Number 52 *of* 1998

JURISDICTION OF COURTS AND ENFORCEMENT OF JUDGMENTS ACT, 1998

ARRANGEMENT OF SECTIONS

PART I

Preliminary and General

Section

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Text (in the English language) of Titles VI and VII of the 1989 Accession Convention.

SIXTH SCHEDULE

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SEVENTH SCHEDULE

Text (in the English language) of the Lugano Convention.

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NINTH SCHEDULE

Domicile

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Number 52 *of* 1998

JURISDICTION OF COURTS AND ENFORCEMENT OF JUDGMENTS ACT, 1998.

AN ACT TO CONSOLIDATE THE JURISDICTION OF COURTS AND ENFORCEMENT OF JUDGMENTS ACTS, 1988 AND 1993, TO GIVE THE FORCE OF LAW TO THE CONVENTION SIGNED AT BRUSSELS ON THE 29TH DAY OF NOVEMBER, 1996 ON THE ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN 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 OF THE EUROPEAN COMMUNITIES WITH THE ADJUSTMENTS MADE TO THEM BY THE CONVENTION ON THE ACCESSION OF THE KINGDOM OF DENMARK, OF IRELAND AND OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, BY THE CONVENTION ON THE ACCESSION OF THE HELLENIC REPUBLIC AND BY THE CONVENTION ON THE ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC AND TO PROVIDE FOR RELATED MATTERS. [23*rd December,* 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title and commencement.

1.—(1) This Act may be cited as the Jurisdiction of Courts and Enforcement of Judgments Act, 1998.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister, may be fixed either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

''the Accession Conventions'' means the 1978 Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention;

''the 1978 Accession Convention'' means the Convention on the accession to the 1968 Convention and the 1971 Protocol of the State,

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Denmark and the United Kingdom, signed at Luxembourg on the 9th day of October, 1978;

''the 1982 Accession Convention'' means the Convention on the accession to the 1968 Convention and the 1971 Protocol (as amended in each case by the 1978 Accession Convention) of the Hellenic Republic, signed at Luxembourg on the 25th day of October, 1982;

''the 1989 Accession Convention'' means the Convention on the accession to the 1968 Convention and the 1971 Protocol (as amended in each case by the 1978 Accession Convention and the 1982 Accession Convention) of the Kingdom of Spain and the Portuguese Republic, signed at San Sebastian on the 26th day of May, 1989;

''the 1996 Accession Convention'' means the Convention on the accession to the 1968 Convention and the 1971 Protocol (as amended in each case by the 1978 Accession Convention, the 1982 Accession Convention and the 1989 Accession Convention) of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, signed at Brussels on the 29th day of November, 1996;

''the 1968 Convention'' means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the protocol annexed to that Convention), signed at Brussels on the 27th day of September, 1968;

''court'' includes a tribunal;

''the European Communities'' has the same meaning as in section 1 of the European Communities Act, 1972;

''the European Court'' means the Court of Justice of the European Communities;

''the Lugano Convention'' means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Lugano on the 16th day of September, 1988, and includes Protocol 1;

''the Minister'' means the Minister for Justice, Equality and Law Reform;

''the 1971 Protocol'' means the Protocol on the interpretation of the 1968 Convention by the European Court, signed at Luxembourg on the 3rd day of June, 1971;

''Protocol 1'' means the protocol on certain questions of jurisdiction, procedure and enforcement, signed at Lugano on the 16th day of September, 1988.

(2) In this Act, unless the context otherwise requires, a reference to, or to any provision of, the 1968 Convention or the 1971 Protocol is to the 1968 Convention, the 1971 Protocol or the provision, as amended by—

(*a*) the 1978 Accession Convention,

(*b*) the 1982 Accession Convention,

(*c*) the 1989 Accession Convention, and

(*d*) the 1996 Accession Convention in so far as it is in force between the State and a state respecting which it has

entered into force in accordance with Article 16 of that Convention.

(3) In this Act—

(*a*) a reference to a section, a Part or a Schedule is to a section or a Part of, or a Schedule to, this Act unless it is indicated that a reference to some other enactment is intended,

(*b*) a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended, and

(*c*) a reference to an enactment is to that enactment as amended or modified by any other enactment including this Act.

(4) The collective citation ''the Courts (Supplemental Provisions) Acts, 1961 to 1998'' shall include *sections 7* to *10, 13, 14* and *16* of this Act, and those Acts and those sections shall be construed together as one Act.

Texts of Conventions and Protocols.

3.—(1) For convenience of reference, the following texts are set out in the *Schedules*:

(*a*) in the *First Schedule*, the 1968 Convention as amended by—

(i) Titles II and III of the 1978 Accession Convention,

(ii) Titles II and III of the 1982 Accession Convention,

(iii) Titles II and III of, and Annex 1 to, the 1989 Accession Convention, and

(iv) Titles II and III of the 1996 Accession Convention;

(*b*) in the *Second Schedule*, the 1971 Protocol as amended by—

(i) Title IV of the 1978 Accession Convention,

(ii) Title IV of the 1982 Accession Convention,

(iii) Title IV of the 1989 Accession Convention, and

(iv) Title IV of the 1996 Accession Convention;

(*c*) in the *Third Schedule*, Titles V and VI of the 1978 Accession Convention as amended by the 1989 Accession Convention;

(*d*) in the *Fourth Schedule*, Titles V and VI of the 1982 Accession Convention;

(*e*) in the *Fifth Schedule*, Titles VI and VII of the 1989 Accession Convention;

(*f*) in the *Sixth Schedule*, Titles V and VI of the 1996 Accession Convention;

(*g*) in the *Seventh Schedule*, the Lugano Convention;

(*h*) in the *Eighth Schedule*, Protocol 1.

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(2) The texts set out in the *Schedules* are prepared from—

(*a*) in the case of the *First Schedule* and the *Second Schedule*, the authentic texts, in the English and Irish languages, referred to in Articles 37 and 41 of the 1978 Accession Convention, Article 17 of the 1982 Accession Convention, Article 34 of the 1989 Accession Convention and Article 18 of the 1996 Accession Convention, and

(*b*) in the case of the remaining *Schedules*, the authentic texts, in the English language, referred to in the Articles mentioned in *paragraph (a)* and in Article 68 of the Lugano Convention.

PART II

The 1968 Convention and the Accession Conventions

Interpretation of this Part.

4.—(1) In this Part, unless the context otherwise requires—

''Contracting State'' means a state—

(*a*) which is—

(i) one of the original parties to the 1968 Convention (Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands), or

(ii) one of the parties acceding to the 1968 Convention under any of the Accession Conventions (the State, Denmark, the United Kingdom, the Hellenic Republic, the Kingdom of Spain, the Portuguese Republic, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden), and

(*b*) respecting which—

(i) the 1978 Accession Convention has entered into force in accordance with Article 39 of that Convention,

(ii) the 1982 Accession Convention has entered into force in accordance with Article 15 of that Convention,

(iii) the 1989 Accession Convention has entered into force in accordance with Article 32 of that Convention, or

(iv) the 1996 Accession Convention has entered into force in accordance with Article 16 of that Convention,

as the case may be;

''the Conventions'' means the 1968 Convention, the 1971 Protocol and the Accession Conventions;

''enforceable maintenance order'' means—

(*a*) a maintenance order respecting all of which an enforcement order has been made, or

(*b*) if an enforcement order has been made respecting only part of a maintenance order, the maintenance order to the extent to which it is so ordered to be enforced;

''enforcement order'' means an order for the recognition or enforcement of all or part of a judgment where the order—

(*a*) is made by the Master of the High Court under *section 7*, or

(*b*) is made or varied on appeal from a decision of the Master of the High Court under *section 7* or from a decision of the High Court relating to the Master's decision;

''judgment'' means a judgment or order (by whatever name called) that is a judgment for the purposes of the 1968 Convention, and, except in *sections 10*, *12* and *14*, includes—

(*a*) an instrument or settlement referred to in Title IV of the 1968 Convention, and

(*b*) an arrangement relating to maintenance obligations concluded with or authenticated by an administrative authority, as referred to in Article 10 of the 1996 Accession Convention;

''maintenance'' means maintenance within the meaning of the Conventions;

''maintenance creditor'' means, in relation to a maintenance order, the person entitled to the payments for which the order provides;

''maintenance debtor'' means, in relation to a maintenance order, the person liable to make payments under the order;

''maintenance order'' means a judgment relating to maintenance.

(2) The Minister for Foreign Affairs may, by order, declare—

(*a*) that any state specified in the order is a Contracting State, or

(*b*) that a declaration has been made pursuant to Article IV of the 1968 Convention, or a communication has been made pursuant to Article VI of that Convention, to the Secretary General of the Council of the European Communities.

(3) The text of a declaration or communication referred to in *subsection (2)(b)* shall be set out in the order declaring that the declaration or communication has been made.

(4) An order that is in force under *subsection (2)* is—

(*a*) if made under *subsection (2)(a)*, evidence that any state to which the declaration relates is a Contracting State, and

(*b*) if made under *subsection (2)(b)*, evidence that the declaration pursuant to Article IV or the communication pursuant to Article VI was made and evidence of its contents.

(5) The Minister for Foreign Affairs may, by order, amend or revoke an order made under *subsection (2*) or this subsection.

Conventions to have force of law.

5.—The Conventions shall have the force of law in the State and judicial notice shall be taken of them.

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Interpretation of Conventions.

6.—(1) Judicial notice shall be taken of—

(*a*) a ruling or decision of, or expression of opinion by, the European Court on any question about the meaning or effect of a provision of the Conventions, and

(*b*) the reports listed in *subsection (2).*

(2) When interpreting a provision of the Conventions, a court may consider the following reports (which are reproduced in the Official Journal of the European Communities) and shall give them the weight that is appropriate in the circumstances:

(*a*) the reports by Mr. P. Jenard on the 1968 Convention and the 1971 Protocol[1];

(*b*) the report by Professor Peter Schlosser on the 1978 Accession Convention[2];

(*c*) the report by Professor Demetrios Evrigenis and Professor K. D. Kerameus on the accession of the Hellenic Republic to the 1968 Convention and the 1971 Protocol[3];

(*d*) the report by Mr. Almeida Cruz, Mr. Desantes Real and Mr. P. Jenard on the 1989 Accession Convention[4].

Applications for recognition and enforcement of Community judgments.

7.—(1) An application under the Conventions for the recognition or enforcement in the State of a judgment shall—

(*a*) be made to the Master of the High Court, and

(*b*) be determined by the Master by order in accordance with the Conventions.

(2) An order made by the Master of the High Court under *subsection (1)* may include an order for the recognition or enforcement of only part of a judgment.

Enforcement of Community judgments by the High Court.

8.—(1) Subject to *section 10 (4)* and to the restrictions on enforcement contained in Article 39 of the 1968 Convention, if an enforcement order has been made respecting a judgment—

(*a*) the judgment shall, to the extent to which its enforcement is authorised by the enforcement order, be of the same force and effect as a judgment of the High Court, and

(*b*) the High Court has the same powers respecting enforcement of the judgment, and proceedings may be taken on the judgment, as if it were a judgment of that Court.

(2) Subject to *subsections (3)* and *(6)*, *subsection (1)* shall apply only to a judgment other than a maintenance order.

(3) On application by the maintenance creditor under an enforceable maintenance order, the Master of the High Court may, by order, declare that the following shall be regarded as being payable under a judgment referred to in *subsection (1)*:

[1]OJ No. C59 of 5. 3. 1979, p. 1.
[2]OJ No. C59 of 5. 3. 1979, p. 71.
[3]OJ No. C298 of 24. 11. 1986, p. 1.
[4]OJ No. C189 of 28. 7. 1990, p. 35.

(*a*) sums which were payable under the maintenance order as periodic payments but were not paid before the relevant enforcement order was made;

(*b*) a lump sum (not being a sum referred to in *paragraph (a)*) which is payable under the enforceable maintenance order.

(4) A declaration shall not be made under *subsection (3)* unless the Master of the High Court considers that by doing so the enforceable maintenance order would be more effectively enforced respecting any sums or sum referred to in that subsection.

(5) If a declaration is made under *subsection (3)*, the sums or sum to which the declaration relates shall be deemed, for the purposes of this Part, to be payable under a judgment referred to in *subsection (1)* and not otherwise.

(6) A maintenance order shall be regarded as a judgment referred to in *subsection (1)* if the District Court does not have jurisdiction to enforce the order under *section 9(7)*.

Enforcement of Community maintenance orders by the District Court.

9.—(1) Subject to *section 10(4)* and to the restrictions on enforcement contained in Article 39 of the 1968 Convention, the District Court shall have jurisdiction to enforce an enforceable maintenance order.

(2) An enforceable maintenance order shall, from the date on which the maintenance order was made, be deemed for the purposes of—

(*a*) *subsection (1)*,

(*b*) section 98(1) of the Defence Act, 1954, and

(*c*) subject to the 1968 Convention, the variation or discharge of that order under section 6 of the Family Law (Maintenance of Spouses and Children) Act, 1976, as amended by the Status of Children Act, 1987,

to be an order made by the District Court under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Family Law (Maintenance of Spouses and Children) Act, 1976, as may be appropriate.

(3) *Subsections (1)* and *(2)* shall apply even though an amount payable under the enforceable maintenance order exceeds the maximum amount the District Court has jurisdiction to award under the appropriate enactment mentioned in *subsection (2)*.

(4) Where an enforceable maintenance order is varied by a court in a Contracting State other than the State and an enforcement order has been made respecting all or part of the enforceable maintenance order as so varied, or respecting all or part of the order effecting the variation, the enforceable maintenance order shall, from the date on which the variation takes effect, be enforceable in the State only as so varied.

(5) Where an enforceable maintenance order is revoked by a court in a Contracting State other than the State and an enforcement order has been made respecting the order effecting the revocation, the enforceable maintenance order shall, from the date on which the revocation takes effect, cease to be enforceable in the State except

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in relation to any sums under the order that were payable, but were not paid, on or before that date.

(6) Subject to *section 8(3)* to *(5)* of this Act, the following shall be regarded as being payable pursuant to an order made under section 5 or section 5A or 21A (inserted by the Status of Children Act, 1987) of the Family Law (Maintenance of Spouses and Children) Act, 1976:

(*a*) any sums that were payable under an enforceable maintenance order but were not paid before the date of the making of the relevant enforcement order;

(*b*) any costs of or incidental to the application for the enforcement order that are payable under *section 10(2)* of this Act.

(7) The jurisdiction vested in the District Court by this section may be exercised by the judge of that Court for the time being assigned to—

(*a*) if the maintenance debtor under an enforceable maintenance order resides in the State, the district court district in which the debtor resides or carries on any profession, business or occupation, or

(*b*) if the maintenance debtor under an enforceable maintenance order does not reside in the State but is in the employment of an individual residing or having a place of business in the State or of a corporation or association having its seat in the State, the district court district in which that individual resides or that corporation or association has its seat.

(8) Despite anything to the contrary in an enforceable maintenance order, the maintenance debtor shall pay any sum payable under that order to—

(*a*) in the case referred to in *subsection (7)(a)*, the district court clerk for the district court district in which the debtor for the time being resides, or

(*b*) in a case referred to in *subsection (7)(b)*, a district court clerk specified by the District Court,

for transmission to the maintenance creditor under the order or, if a public authority has been authorised by the creditor to receive that sum, to that authority.

(9) If a sum payable under an enforceable maintenance order is not duly paid and if the maintenance creditor under the order so requests in writing, the district court clerk concerned shall make an application respecting that sum under—

(*a*) section 10 (which relates to the attachment of certain earnings) of the Family Law (Maintenance of Spouses and Children) Act, 1976, or

(*b*) section 8 (which relates to the enforcement of certain maintenance orders) of the Enforcement of Court Orders Act, 1940.

(10) For the purposes of *subsection (9)(b),* a reference in section 8 of the Enforcement of Court Orders Act, 1940 (other than in subsections (4) and (5) of that section) to an applicant shall be construed as a reference to the district court clerk.

(11) Nothing in this section shall affect the right of a maintenance creditor under an enforceable maintenance order to institute proceedings for the recovery of a sum payable to a district court clerk under *subsection (8).*

(12) Section 8(7) of the Enforcement of Court Orders Act, 1940, does not apply to proceedings for the enforcement of an enforceable maintenance order.

(13) The maintenance debtor under an enforceable maintenance order shall give notice to the district court clerk for the district court area in which the debtor has been residing of any change of address.

(14) A person who, without reasonable excuse, contravenes *subsection (13)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

(15) If there are two or more district court clerks for a district court area, a reference in this section to a district court clerk shall be construed as a reference to any of those clerks.

(16) For the purposes of this section, the Dublin Metropolitan Area shall be deemed to be a district court area.

Provisions in enforcement orders for payment of interest on judgments and payment of costs.

10.—(1) Where, on application for an enforcement order respecting a judgment, it is shown—

(*a*) that the judgment provides for the payment of a sum of money, and

(*b*) that, in accordance with the law of the Contracting State in which the judgment was given, interest on that sum is recoverable under the judgment at a particular rate or rates and from a particular date or time,

the enforcement order, if made, shall provide that the person liable to pay that sum shall also be liable to pay that interest, apart from any interest on costs recoverable under *subsection (2),* in accordance with the particulars noted in the order, and the interest shall be recoverable by the applicant as though it were part of that sum.

(2) An enforcement order may, at the discretion of the court concerned or the Master of the High Court, as may be appropriate, provide for the payment to the applicant by the respondent of the reasonable costs of or incidental to the application for the enforcement order.

(3) A person required by an enforcement order to pay costs shall be liable to pay interest on the costs as if they were the subject of an order for the payment of costs made by the High Court on the date the enforcement order was made.

(4) Interest shall be payable on a sum referred to in *subsection (1)* only as provided for in this section.

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Currency of payments under Community maintenance orders.

11.—(1) An amount payable in the State under a maintenance order by virtue of an enforcement order shall be paid in the currency of the State.

(2) If the amount referred to in *subsection (1)* is stated in the maintenance order in a currency other than that of the State, the payment shall be made on the basis of the exchange rate prevailing, on the date the enforcement order is made, between the currency of the State and the other currency.

(3) For the purposes of this section, a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

(4) In this section, ''authorised institution'' means any of the following:

(*a*) a body licensed under the Central Bank Acts, 1942 to 1998, or authorised under regulations made under the European Communities Act, 1972, to carry on banking business;

(*b*) a building society incorporated or deemed to be incorporated under section 10 of the Building Societies Act, 1989;

(*c*) a society licensed under section 10 of the Trustee Savings Banks Act, 1989, to carry on the business of a trustee savings bank;

(*d*) An Post;

(*e*) ACC Bank public limited company;

(*f*) ICC Bank public limited company.

Proof and admissibility of certain judgments, documents and related translations.

12.—(1) For the purposes of the Conventions—

(*a*) a document that is duly authenticated and purports to be a copy of a judgment given by a court of a Contracting State other than the State shall, without further proof, be deemed to be a true copy of the judgment, unless the contrary is shown, and

(*b*) the original or any copy of a document mentioned in Article 46.2 or 47 of the 1968 Convention shall be admissible as evidence of any matter to which the document relates.

(2) A document purporting to be a copy of a judgment given by a court of a Contracting State, shall, for the purposes of this Act, be regarded as being duly authenticated if it purports—

(*a*) to bear the seal of that court, or

(*b*) to be certified by a judge or officer of that court to be a true copy of a judgment given by that court.

(3) A document shall be admissible as evidence of a translation if—

(*a*) it purports to be the translation of—

(i) a judgment given by a court of a Contracting State other than the State,

(ii) a document mentioned in Article 46.2, 47 or 50 of the 1968 Convention, or

(iii) a document containing a settlement referred to in Article 51 of the 1968 Convention or containing an arrangement referred to in Article 10 of the 1996 Accession Convention, and

(*b*) it is certified as correct by a person competent to do so.

Provisional, including protective, measures.

13.—(1) On application pursuant to Article 24 of the 1968 Convention, the High Court may grant any provisional, including protective, measures of any kind that the Court has power to grant in proceedings that, apart from this Act, are within its jurisdiction, if—

(*a*) proceedings have been or are to be commenced in a Contracting State other than the State, and

(*b*) the subject matter of the proceedings is within the scope of the 1968 Convention as determined by Article 1 (whether or not that Convention has effect in relation to the proceedings).

(2) On an application under *subsection (1*), the High Court may refuse to grant the measures sought if, in its opinion, the fact that, apart from this section, that Court does not have jurisdiction in relation to the subject matter of the proceedings makes it inexpedient for it to grant those measures.

(3) Subject to Article 39 of the 1968 Convention, an application to the Master of the High Court for an enforcement order respecting a judgment may include an application for any protective measures the High Court has power to grant in proceedings that, apart from this Act, are within its jurisdiction.

(4) Where an enforcement order is made, the Master of the High Court shall grant any protective measures referred to in *subsection (3)* that are sought in the application for the enforcement order.

Provision of certain documents by courts in the State to interested parties.

14.—If a judgment is given by a court in the State, the registrar or clerk of that court shall, at the request of an interested party and subject to any conditions that may be specified by rules of court, give to the interested party—

(*a*) a duly authenticated copy of the judgment,

(*b*) a certificate signed by the registrar or clerk of the court stating—

(i) the nature of the proceedings,

(ii) the grounds, pursuant to the 1968 Convention, on which the court assumed jurisdiction,

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(iii) the date on which the time for lodging an appeal against the judgment will expire or, if it has expired, the date on which it expired,

(iv) whether notice of appeal against, or, if the judgment was given in default of appearance, notice to set aside, the judgment has been entered,

(v) if the judgment is for the payment of a sum of money, the rate of interest, if any, payable on the sum and the date from which interest is payable, and

(vi) any other particulars that may be specified by rules of court, and

(*c*) if the judgment was given in default of appearance, the original or a copy, certified by the registrar or clerk of the court to be a true copy, of a document establishing that notice of the institution of proceedings was served on the person in default.

Domicile for purposes of 1968 Convention and this Part.

15.—(1) In order to determine for the purposes of the 1968 Convention and this Part whether an individual is domiciled in the State, in a place in the State or in a state other than a Contracting State, the following provisions shall apply:

(*a*) *Part I* of the *Ninth Schedule*, in relation to the text in the English language of the 1968 Convention;

(*b*) *Part II* of the *Ninth Schedule*, in relation to the text in the Irish language of the 1968 Convention.

(2) The seat of a corporation or association shall be treated as its domicile and in order to determine for the purposes of Article 53 of the 1968 Convention and this Part whether a corporation or association has its seat in the State, in a place in the State or in a state other than a Contracting State, the following provisions shall apply:

(*a*) *Part III* of the *Ninth Schedule*, in relation to the text in the English language of the 1968 Convention;

(*b*) *Part IV* of the *Ninth Schedule*, in relation to the text in the Irish language of the 1968 Convention.

(3) In order to determine for the purposes of the 1968 Convention and this Part whether a trust is domiciled in the State the following provisions shall apply:

(*a*) *Part V* of the *Ninth Schedule*, in relation to the text in the English language of the 1968 Convention;

(*b*) *Part VI* of the *Ninth Schedule*, in relation to the text in the Irish language of the 1968 Convention.

(4) In this section—

''association'' means an unincorporated body of persons;

''corporation'' means a body corporate.

Pt.II

Venue for certain proceedings in Circuit Court or District Court.

16.—(1) Subject to Title II of the 1968 Convention, the jurisdiction of the Circuit Court respecting proceedings that may be instituted in the State by virtue of Article 2, 8.1, 11, 14 or 16(1)(*b*) of that Convention shall be exercised by the judge of that Court for the time being assigned to the circuit where the defendant, or one of the defendants, ordinarily resides or carries on any profession, business or occupation.

(2) *Subsection (1)* shall apply where, apart from that subsection, the Circuit Court's jurisdiction would be determined by reference to the place where the defendant resides or carries on business.

(3) The jurisdiction of the Circuit Court or District Court respecting proceedings that may be instituted in the State by virtue of Article 14 of the 1968 Convention by a plaintiff domiciled in the State may be exercised as follows:

(*a*) in the case of the Circuit Court, by the judge of the Circuit Court for the time being assigned to the circuit where the plaintiff or one of the plaintiffs ordinarily resides or carries on any profession, business or occupation;

(*b*) in the case of the District Court, by the judge of the District Court for the time being assigned to the district court district in which the plaintiff or one of the plaintiffs ordinarily resides or carries on any profession, business or occupation.

PART III

The Lugano Convention

Interpretation of this Part.

17.—(1) For the purposes of this Part, unless the context otherwise requires—

''Contracting State'' means a state respecting which the Lugano Convention has entered into force in accordance with Article 61 or 62 of that Convention;

''enforceable maintenance order'' means—

(*a*) a maintenance order respecting all of which an enforcement order has been made, or

(*b*) if an enforcement order has been made respecting only part of a maintenance order, the maintenance order to the extent to which it is so ordered to be enforced;

''enforcement order'' means an order for the recognition or enforcement of all or part of a judgment where the order—

(*a*) is made by the Master of the High Court under *section 7* as applied by this section, or

(*b*) is made or varied on appeal from a decision of the Master of the High Court under *section 7* as applied by this Part or from a decision of the High Court relating to the Master's decision;

''judgment'' means a judgment or order (by whatever name called) that is a judgment for the purposes of the Lugano Convention, and,

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except in *sections 10, 12* and *14* as applied by this Part, includes an instrument or settlement referred to in Title IV of that Convention;

''maintenance'' means maintenance within the meaning of the Lugano Convention;

''maintenance creditor'' means, in relation to a maintenance order, the person entitled to the payments for which the order provides;

''maintenance debtor'' means, in relation to a maintenance order, the person liable to make payments under the order;

''maintenance order'' means a judgment relating to maintenance.

(2) The Minister for Foreign Affairs may, by order, declare—

(*a*) that any state specified in the order is a Contracting State, or

(*b*) that—

(i) a denunciation has been made pursuant to Article 64 of the Lugano Convention,

(ii) a declaration has been made pursuant to Article Ia, Ib, or IV of Protocol 1, or

(iii) a communication has been made pursuant to Article 63 of the Lugano Convention or Article VI of Protocol 1.

(3) The text of a denunciation, declaration or communication referred to in *subsection (2)(b)* shall be set out in the order declaring that the denunciation, declaration or communication has been made.

(4) An order that is in force under *subsection (2)* shall be—

(*a*) if made under *subsection (2)(a),* evidence that any state to which the declaration relates is a Contracting State, and

(*b*) if made under *subsection (2)(b),* evidence that the denunciation, declaration or communication, the text of which is set out in the order, was made and evidence of its contents.

(5) The Minister for Foreign Affairs may, by order, amend or revoke an order made under *subsection (2)* or this subsection.

(6) The definition of ''judgment'' in *subsection (1)* shall not be construed to limit the effect of Article 54b of the Lugano Convention.

Convention to have force of law.

18.—The Lugano Convention shall have the force of law in the State and judicial notice shall be taken of it.

Interpretation of Convention.

19.—(1) Judicial notice shall be taken of relevant decisions delivered by courts of other Contracting States concerning the provisions of the Lugano Convention, and a court shall, when interpreting and applying those provisions, pay due account to the principles laid down in those decisions.

(2) Judicial notice shall be taken of the report prepared by Mr. P. Jenard and Mr. G. Möller on the Lugano Convention[1], and, when interpreting any provision of that Convention, a court may consider that report and shall give it the weight that is appropriate in the circumstances. Pt.III S.19

Application of certain provisions of *Part II*.

20.—(1) *Sections 7* to *16* apply in relation to the application of the Lugano Convention in the State pursuant to *section 18* as they apply in relation to the application, pursuant to *section 5*, of the Conventions (as defined in *section 4*) with—

(*a*) the modifications set out in *subsection (2)*, and

(*b*) any other necessary modifications.

(2) For the purposes of *subsection (1)*,

(*a*) a reference in *sections 7* to *16* to a numbered Article or Title of the 1968 Convention shall be construed as a reference to the corresponding Article or Title of the Lugano Convention,

(*b*) a reference in *sections 7* to *16* to an instrument or settlement shall be construed as a reference to an instrument or settlement referred to in Title IV of the Lugano Convention, and

(*c*) a reference in *sections 7* to *16* to a term defined in *section 17* shall be construed in accordance with that section.

PART IV

Amendments and Repeals

''Act of 1994''.

21.—In this Part, ''the Act of 1994'' means the Maintenance Act, 1994.

Amendment of Act of 1994.

22.—(1) Section 3 (1) of the Act of 1994 is hereby amended by the substitution of the following definition for the definitions of ''the Act of 1988'' and ''the Act of 1993'':

'' '*the Act of 1998*' means the *Jurisdiction of Courts and Enforcement of Judgments Act, 1998*;''.

(2) Section 4 (2) of the Act of 1994 (as amended by section 45 (*b*) of the Family Law Act, 1995, and section 53 (*b*) of the Family Law (Divorce) Act, 1996) is hereby amended by the substitution of the following paragraph for paragraph (*a*):

''(*a*) For the purposes of section 8 of the Enforcement of Court Orders Act, 1940, the Act of 1976, the Act of 1995, the Act of 1996, *the Act of 1998* and this Act, the Central Authority shall have authority to act on behalf of a maintenance creditor or of a claimant, as defined in section 13 (1), and references in those enactments to a maintenance creditor or to such a claimant shall be construed as including references to the Central Authority.''.

[1]OJ No. C189 of 28. 7. 1990, p. 57.

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(3) Section 5 of the Act of 1994 is hereby amended by the substitution of ''*Jurisdiction of Courts and Enforcement of Judgments Act, 1998*'' for ''Jurisdiction of Courts and Enforcement of Judgments Acts, 1988 and 1993''.

(4) Section 6 of the Act of 1994 is hereby amended—

(*a*) in subsection (1) by the substitution of the following definitions for the definitions of ''the Brussels Convention'', and ''the Lugano Convention'' respectively:

'''the Brussels Convention' means—

(*a*) the 1968 Convention, and

(*b*) the Accession Conventions,

as defined in *the Act of 1998*, and a reference to an Article of the Brussels Convention shall be construed as including a reference to the corresponding Article of the Lugano Convention;'',

'''the Lugano Convention' has the meaning assigned to it by *the Act of 1998*;'',

(*b*) in subsection (1) in the definition of ''reciprocating jurisdiction'', by the substitution of ''*the Act of 1998*'' for ''the Acts of 1988 and 1993'', and

(*c*) in subsection (2)(*a*), by the substitution of ''*the Act of 1998*'' for ''the Acts of 1988 and 1993''.

(5) Section 7 (1) of the Act of 1994 is hereby amended by the substitution of ''in accordance with *section 7* of *the Act of 1998*'' for ''in accordance with section 5 of the Act of 1988''.

(6) Section 14 of the Act of 1994 is hereby amended—

(*a*) in subsection (1), by the substitution of the following for paragraph (*a*):

''(*a*) if the request is accompanied by an order of a court in a Contracting State (as defined in *the Act of 1998)*, transmit the request to the Master of the High Court for determination in accordance with *section 7* of *the Act of 1998* and Part II of this Act, and the other provisions of *the Act of 1998* shall apply accordingly, with any necessary modifications,'',

(*b*) in subsection (2), by the substitution of the following for paragraphs (*a*) and (*b*):

''(*a*) the order of the District Court shall be deemed to be an enforceable maintenance order as defined in *the Act of 1998*, and

(*b*) sections 8, 9 and 10 of that Act shall apply in relation to that order, with any necessary modifications.'' ,

and

(*c*) by the insertion of the following subsection after subsection (9):

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''(9A) In subsections (1) (*a*) and (9) a reference to an order of, or made by, a court shall be construed as including a reference to—

(*a*) an instrument or settlement within the meaning of the Brussels Convention as defined in Part II, and

(*b*) an arrangement relating to maintenance obligations concluded with or authenticated by an administrative authority, as referred to in Article 10 of the 1996 Accession Convention as defined in *section 2* of *the Act of 1998*.''.

(7) Section 20 (1) of the Act of 1994 is hereby amended by the substitution of ''*the Act of 1998*'' for ''the Act of 1988''.

Repeals.

23.—The following are hereby repealed:

(*a*) the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988;

(*b*) the Jurisdiction of Courts and Enforcement of Judgments Act, 1993;

(*c*) sections 7 (7) and 9 to 12 of the Act of 1994.

FIRST SCHEDULE

Text of the 1968 Convention as amended by the 1978 Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention[1]

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:

[*Plenipotentiaries designated by the Member States*]

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.

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.

[1]OJ No. C 27 of 26.1.1998, p.1.

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 — Burgerlijk Wetboek*) and Article 638 of the judicial code (*Code judiciaire — Gerechtelijk Wetboek*),

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

—in the Federal Republic of Germany: Article 23 of the code of civil procedure (*Zivilprozeβordnung*),

—in Greece: Article 40 of the code of civil procedure (*Κώδικας Πολιτικής Δικονομίας*),

—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 Austria: Article 99 of the Law on Court Jurisdiction (*Jurisdiktionsnorm*),

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

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

—in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (*oikeudenkäymiskaari/rättegångsbalken*),

—in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (*rättegångsbalken*),

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—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 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; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated;

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;

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; Sch.1

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

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;

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

Article 6a

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability 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 Article 4 and 5.5.

Article 8

An insurer domiciled in a Contracting State may be sued:

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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 had 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 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 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 Sch.1

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

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.

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

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

(*b*) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Contracting State; Sch.1

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 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:

(*a*) in writing or evidenced in writing; or

(*b*) in a form which accords with practices which the parties have established between themselves; or

(*c*) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

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

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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 Articles 12 or 15, or if the courts whose juridiction 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.

In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it is entered into after the dispute has arisen or if the employee invokes it to seise courts other than those for the defendant's domicile or those specified in Article 5.1.

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 the 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.

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 Sch.1

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 stay its proceedings until such time as the jurisdiction of the court first seised is established.

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

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.

Sch.1

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;

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 of origin, 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 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 28

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Sections 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 of origin based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State of origin may not be reviewed; the test of

public policy referred to in Article 27.1 may not be applied to the rules relating to jurisdiction. Sch.1

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 of origin, by reason of an appeal.

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, it has been declared enforceable 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.

Article 32

1. The application shall be submitted:

—in Belgium, to the *tribunal de première instance* or *rechtbank van eerste aanleg,*

—in Denmark, to the *byret,*

—in the Federal Republic of Germany, to the presiding judge of a chamber of the *Landgericht,*

—in Greece, to the *Μονομελές Πρωτοδικείο,*

—in Spain, to the *Juzgado de Primera Instancia,*

—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 Austria, to the *Bezirksgericht,*

—in the Netherlands, to the presiding judge of the *arrondissementsrechtbank,*

—in Portugal, to the *Tribunal Judicial de Círculo,*

—in Finland, to the *Käräjäoikeus/tingsrätt,*

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—in Sweden, to the *Svea hovrätt,*

—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.

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. Sch.1

Article 37

1. 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 Greece, with the *Εφετείο*,

—in Spain, with the *Audiencia Provincial*,

—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 Austria, with the *Bezirksgericht*,

—in the Netherlands, with the *arrondissementsrechtbank*,

—in Portugal, with the *Tribunal da Relação*,

—in Finland, with the *hovioikeus / hovrätt*,

—in Sweden, with the *Svea hovrätt*,

—in the United Kingdom:

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

(*b*) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;

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

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

—in Belgium, Greece, Spain, France, Italy, Luxembourg and in 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 Austria, in the case of an appeal, by a *Revisionsrekurs* and, in the case of opposition proceedings, by a *Berufung* with the possibility of a revision,

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

—in Portugal, by an appeal on a point of law,

—in Finland, by an appeal to *korkein oikeus/ högsta domstolen*,

—in Sweden, by an appeal to *Högsta domstolen*,

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

Sch.1

Article 38

The court with which the appeal under Article 37 (1) 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 of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within 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 of origin shall be treated as an ordinary appeal for the purposes of the first paragraph.

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

1. 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 Greece, to the *Εφετείο*,

—in Spain, to the *Audiencia Provincial*,

—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 Austria, to the *Bezirksgericht*,

—in the Netherlands, to the *gerechtshof*,

—in Portugal, to the *Tribunal da Relação*,

—in Finland, to *hovioikeus/hovrätten*,

—in Sweden, to the *Svea hovrätt*,

—in the United Kingdom:

(*a*) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;

(*b*) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;

(*c*) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States. Sch.1

Article 41

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

—in Belgium, Greece, Spain, France, Italy, Luxembourg and in 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 Austria, by a *Revisionsrekurs*,

—in Portugal, by an appeal on a point of law,

—in Finland, by an appeal to *korkein oikeus/högsta domstolen*,

—in Sweden, by an appeal to *Högsta domstolen*,

—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 of origin.

Article 44

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

Sch.1 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.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State of origin, 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 of origin.

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 Articles 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, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin. Sch.1

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 addressed 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.

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.

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 in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.

However, 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 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.

If the parties to a dispute concerning a contract had agreed in writing before 1 June 1988 for Ireland or before 1 January 1987 for

Sch.1

the United Kingdom 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 54a

For a period of three years from 1 November 1986 for Denmark and from 1 June 1988 for Ireland, jurisdiction in maritime matters shall be determined in these States not only in accordance with the provisions of Title II, but also in accordance with the provisions of paragraphs 1 to 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:

Sch.1

(*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 on any ship;

(*c*) salvage;

(*d*) agreement relating to the use or hire of any ship whether by charterparty or otherwise;

(*e*) agreement relating to the carriage of goods in any ship whether by charterparty 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 VII

RELATIONSHIPS TO OTHER CONVENTIONS

Article 55

Subject to the provisions of the second subparagraph 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:

Sch.1

—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,

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

—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 Federal Republic of Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,

—the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 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,

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

—the Convention between the Kingdom of Greece and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4 November 1961,

Sch.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 Kingdom of the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,

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

—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,

—the Convention between Spain and France on the recognition and enforcement of judgments and arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969,

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

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

—the Convention between Spain and Italy regarding legal aid and the recognition and enforcement of judgments in civil and commercial matters, signed at Madrid on 22 May 1973,

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

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

—the Convention between Spain and the Federal Republic of Germany on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Bonn on 14 November 1983,

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

—the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986,

Sch.1

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

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. With a view to its uniform interpretation, pargraph 1 shall be applied in the following manner:

(*a*) this Convention 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 hearing the action shall, in any event, apply Article 20 of this Convention;

(*b*) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting State in accordance with this Convention.

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 this Convention which concern the procedure for recognition and enforcement of judgments may be applied.

3. 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

Until such time as the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Lugano on 16 September 1988, takes effect with regard to France and the Swiss Confederation, this Convention shall not affect the rights granted to Swiss nationals by the Convention between France and the Swiss Confederation on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15 June 1869.

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.

Title VIII

FINAL PROVISIONS

Article 60

[deleted]

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 States 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;

Sch.1

(*b*) the date of entry into force of this Convention;

(*c*) [*deleted*]

(*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.

[*Signatures of the designated plenipotentiaries*]

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.

Sch.1

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 or in Austria. Any person domiciled in another Contracting State may be sued in the courts:

—of the Federal Republic of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozessordnung*) concerning third-party notices,

—of Austria, pursuant to Article 21 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 and in Austria in accordance with Title III. Any effects which judgments given in those States may have on third parties by application of the provisions in the preceding paragraph shall also be recognized in the other Contracting States.

Article Va

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

In Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*) and assistance (*handräckning*), the expression ''court'' includes the ''Swedish enforcement service'' (*kronofogdemyndighet*).

Sch.1

Article Vb

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

Article Ve

Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of the first paragraph of Article 50 of the Convention.

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.

[*Signatures of the designated plenipotentiaries*]

Text in the Irish language of the 1968 Convention as amended by the 1978 Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention[1] Sch.1

COINBHINSIÚN

ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála

BROLLACH

TÁ NA hARDPHÁIRTITHE CONARTHACHA SA CHONRADH AG BUNÚ CHOMHPHOBAL 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 áirithiú 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 áirithiú go bhforghníomhófar breithiúnais, ionstraimí barántúla agus socraíochtaí cúirte;

TAR ÉIS CINNEADH ar an gCoinbhinsiún seo a chur i gcrích agus cuige sin tar éis na daoine seo a leanas a cheapadh mar Lánchumhachtaigh:

(*Lánchumhachtaigh arna gceapadh ag na Ballstáit*)

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 óna réim, go háirithe, cúrsaí ioncaim, custaim agus riaracháin.

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 dlítheanacha eile atá dócmhainneach, comhshocraíochtaí breithiúnacha, imshocraíochtaí agus imeachtaí cosúil leo sin;
3. slándáil shóisialta;
4. eadráin.

[1] IO Uimh. C27 an 26.1.1998, lch.3.

Sch.1

TEIDEAL II

DLÍNSE

ROINN 1

Forálacha Ginearálta

Airteagal 2

Faoi réir fhorálacha 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 Chonarthaigh 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 — Burgerlijk Wetboek*) agus Airteagal 638 den chód breithiúnach (*Code judiciaire — Gerechtelijk Wetboek*),

— sa Danmhairg: Airteagal 246(2) agus (3) den dlí ar nós imeachta sibhialta (*Lov om rettens pleje*),

— i bPoblacht Chónaidhme na Gearmáine: Airteagal 23 de chód an nós imeachta shibhialta (*Zivilprozeßordnung*),

— sa Ghréig: Airteagal 40 de chód an nós imeachta shibhialta (*Κώδικας Πολιτικής Δικονομίας*),

— sa Fhrainc: Airteagail 14 agus 15 den chód sibhialta (*Code civil*),

— in Éirinn: na rialacha á chumasú dlínse a bhunú ar dhoiciméad tionscanta na n-imeachtaí a bheith arna sheirbheáil ar an gcosantóir le linn dó bheith in Éirinn go sealadach,

— 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 Ostair: Airteagal 99 den Dlí ar Dhlínse Chúirte (*Jurisdiktionsnorm*),

— san Ísiltír: Airteagal 126(3) agus Airteagal 127 de chód an nós imeachta shibhialta (*Wetboek van Burgerlijke Rechtsvordering*),

— sa Phortaingéil: Airteagail 65(1)(*c*), 65(2) agus 65A(*c*) de chód an nós imeachta shibhialta (*Código de Processo Civil*) agus Airteagal 11 de chód an nós imeachta saothair (*Código de Processo de Trabalho*),

— san Fhionlainn: an dara, an tríú agus an ceathrú habairt den chéad mhír de Roinn 1 de Chaibidil 10 de Chód an Nós

Imeachta Bhreithiúnaigh (*oikeudenkäymiskaari/rättegångs-balken)*, Sch.1

— sa tSualainn: an chéad abairt den chéad mír de Roinn 3 de Chaibidil 10 de Chód an Nós Imeachta Bhreithiúnaigh (*rättegångsbalken*),

— sa Ríocht Aontaithe: na rialacha á chumasú dlínse a bhunú:

(*a*) ar dhoiciméad tionscanta na n-imeachtaí a bheith arna sheirbheáil ar an gcosantóir le linn dó bheith sa Ríocht Aontaithe go sealadach; nó

(*b*) ar mhaoin leis an gcosantóir a bheith sa Ríocht Aontaithe; nó

(*c*) ar urghabháil ag an ngearánaí ar mhaoin sa Ríocht Aontaithe.

Airteagal 4

Mura bhfuil sainchónaí i Stát Conarthach ar an gcosantóir, rialófar dlínse na gcúirteanna i ngach Stát Conarthach de réir dhlí an Stáit sin, faoi réir fhorálacha 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; in ábhair a bhaineann le conarthaí fostaíochta aonair, is é an áit sin an áit ina ndéanann an fostaí a chuid oibre de ghnáth; más rud é nach ndéanann an fostaí a chuid oibre in aon tír amháin de ghnáth, féadfar an fostóir a agairt freisin sna cúirteanna don áit ina bhfuil nó ina raibh an áit ghnó trínar earcaíodh an fostaí;

2. in ábhair a bhaineann le cothabháil, sna cúirteanna don áit ina bhfuil sainchónaí nó gnáthchónaí ar an gcreidiúnaí cothabhála nó, más ábhar é atá coimhdeach le himeachtaí i dtaobh stádais duine, sa chúirt ag a bhfuil, de réir a dlí féin, dlínse chun na himeachtaí sin a thriail, mura rud é nach bhfuil de bhonn faoin dlínse sin ach náisiúntacht cheann de na páirtithe;

3. in ábhair a bhaineann le tort, míghníomh nó samhail mhíghnímh, 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, su chúirt ar tugadh na himeachtaí sin faoina bráid, sa mhéid go bhfuil dlínse ag an gcúirt sin faoina dlí féin glacadh le himeachtaí sibhialta;

Sch.1

5. i gcás díospóide a éiríonn as oibríochtaí brainse, gníomhaireachta nó bunaíochta eile, sna cúirteanna don áit ina bhfuil an brainse, an ghníomhaireacht nó an bhunaíocht eile;

6. ina cháil mar shocraitheoir, iontaobhaí nó tairbhí i leith iontaobhais a bunaíodh de bhun reachta nó le hionstraim i scríbhinn nó a bunaíodh de bhriathra béil agus a fianaíodh i scríbhinn, i gcúirteanna an Stáit Chonarthaigh a bhfuil sainchónaí an iontaobhais ann;

7. i gcás díospóide maidir le híoc luach saothair a éilíodh as last nó lucht a tharrtháil, sa chúirt ar faoina húdarás:

   (*a*) a gabhadh an last nó an lucht áirithe chun an íocaíocht sin a urrú; nó

   (*b*) a bhféadfaí é a ghabháil amhlaidh, ach gur tugadh bannaí nó urrús eile;

ar an gcoinníoll nach mbeidh feidhm leis an bhforáil seo ach amháin nuair a éilítear go bhfuil leas ag an gcosantóir sa last nó sa lucht nó go raibh leas den sórt sin aige tráth na tarrthála.

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'aon toisc 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.

4. i gcás ábhar a bhaineann le conradh, más féidir an chaingean a dhlúthú le caingean i gcoinne an chosantóra chéanna in ábhair a bhaineann le cearta *in rem* ar mhaoin dhochorraithe, i gcúirt an Stáit Chonarthaigh ina bhfuil an mhaoin.

Airteagal 6a

Más rud é de bhua an Choinbhinsiúin seo go bhfuil dlínse ag cúirt Stáit Chonarthaigh i gcaingne maidir le dliteanas a thig as úsáid nó oibriú loinge, beidh dlínse freisin ag an gcúirt sin, nó ag aon chúirt eile a bheidh curtha ina hionad chun na críche sin le dlí intíre an Stáit sin, i gcás éilimh chun an dliteanas sin a theorannú.

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 Sch.1

Féadfar árachóir ar a bhfuil sainchónaí i Stát Conarthach a agairt:

1. i gcúirteanna an Stáit ina bhfuil sainchónaí air, nó

2. i Stát Conarthach eile, sna cúirteanna don áit ina bhfuil sainchónaí ar shealbhóir an pholasaí árachais, nó

3. más comhárachóir é, i gcúirteanna Stáit Chonarthaigh ina dtionscnaítear imeachtaí i gcoinne an phríomhárachóra.

Árachóir nach bhfuil sainchónaí air i Stát Conarthach ach a bhfuil brainse nó gníomhaireacht nó bunaíocht eile aige i gceann de na Stáit Chonarthacha, measfar, i gcás díospóidí a thiocfaidh ar barr de dhroim oibríochtaí an bhrainse nó na gníomhaireachta nó na bunaíochta, 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 mhaoin dhochorraithe. Is é an dála céanna é má chumhdaítear maoin shochorraithe agus maoin 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 árachaí.

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 fhorálan an dlí maidir leis na caingne díreacha sin go bhféadfar sealbhóir an pholasaí nó an t-árachaí 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 Chonarthaigh ina bhfuil sainchónaí ar an gcosantóir, cibé acu sealbhóir an pholasaí nó an t-árachaí 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 i dtaobh dlínse:

1. a dhéanfar tar éis an díospóid a theacht ar barr, nó

2. a cheadóidh do shealbhóir an pholasaí, don árachaí nó do thairbhí imeachtaí a thionscnamh i gcúirteanna seachas na cinn a luaitear sa Roinn seo, nó

Sch.1

3. a chuirfear i gcrích idir sealbhóir polasaí agus árachóir, a bhfuil sainchónaí nó gnáthchónaí orthu araon sa Stát Conarthach céanna tráth an chonartha a chur i gcrích agus arb é is éifeacht dó dlínse a thabhairt do chúirteanna an Stáit sin fiú i gcás an teagmhas díobhálach a tharlú ar an gcoigríoch, ar an gcoinníoll nach bhfuil an comhaontú sin contrártha le dlí an Stáit sin, nó

4. a dhéanfar le sealbhóir polasaí nach bhfuil sainchónaí air i Stát Conarthach, ach amháin sa mhéid gurb árachas éigeantach atá ann nó árachas a bhaineann le maoin dhochorraithe i Stát Conarthach, nó

5. a bhainfidh le conradh árachais sa mhéid go gcumhdaíonn sé fiontar nó fiontair a luaitear in Airteagal 12a.

Airteagal 12a

Is iad seo a leanas na fiontair dá dtagraítear in Airteagal 12(5):

1. aon chailleadh nó damáiste a bhainfidh:

   (*a*) do longa farraige, do chóracha amach ón gcladach nó ar muir, nó d'aerárthaí, de dhroim guaiseanna a bhaineann lena n-úsáid chun críoch tráchtála;

   (*b*) d'earraí faoi bhealach, seachas bagáiste paisinéirí, agus iad á n-iompar go bun a mbealaigh nó ar chuid dá mbealach ag na longa nó na haerárthaí sin;

2. aon dliteanas, seachas dliteanas i leith díobhála coirp do phaisinéirí nó i leith cailleadh nó damáiste a bhaint dá mbagáiste:

   (*a*) a thig as úsáid nó oibriú long, córacha nó aerárthaí mar a luaitear in 1(*a*) thuas sa mhéid nach gcuireann dlí an Stáit Chonarthaigh a bhfuil na haerárthaí sin cláraithe ann toirmeasc le comhaontuithe ar dhlínse maidir le hárachú na bhfiontar sin;

   (*b*) i leith cailleadh nó damáiste a tharlóidh trí bhíthin earraí faoi bhealach mar a luaitear in 1(*b*) thuas;

3. aon chailleadh airgid i ndáil le húsáid nó oibriú long, córacha nó aerárthaí mar a luaitear in 1(*a*) thuas, go háirithe cailleadh last-táillí nó íocaíochta as cairthfhostú;

4. aon fhiontar nó leas a ghabhann leo sin a luaitear in 1 go 3 thuas.

ROINN 4

Dlínse ar chonarthaí tomhaltais

Airteagal 13

In imeachtaí maidir le conradh a chuir duine i gcrích chun críche a fhéadfar a mheas a bheith lasmuigh dá thrádáil nó dá ghairm, dá ngairtear an 'tomhaltóir' anseo feasta, cinnfear dlínse leis an Roinn seo, gan dochar d'fhorálacha Airteagail 4 agus 5(5), más éard é:

1. conradh chun earraí a dhíol ar théarmaí creidmheasa tráthchoda, nó

2. conradh le haghaidh iasacht is iníoctha i dtráthchodanna, nó le haghaidh aon fhoirm eile chreidmheasa, arna dhéanamh chun díolachán earraí a mhaoiniú, nó

3. aon chonradh eile chun earraí a sholáthar nó conradh chun seirbhísí a sholáthar, agus Sch.1

   (*a*) go ndearnadh, i Stát shainchónaí an tomhaltóra, cuireadh sonrach a dhíriú chuige nó fógraíocht sular cuireadh an conradh i gcrích, agus

   (*b*) go ndearna an tomhaltóir sa Stát sin na bearta ba ghá chun an conradh a chur i gcrích.

I gcás tomhaltóir do dhul i gconradh le páirtí nach bhfuil sainchónaí air i Stát Conarthach ach go bhfuil brainse nó gníomhaireacht nó bunaíocht eile aige i gceann de na Stáit Chonarthacha, measfar sainchónaí a bheith ar an bpáirtí sin sa Stát sin i gcás díospóidí a thiocfaidh ar barr de dhroim oibríochtaí an bhrainse nó na gníomhaireachta nó na bunaíochta.

Ní bhainfidh an Roinn seo le conarthaí iompair.

Airteagal 14

Féadfaidh tomhaltóir imeachtaí a thabhairt in aghaidh an pháirtí eile i gconradh i gcúirteanna an Stáit Chonarthaigh ina bhfuil sainchónaí ar an bpáirtí sin nó i gcúirteanna an Stáit Chonarthaigh ina bhfuil sainchónaí air féin.

Ní féidir le páirtí eile sa chonradh imeachtaí a thabhairt i gcoinne tomhaltóra ach amháin i gcúirteanna an Stáit Chonarthaigh ina bhfuil sainchónaí ar an tomhaltóir.

Ní dhéanfaidh na forálacha sea 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 díospóid a theacht ar barr, nó

2. a cheadóidh don tomhaltóir imeachtaí a thionscnamh i gcúirteanna seachas na cinn a luaitear sa Roinn seo, nó

3. a dhéanfaidh an tomhaltóir agus an páirtí eile sa chonradh, agus sainchónaí nó gnáthchónaí orthu araon sa Stát Conarthach céanna tráth an chonartha a chur i gcrích, agus a thabharfaidh dlínse do chúirteanna an Stáit sin, ar an gcoinníoll nach bhfuil an comhaontú sin contrártha le dlí an Stáit sin.

ROINN 5

Dlínse eisiach

Airteagal 16

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

1. (*a*) in imeachtaí arb é is cuspóir dóibh cearta *in rem* ar mhaoin dhochorraithe nó tionóntachtaí maoine dochorraithe, cúirteanna an Stáit Chonarthaigh ina bhfuil an mhaoin;

Sch.1

(*b*) ach, in imeachtaí arb é is cuspóir dóibh tionóntachtaí maoine dochorraithe arna gcur i gcrích le haghaidh úsáide príobháidí sealadaí go ceann tréimhse nach faide ná sé mhí as a chéile, beidh dlínse freisin ag cúirteanna an Stáit Chonarthaigh ina bhfuil sainchónaí ar an gcosantóir, ar an gcoinníoll gur daoine nádúrtha iad an tiarna talún agus an tionónta agus go bhfuil sainchónaí orthu sa Stát Conarthach céanna;

2. in imeachtaí arb é is cuspóir dóibh bailíocht chomhdhéanamh, neamhniú nó díscaoileadh cuideachtaí nó daoine dlítheanacha eile nó comhlachas de dhaoine nádúrtha nó dlítheanacha, nó cinntí a thug orgáin dá gcuid, cúirteanna an Stáit Chonarthaigh 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 Chonarthaigh 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 Chonarthaigh 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 Chonarthaigh ina ndearnadh, nó ina ndéanfar, an breithiúnas a fhorghníomhú.

ROINN 6

Dlínse a iarchur

Airteagal 17

Más rud é go ndearna na páirtithe, a bhfuil sainchónaí ar pháirtí nó páirtithe díobh i Stát Conarthach, combaontú chun dlínse a bheith ag cúirt nó cúirteanna de chuid Stáit Chonarthaigh aon díospóidí a réiteach a tharla nó a tharlóidh i ndáil le comhbhaint dhlíthiúil áirithe, beidh dlínse eisiach ag an gcúirt nó ag na cúirteanna sin. Ní foláir comhaontú den sórt sin a thugann dlínse:

(*a*) a bheith i scríbhinn nó arna fhianú i scríbhinn; nó

(*b*) a bheith i bhfoirm atá de réir cleachtas a bhunaigh na páirtithe eatarthu féin; nó

(*c*) i dtrádáil nó tráchtáil idirnáisiúnta, a bheith i bhfoirm atá de réir gnáthaimh ar a bhfuil eolas nó ar ar cheart go mbeadh eolas ag na páirtithe agus a bhfuil aithne fhorleathan air sa trádáil nó sa tráchtáil sin agus a leantar go rialta é i measc páirtithe i gconarthaí den saghas a bhaineann leis an trádáil nó an tráchtáil áirithe atá i gceist.

I gcás comhaontú den sórt sin a bheith déanta ag páirtithe nach bhfuil sainchónaí ar aon pháirtí díobh i Stát Conarthach, ní bheidh aon dlínse ag cúirteanna Stát Conarthach eile ar a ndíospóidí mura rud é go mbeidh diúltaithe do dhlínse ag an gcúirt nó ag na cúirteanna a roghnaíodh.

An chúirt nó na cúirteanna de chuid Stáit Chonarthaigh dá dtugann ionstraim iontaobhais dlínse, beidh dlínse eisiach aici nó acu in aon imeachtaí a thabharfar i gcoinne socraitheora, iontaobhaí nó tairbhí, má bhíonn comhbhaint i gceist idir na daoine sin nó a gcearta nó a n-oibleagáidí faoin iontaobhas.

Ní bheidh aon fheidhm dhlíthiúil ag comhaontuithe nó forálacha ionstraime iontaobhais a thugann dlínse má bhíonn siad contrártha le forálacha Airteagal 12 nó 15, nó má bhíonn dlínse eisiach de bhua Airteagal 16 ag na cúirteanna a bhfuil airbheartaithe acu a ndlínse a eisiamh.

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.

In ábhair a bhaineann le conarthaí fostaíochta aonair ní bheidh feidhm dhlíthiúil ag comhaontú chun dlínse a thabhairt ach amháin má rinneadh é tar éis don díospóid tarlú nó má bhaineann an fostaí leas as chun an cás a thabhairt os comhair cúirteanna seachas na cúirteanna don áit ina bhfuil sainchónaí ar an gcosantóir nó na cúirteanna dá dtagraítear in Airteagal 5(1).

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 eisiach 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 eisiach ina leith ag cúirteanna Stáit Chonarthaigh eile de bhua Airteagal 16, dearbhóidh sí uaithi féin nach bhfuil aon dlínse aici.

Airteagal 20

Má dhéntar cosantóir a bhfuil sainchónaí air i Stát Conarthach amháin a agairt i gcúirt de chuid Stáit Chonarthaigh eile agus nach dtaifeadfaidh sé láthreas, dearbhóidh an chúirt uaithi 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 nó doiciméad comhionann a fháil in am trátha chun socrú a dhéanamh é féin a chosaint, nó go nedearnadh gach dícheall chuige sin.

Cuirfear in ionad fhorálacha na míre roimhe seo forálacha Airteagal 15 de Choinbhinsiún na Háige dar dáta 15 Samhain 1965 ar

Sch.1

sheirbheáil doiciméad dlíthiúil agus seachdhlíthiúil in ábhair shibhialta nó tráchtála ar an gcoigríoch, má ba ghá doiciméad tionscanta na n-imeachtaí, nó fógra ina dtaobh, a sheoladh amach ar an gcoigríoch de réir an Choinbhinsiúin sin.

ROINN 8

Lis pendens — Caingne gaolmhara

Airteagal 21

Má dhéantar imeachtaí leis an gcúis chéanna caingne 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 bac a chur ar a himeachtaí, uaithi féin, go dtí go suífear dlínse na chéad chúirte ar tugadh os a comhair iad.

Má shuitear dlínse na chéad chúirte ar tugadh na himeachtaí os a comhair, dlífidh cúirt ar bith seachas an chéad chúirt ar tugadh os a comhair iad dlínse a dhiúltú i bhfabhar na chéad chúirte sin.

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 bheith ar feitheamh ag 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 le chéile go bhfuil sé fóirsteanach iad a éisteacht agus breith a thabhairt orthu i dteannta a chéile ionas go seachnófaí breithiúnais bunoscionn le chéile mar ab fhéidir a theacht d'imeachtaí ar leithligh.

Airteagal 23

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

ROINN 9

Bearta sealadacha lena n-áirítear bearta consantacha

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 Sch.1

AITHINT AGUS FORGHNÍOMHÚ

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 foraithne, ordú, breith, nó eascaire fhorghníomhaithe, mar aon le cinneadh ar chostais nó caiteachais ag oifigeach en 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 bhreith go ndlitear an breithiúnas a aithint.

Má bhíonn toradh imeachtaí i gcúirt de chuid Stáit Chonarthaigh a 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 leis an ord poiblí sa Stát ina n-iarrtar an eithint;

2. más d'éagmais láithris a tugadh an breithiúnas, mura ndearnadh doiciméad tionscanta na n-imeachtaí nó doiciméad comhionann 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 ndíospóid idir na páirtithe céanna sa Stát ina n-iarrtar an aithint;

4. má rinne cúirt an Stáit tionscnaimh, 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 indirnáisiúnta príobháideach an Stáit ina n-iarrtar an aithint, mura rud é gurb é an toradh cénna a thiocfadh de rialacha dlí idirnáisiúnta phríobháidigh an Stáit sin a chur chun feidhme;

5. má bhíonn an breithiúnas bunoscionn le breithiúnas a tugadh roimhe sin i Stát neamhchonarthach agus é ag baint leis an gcúis chéanna caingne agus idir na páirtithe céanna, nuair a chomhlíonnann an breithiúnas deireanach seo na coinníollacha is gá chun é a aithint sa Stát chun a ndéantar an t-iarratas.

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Airteagal 28

Ina theannta sin, ní aithneofar breithiúnas má bhíonn sé contrártha le forálacha Roinn 3, 4 nó 5 de Theideal II, ná i gcas 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 fíorais a ndearna cúirt an Stáit tionscnaimh a dlínse a bhunú orthu.

Faoi réir fhorálacha na chéad mhíre, ní féidir dlínse chúirt an Stáit tionscnaimh a athbhreithniú; ní bheidh a 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 athbhreithniú 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.

Féadfaidh cúirt i Stát Conarthach ina n-iarrfar aithint do bhreithiúnas a tugadh in Éirinn nó sa Ríocht Aontaithe bac a chur ar na himeachtaí má bhíonn forghníomhú curtha ar fionraí, mar gheall ar achomharc, sa Stát tionscnaimh.

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 sé dearbhaithe, ar iarratas ó aon pháirtí leasmhar, go bhfuil sé infhorghníomhaithe sa Stát eile sin.

Sa Ríocht Aontaithe, áfach, déanfar breithiúnas den sórt sin a fhorghníomhú i Sasana agus sa Bhreatain Bheag, in Albain, nó i dTuaisceart Éireann nuair a bheidh sé cláraithe, ar iarratas ó aon pháirtí leasmhar, lena fhorghníomhú sa chuid sin den Ríocht Aontaithe.

Airteagal 32

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

— sa Bheilg, an *tribunal de première instance* nó *rechtbank van eerste aanleg,*

— sa Danmhairg, an *byret,*

— i bPoblacht Chónaidhme na Gearmáine, uachtarán dlísheomra den *Landgericht,*

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— sa Ghréig, an *Μονομελές Πρωτοδικείο*,

— sa Spáinn, an *Juzgado de Primera Instancia*,

— sa Fhrainc, uachtarán an *tribunal de grande instance*,

— in Éirinn, an Ard-Chúirt,

— san Iodáil, an *corte d'appello*,

— i Lucsamburg, uachtarán an *tribunal d'arrondissement*,

— san Ostair, an *Bezirksgericht*,

— san Ísiltír, uachtarán an *arrondissementsrechtbank*,

— sa Phortaingéil, an *Tribunal Judicial de Círculo*,

— san Fhionlainn, *käräjäoikeus/tingsrätt*,

— sa tSualainn, an *Svea hovrätt*,

— sa Ríocht Aontaithe:

(*a*) i Sasana agus sa Bhreatain Bheag, an *High Court of Justice* nó, i gcás breithiúnais chothabhála, an *Magistrates' Court* tríd an *Secretary of State*;

(*b*) in Albain, an *Court of Session* nó, i gcás breithiúnais chothabhála, an *Sheriff Court* tríd an *Secretary of State*;

(*c*) i dTuaisceart Éireann, an *High Court of Justice* nó, i gcás breithiúnais chothabhála, an *Magistrates' Court* tríd an *Secretary of State*.

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 fhorghníomhaithe.

Airteagal 33

Is de réir dhlí 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 fhéadfaidh 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.

Sch.1

Airteagal 35

Déanfaidh oifigeach iomchuí na cuírte, 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 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 pearsante nó ag a ionad cónaithe. Ní féidir cur leis an tréimhse sin mar gheall ar fhad slí ó bhaile.

Airteagal 37

1. Déanfar achomharc i gcoinne na breithe a d'údaraigh forghníomhú a thaisceadh de réir rialacha an nós imeachta in ábhair chointinneacha:

   — sa Bheilg, sa *tribunal de première instance* nó *rechtbank van eerste aanleg;*

   — sa Danmhairg, sa *landsret*;

   — i bPoblacht Chónaidhme na Gearmáine, san *Oberlandesgericht*;

   — sa Ghréig, san *Εφετείο*;

   — sa Spáinn, san *Audiencia Provincial*;

   — sa Fhrainc, sa *cour d'appel*;

   — in Éirinn, san Ard-Chúirt;

   — san Iodáil, sa *corte d'appello*;

   — i Lucsamburg, sa *Cour supérieure de justice* ina suí di mar chúirt achomhairc shibhialta;

   — san Ostair, sa *Bezirksgericht*;

   — san Ísiltír, san *arrondissementsrechtbank*;

   — sa Phortaingéil, sa *Tribunal da Relação*;

   — san Fhionlainn, i *hovioikeus/hovrätt*;

   — sa tSualainn, sa *Svea hovrätt*;

   — sa Ríocht Aontaithe:

      (*a*) i Sasana agus sa Bhreatain Bheag, sa *High Court of Justice* nó, i gcás breithiúnais chothabhála, sa *Magistrates' Court*;

      (*b*) in Albain, sa *Court of Session* nó, i gcás breithiúnais chothabhála, sa *Sheriff Court*;

      (*c*) i dTuaisceart Éireann, sa *High Court of Justice* nó, i gcás breithiúnais chothabhála, sa *Magistrates' Court.*

2. Ní féidir an breithiúnas a tugadh ar an achomharc a chonspóid ach amháin: Sch.1

— sa Bheilg, sa Ghréig, sa Spáinn, sa Fhrainc, san Iodáil, i Lucsamburg agus san Ísiltír, trí achomharc *en cassation*;

— sa Danmhairg, trí achomharc chuig an *højesteret*, le cead ón Aire Dlí agus Cirt;

— i bPoblacht Chónaidhme na Gearmáine, trí *Rechtsbeschwerde*;

— san Ostair, i gcás achomhairc, trí *Revisionsrekurs* agus, i gcás imeachtaí freasúra, trí *Berufung* lena ngabhann deis athbhreithnithe;

— in Éirinn, trí achomharc ar phointe dlí chuig an gCúirt Uachtarach;

— sa Phortaingéil, trí achomharc ar phointe dlí;

— san Fhionlainn, trí achomharc chuig *korkein oikeus/högsta domstolen*;

— sa tSualainn, trí achomharc chuig *Högsta domstolen*;

— sa Ríocht Aontaithe, trí aon achomharc amháin eile ar phointe dlí.

Airteagal 38

Féadfaidh an chúirt ar tugadh an t-achomharc faoin gcéad mhír d'Airteagal 37 os 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 tionscnaimh 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.

Más in Éirinn nó sa Ríocht Aontaithe a tugadh an breithiúnas, measfar aon chineál achomhairc is indéanta sa Stát tionscnaimh a bheith ina ghnáthachomharc chun críocha na chéad mhíre.

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 mhaoin 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

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

— sa Bheilg, chuig an *cour d'appel* nó *hof van beroep*;

— sa Danmhairg, chuig an *landsret*;

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— i bPoblacht Chónaidhme na Gearmáine, chuig an *Oberlandesgericht*;

— sa Ghréig, chuig an *Εøετείο*;

— sa Spáinn, chuig an *Audiencia Provincial*;

— sa Fhrainc, chuig an *cour d'appel*;

— in Éirinn, chuig an Ard-Chúirt;

— san Iodáil, chuig an *corte d'appello*;

— i Lucsamburg, chuig an *Cour supérieure de justice*, ina suí di mar chúirt achomhairc shibhialta;

— san Ostair, chuig an *Bezirksgericht*;

— san Ísiltír, chuig an *gerechtshof*;

— sa Phortaingéil, chuig an *Tribunal da Relação*;

— san Fhionlainn, chuig *hovioikeus/hovrätten*;

— sa tSualainn, chuig an *Svea hovrätt*;

— sa Ríocht Aontaithe:

(*a*) i Sasana agus sa Bhreatain Bheag, chuig an *High Court of Justice* nó, i gcás breithiúnais chothabhála, chuig an *Magistrates' Court*;

(*b*) in Albain, chuig an *Court of Session* nó, i gcás breithiúnais chothabhála, chuig an *Sheriff Court*;

(*c*) i dTuaisceart Éireann, chuig an *High Court of Justice* nó, i gcás breithiúnais chothabhála, chuig an *Magistrates' Court*.

2. 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:

— sa Bheilg, sa Ghréig, sa Spáinn, sa Fhrainc, san Iodáil, i Lucsamburg agus san Ísiltír, trí achomharc *en cassation*;

— sa Danmhairg, trí achomharc chuig an *højesteret*, le cead ón Aire Dlí agus Cirt;

— i bPoblacht Chónaidhme na Gearmáine, trí *Rechtsbeschwerde*;

— in Éirinn, trí achomharc ar phointe dlí chuig an gCúirt Uachtarach;

— san Ostair, trí *Revisionsrekurs*;

— sa Phortaingéil, trí achomharc ar phointe dlí;

— san Fhionlainn, trí achomharc chuig *korkein oikeus/högsta domstolen*;

— sa tSualainn, trí achomharc chuig *Högsta domstolen*;

— sa Ríocht Aontaithe, trí aon achomharc amháin eile ar phointe dlí. Sch.1

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 iarraidh.

Airteagal 43

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

Airteagal 44

Iarratasóir ar tugadh dó go hiomlán nó go páirteach, sa Stát tionscnaimh, cúnamh dlíthiúil nó díolúine ó chostais nó ó chaiteachais, beidh teideal aige, sna nósanna imeachta dá bhforáiltear in Airteagail 32 go 35, chun tairbhiú den chúnamh dlíthiúil is fabhraí nó den díolúine is fairsinge ó chostais nó ó chaiteachais a fhoráiltear le dlí an Stáit chun a ndéantar an t-iarratas.

Ach féadfaidh iarratasóir a iarrfaidh forghníomhú ar bhreith a thug údarás riaracháin sa Danmhairg i leith ordú cothabhála éileamh a dhéanamh, sa Stát chun a ndéantar an t-iarratas, ar na tairbhí dá dtagraítear sa chéad mhír má thugann sé ar aird ráiteas ó Aireacht Dlí agus Cirt na Danmhairge á rá go gcomhlíonann sé na ceanglais eacnamaíocha is gá chun bheith cáilithe le haghaidh cúnaimh dhlíthiúil nó díolúine ó chostais nó ó chaiteachais go hiomlán nó go páirteach.

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 an 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 shásódidh na coinníollacha is gá chun a barántúlacht a shuíomh;

2. i gcás breithiúnais mhainneachtana, an chóip bhunaidh nó cóip dhílis dheimhnithe den doiciméad á shuíomh gur seirbheáladh

Sch.1

doiciméd tionscanta na n-imeachtaí nó doiciméad comhionann 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 sierbheáladh é, de réir dhlí an Stáit tionscnaimh;

2. más cuí, doiciméad á thaispeáint go bhfuil cúnamh dlíthiúil á fháil ag an iarratasóir sa Stát tionscnaimh.

Airteagal 48

Mura dtugtar ar aird na doiciméid a luaitear in Airteagal 46(2) agus in Airteagal 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 sáith 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 Airteagal 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*, a dhearbhú, i Stát Conarthach eile, go bhfuil sé infhorgníomhaithe ann. Ní féidir diúltú don iarratas ach amháin i gcás forghníomhú na hionstraime a bheith contrártha leis an ord poiblí sa Stát chun a ndéantar an t-iarratas.

Ní foláir an ionstraim a thabharfar ar aird a bheith de réir na gcoinníollacha is gá chun a barántúlacht sa Stáit tionscnaimh 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 chun a ndéantar an t-iarratas, faoi na coinníollacha céanna le hionstraimí barántúla.

TEIDEAL V Sch.1

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.

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.

Chun a chinneadh an bhfuil sainchónaí ar iontaobhas sa Stát Conarthach a bhfuil an t-ábhar os comhair a chúirteanna, 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 éis a theachta i bhfeidhm sa Stát tionscnaimh agus, má iarrtar aithint nó forghníomhú breithiúnais nó ionstraime barántúla, sa Stát chun a ndéantar an t-iarratas.

Déanfar, áfach, breithiúnais a thabharfar tar éis dáta an Choinbhinsiúin seo a theacht i bhfeidhm idir an Stát tionscnaimh agus an Stát chun a ndéantar an t-iarratas, i gcás imeachtaí a tionscnaíodh roimh an dáta sin, a aithint agus a fhorghníomhú de réir fhorálacha 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 cuireadh 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.

Má bhí na páirtithe i ndíospóid i dtaobh conartha tar éis comhaontú a dhéannamh i scríbhinn, roimh an 1 Meitheamh 1988 i gcás na hÉireann agus an 1 Eanáir 1987 i gcás na Ríochta Aontaithe, go mbeadh an conradh faoi rialú ag dlí na hÉireann nó ag dlí cuid den Ríocht Aontaithe, coinneoidh cúirteanna na hÉireann nó na coda sin den Ríocht Aontaithe an ceart chun dlínse a fheidhmiú sa díospóid.

Sch.1 *Airteagal 54a*

Go ceann tréimhse trí bliana ón 1 Samhain 1986 i gcás na Danmhairge agus ón 1 Meitheamh 1988 i gcás na hÉireann, déanfar dlínse in ábhair mhuirí a chinneadh sna Stáit sin de réir fhorálacha Theideal II, i dteannta fhorálacha phointí 1 go 6 anseo thíos. Ach nuair a thiocfaidh an Coinbhinsiún Idirnáisiúnta maidir le longa farraige a ghabháil, a síníodh sa Bhruiséil ar an 10 Bealtaine 1952, i bhfeidhm i gcás ceann de na Stáit sin, scoirfidh na forálacha seo d'éifeacht a bheith acu i gcás an Stáit sin.

1. Féadfar duine ar a bhfuil sainchónaí i Stát Conarthach a agairt i gcúirteanna ceann de na Stáit thuasluaite maidir le héileamh muirí más más rud é go ndearnadh an long lena mbaineann an t-éileamh, nó aon long eile leis an duine sin, a ghabháil trí phróis dlí i gcríoch an Stáit is déanaí atá luaite chun an t-éileamh a urrú, nó go bhféadfaí í a ghabháil ann amhlaidh ach gur tugadh banno nó urrús eile, sna cásanna seo a leanas:

   (*a*) má tá sainchónaí sa Stát deireanach sin ar an éilitheoir; nó

   (*b*) más sa Stát deireanach sin a d'éirigh an t-éileamh; nó

   (*c*) má bhaineann an t-éileamh leis an aistear ar lena linn a rinneadh an ghabháil nó a d'fhéadfaí í a dhéanamh; nó

   (*d*) má thig an t-éileamh as imbhualadh nó as damáiste a rinne long do long eile nó d'earraí nó do dhaoine ar bord ceachtar long, trí chor inlíochta a dhéanamh nó gan é a dhéanamh nó trí neamhchomhlíonadh rialachán; nó

   (*e*) más éileamh ar tharrthálas atá ann; nó

   (*f*) más éileamh i leith mhorgáistiú na loinge a gabhadh nó i leith a curtha i ngeall atá ann.

2. Féadfaidh éilitheoir an long áirithe a mbaineann an t-éileamh muirí léi a ghabháil, nó aon long eile leis an duine arbh é úinéir na loinge áirithe é an tráth a d'éirigh an t-éileamh muirí. Ach i gcás na n-éileamh muirí atá leagtha amach in 5(*o*), (*p*) nó (*q*) den Airteagal seo, ní féidir a ghabháil ach an long áirithe a mbaineann an t-éileamh muirí léi.

3. Measfar longa a bheith san úinéireacht chéanna nuair is leis an duine nó na daoine céanna na scaireanna go léir iontu.

4. I gcás cairtfhostú loinge trína forléasadh, más é an cairtfhostóir amháin atá faoi dhliteanas i leith éilimh mhuirí a bhaineann leis an long sin, féadfaidh an t-éilitheoir an long sin nó aon long eile leis an gcairtfhostóir a ghabháil, ach ní fhéadfar aon long eile is leis an úinéir a ghabháil i leith an éilimh mhuirí sin. Is mar sin a bheidh freisin in aon chás ina mbeidh duine seachas úinéir loinge faoi dhliteanas i leith éilimh mhuirí a bhaineann leis an long sin.

5. Ciallaíonn an abairt ''éileamh muirí'' éileamh a thig as ní nó nithe díobh seo a leanas:

   (*a*) damáiste ar bith a raibh long ina cúis leis, trí imbhualadh nó ar dhóigh eile;

   (*b*) bás duine nó díobháil do dhuine a raibh long ar bith ina cúis leis nó a tharla i ndáil le hoibriú loinge ar bith;

   (*c*) tarrthálas;

(*d*) comhaontú maidir le húsáid nó le fruiliú loinge ar bith, cibé acu trí chonradh fostaithe nó ar dhóigh eile é; Sch.1

(*e*) comhaontú maidir le hiompar earraí in aon long cibé acu trí chonradh fostaithe nó ar dhóigh eile é;

(*f*) cailleadh nó damáistiú earraí, lena n-áirítear bagáiste, a bhí á n-iompar i long ar bith;

(*g*) caillroinnt ilpháirteach;

(*h*) longmhorgáiste;

(*i*) tuáil;

(*j*) píolótaíocht;

(*k*) earraí nó ábhair a soláthraíodh in áit ar bith do long chun í a oibriú nó a choimeád i dtreo;

(*l*) déanamh, deisiú nó trealmhú loinge ar bith nó táillí agus dleachtanna duga;

(*m*) pá máistrí, oifigeach nó foirne;

(*n*) eisíocaíochtaí máistir, lena n-áirítear eisíocaíochtaí a rinne seoladóirí, cairtfhostóirí nó gníomhairí thar ceann loinge nó thar ceann a húinéara;

(*o*) díospóid i dtaobh an teidil chun loinge ar bith nó i dtaobh a húinéireachta;

(*p*) díospóidí idir comhúinéirí loinge ar bith i dtaobh úinéireacht, sheilbh, úsáid nó thuilleamh na loinge sin;

(*q*) morgáistiú loinge ar bith nó a cur i ngeall.

6. Sa Danmhairg, measfar, maidir leis na héilimh mhuirí dá dtagraítear in 5(*o*) agus (*p*) den Airteagal seo, go bhfolaíonn an focal ''gabháil'' (''*forbud*'') i gcás inarb é sin an t-aon nós imeachta amháin a cheadaítear i leith éilimh den sórt sin faoi Airteagail 646 go 653 den Acht i dtaobh an nós imeachta shibhialta (*lov om rettens pleje*).

TEIDEAL VII

GAOL LE COINBHINSIÚIN EILE

Airteagal 55

Faoi réir fhorálacha 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 bailíocht agus forghníomhú breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla, a síníodh i bPáras ar 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 ar an 28 Márta 1925,

— an Coinbhinsiún idir an Fhrainc agus an Iodáil ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh sa Róimh ar an 3 Meitheamh 1930,

Sch.1

— an Coinbhinsiún idir an Ríocht Aontaithe agus Poblacht na Fraince ag déanamh socrú d'fhorghníomhú cómhalartach breithiúnas in ábhair shibhialta agus tráchtála, maille le Prótacal, a síníodh i bPáras ar an 18 Eanáir 1934,

— an Coinbhinsiún idir an Ríocht Aontaithe agus Ríocht na Beilge ag déanamh socrú d'fhorghníomhú cómhalartach breithiúnas in ábhair shibhialta agus tráchtála, maille le Prótacal, a síníodh sa Bhruiséil ar an 2 Bealtaine 1934,

— an Coinbhinsiún idir an Ghearmáin agus an Iodáil ar aithint agus forghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh sa Róimh ar an 9 Márta 1936,

— an Coinbhinsiún idir Ríocht na Beilge agus an Ostair ar aithint agus forghníomhú cómhalartach breithiúnas agus ionstraimí barántúla maidir le hoibleagáidí cothabhála, a síníodh i Vín an 25 Deireadh Fómhair 1957,

— an Coinbhinsiún idir Poblacht Chónaidhme na Gearmáine agus Ríocht na Beilge ar aithint agus forghníomhú breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla go frithpáirteach in ábhair shibhialta agus tráchtála, a síníodh in Bonn ar 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 ar an 17 Aibreán 1959,

— an Coinbhinsiún idir Poblacht Chónaidhme na Gearmáine agus an Ostair ar aithint agus forghníomhú cómhalartach breithiúnas, socraíochtaí agus ionstraimí barántúla in ábhair shibhialta agus tráchtála, a síníodh i Vín ar an 6 Meitheamh 1959,

— an Coinbhinsiún idir Ríocht na Beilge agus an Ostair ar aithint agus forghníomhú cómhalartach breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla in ábhair shibhialta agus tráchtála, a síníodh i Vín an 16 Meitheamh 1959,

— an Coinbhinsiún idir an Ríocht Aontaithe agus Poblacht Chónaidhme na Gearmáine le haghaidh aithint agus forghníomhú breithiúnas go cómhalartach in ábhair shibhialta agus tráchtála, a síníodh in Bonn ar an 14 Iúil 1960,

— an Coinbhinsiún idir an Ríocht Aontaithe agus an Ostair le haghaidh aithint agus forghníomhú cómhalartach breithiúnas in ábhair shibhialta agus tráchtála, a síníodh i Vín an 14 Iúil 1961, maille le Prótacal leasaitheach a síníodh i Londain an 6 Márta 1970,

— an Coinbhinsiún idir Ríocht na Gréige agus Poblacht Chónaidhme na Gearmáine le haghaidh aithint agus forghníomhú breithiúnas, socraíochtaí agus ionstraimí barántúla go cómhalartach in ábhair shibhialta agus tráchtála, a síníodh san Aithin ar an 4 Samhain 1961,

— 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 ar 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 frithpháirteach in ábhair shibhialta agus tráchtála, a síníodh sa Háig ar an 30 Lúnasa 1962,

Sch.1

— an Coinbhinsiún idir Ríocht na hÍsiltíre agus an Ostair le haghaidh aithint agus forghníomhú cómhalartach breithiúnas agus ionstraimí barántúla in ábhair shibhialta agus tráchtála, a síníodh sa Háig ar an 6 Feabhra 1963,

— an Coinbhinsiún idir an Fhrainc agus an Ostair ar aithint agus forghníomhú breithiúnas agus ionstraimí barántúla in ábhair shibhialta agus tráchtála, a síníodh i Vín ar an 15 Iúil 1966,

— an Coinbhinsiún idir an Ríocht Aontaithe agus Ríocht na hÍsiltíre ag déanamh socrú d'aithint agus d'fhorghníomhú breithiúnas go cómhalartach in ábhair shibhialta, a síníodh sa Háig ar an 17 Samhain 1967,

— an Coinbhinsiún idir an Spáinn agus an Fhrainc ar aithint agus ar fhorghníomhú breithiúnas agus dámhachtaintí eadrána in ábhair shibhialta agus tráchtála, a síníodh i bPáras ar an 28 Bealtaine 1969,

— an Coinbhinsiún idir an Ríocht Aontaithe agus Poblacht na hIodáile le haghaidh aithint agus forghníomhú breithiúnas go cómhalartach in ábhair shibhialta agus tráchtála, a síníodh sa Róimh ar an 7 Feabhra 1964, maille le Prótacal leasaitheach a síníodh sa Róimh ar an 14 Iúil 1970,

— an Coinbhinsiún idir Lucsamburg agus an Ostair ar aithint agus forghníomhú breithiúnas agus ionstraimí barántúla in ábhair shibhialta agus tráchtála, a síníodh i Lucsamburg an 29 Iúil 1971,

— an Coinbhinsiún idir an Iodáil agus an Ostair ar aithint agus forghníomhú breithiúnas in ábhair shibhialta agus tráchtála, socraíochtaí cúirte agus ionstraimí barántúla, a síníodh sa Róimh an 16 Samhain 1971,

— an Coinbhinsiún idir an Spáinn agus an Iodáil ar chúnamh dlíthiúil agus ar aithint agus forghníomhú breithiúnas in ábhair shibhialta agus tráchtála, a síníodh i Maidrid ar an 22 Bealtaine 1973,

— an Coinbhinsiún idir an Fhionlainn, an Íoslainn, an Iorua, an tSualainn agus an Danmhairg ar aithint agus forghníomhú breithiúnas in ábhair shibhialta, a síníodh i gCóbanhávan an 11 Deireadh Fómhair 1977,

— an Coinbhinsiún idir an Ostair agus an tSualainn ar aithint agus forghníomhú breithiúnas in ábhair shibhialta, a síníodh i Stócólm an 16 Meán Fómhair 1982,

— an Coinbhinsiún idir an Spáinn agus Poblacht Chónaidhme na Gearmáine ar aithint agus forghníomhú breithiúnas agus socraíochtaí cúirte agus ionstraimí barántúla infhorghníomhaithe in ábhair shibhialta agus tráchtála, a síníodh in Bonn ar an 14 Samhain 1983,

— an Coinbhinsiún idir an Ostair agus an Spáinn ar aithint agus forghníomhú breithiúnas, socraíochtaí agus ionstraimí barántúla infhorghníomhaithe in ábhair shibhialta agus tráchtála, a síníodh i Vín an 17 Feabhra 1984,

— an Coinbhinsiún idir an Fhionlainn agus an Ostair ar aithint agus forghníomhú breithiúnas in ábhair shibhialta, a síníodh i Vín an 17 Samhain 1986,

agus, se mhéid go bhfuil sé i bhfeidhm,

— an Conradh idir an Bheilg, an Ísiltír agus Lucsamburg ar dhlínse, ar fhéimheacht, agus ar bhailíocht agus forghníomhú

Sch.1

breithiúnas, dámhachtaintí eadrána agus ionstraimí barántúla, a síníodh sa Bhruiséil ar an 24 Samhain 1961.

Airteagal 56

Leanfaidh na Conarthaí 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 doiciméad a tarraingíodh suas go foirmiúil nó a cláraíodh mar ionstraimí barántúla roimh theacht i bhfeidhm don Choinbhinsiún seo.

Airteagal 57

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

2. Chun a áirithiú go ndéanfar léiriú comhionann uirthi, cuirfear mír 1 chun feidhme mar a leanas:

   (*a*) Ní choiscfidh an Coinbhinsiún seo ar chúirt de chuid Stáit Chonarthaigh is páirtí i gcoinbhinsiún maidir le hábhar áirithe dlínse a ghlacadh de réir an choinbhinsiúin sin, fiú má bhíonn sainchónaí ar an gcosantóir i Stát Conarthach nach páirtí sa choinbhinsiún sin. Ar aon slí, cuirfidh an chúirt a éistfidh an chaingean Airteagal 20 den Choinbhinsiún seo chun feidhme.

   (*b*) Déanfar breithiúnais a thabharfaidh cúirt i Stát Conarthach i bhfeidhmiú dlínse dá bhforáiltear i gcoinbhinsiún maidir le hábhar áirithe a aithint agus a fhorghníomhú sna Stáit Chonarthacha eile de réir an Choinbhinsiúin seo.

   Nuair a dhéanann coinbhinsiún maidir le hábhar áirithe inar páirtithe an Stát tionscnaimh agus an Stát chun a ndéantar an t-iarratas araon coinníollacha a leagan síos le haghaidh breithiúnais a aithint nó a fhorghníomhú, beidh fiedhm ag na coinníollacha sin. Ar aon slí, féadfar forálacha an Choinbhinsiúin seo a bhaineann leis na nósanna imeachta le haghaidh breithiúnais a aithint agus a fhorghníomhú a chur chun feidhme.

3. Ní dhéanfaidh an Coinbhinsiún seo difear d'fheidhmiú forálacha a rialaíonn, maidir le hábhair áirithe, dlínse nó aithint nó forghníomhú breithiúnas agus atá nó a bheidh leagtha síos in ionstraimí na gComhphobal Eorpach nó i reachtaíocht náisiúnta arna comhchuibhiú de dhroim na n-ionstraimí sin.

Airteagal 58

Go dtí go dtiocfaidh an Coinbhinsiún ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta agus tráchtála a síníodh in Lugano ar an 16 Meán Fómhair 1988 i bhfeidhm i leith na Fraince agus na Cónaidhme Eilvéisí, ní dhéanfaidh forálacha an Choinbhinsiúin seo difear do na cearta a deonaíodh do náisiúnaigh Eilvéiseacha leis an gCoinbhinsiún idir an Fhrainc agus an Chónaidhm Eilvéiseach ar dhlínse agus ar fhorghníomhú breithiúnas in ábhair shibhialta, a síníodh i bPáras ar an 15 Meitheamh 1869.

Airteagal 59 Sch.1

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 Chonarthacha eile i gcoinne cosantóirí a raibh sainchónaí nó gnáthchónaí 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.

Ní fhéadfaidh Stát Conarthach, áfach, é a ghabháil d'oibleagáid air féin i leith tríú Stát gan breithiúnas a aithint a bheidh tugtha i Stát Conarthach eile ag cúirt ar bunaíodh a dlínse ar mhaoin leis an gcosantóir a bheith sa Stát sin, nó ar urghabháil ag an ngearánaí ar mhaoin atá sa Stát sin, más rud é:

1. gur tionscnaíodh an chaingean chun cearta dílseánaigh nó cearta seilbhe ar an maoin sin a fhógairt nó a dhearbhú nó chun údarás a fháil í a dhiúscairt, nó gur as saincheist eile a bhaineann leis an maoin sin a thig an chaingean; nó

2. gurb í an mhaoin sin an t-urrús i leith fiach is ábhar don chaingean.

TEIDEAL VIII

FORÁLACHA CRÍOCHNAITHEACHA

Airteagal 60

[*scriosta*]

Airteagal 61

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

Airteagal 62

Tiocfaidh an Coinbhinsiún seo i bhfeidhm ar an gcéad lá den tríú mí i ndiaidh thaisceadh na hionstraime daingniúcháin ag an gceann is déanaí de Stáit a shínithe a dhéanfaidh an taisceadh sin.

Airteagal 63

Aithníonn na Stáit Chonarthacha go ndlífidh aon Stát a thiocfaidh chun bheith ina chomhalta de Chomhphobal Eacnamaíochta na hEorpa glacadh leis an gChoinbhinsiún seo mar bhonn do na caibidlí is gá idir na Stáit Chonarthacha agus an Stát sin chun a áirithiú 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 Chonarthacha de pháirt agus an Ballstát nua den pháirt eile.

Airteagal 64

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

Sch.1

(*a*) taisceadh gach ionstraime daingniúcháin;

(*b*) dáta an Choinbhinsiúin seo a theacht i bhfeidhm;

(*c*) [*scriosta*];

(*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 athbhreithniú.

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 tArdrúnaí cóip dheimhnithe chuig Rialtas gach ceann de Stáit a shínithe.

[*Sínithe na Lánchumhachtach a ceapadh.*]

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 Chonarthaigh eile de bhun Airteagal 5(1), féadfaidh sé diúltú géilleadh do dhlínse na cúirte sin. Mura dtaifeadfaidh an cosantóir láithreas, dearbhóidh an chúirt, uaithi féin, nach bhfuil dlínse aici.

Beidh comhaontú chun dlínse a thabhairt, de réir bhrí Airteagal 17, gan bhailíocht i leith duine a bhfuil sainchónaí air 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 Chonarthaigh 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. Sch.1

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 sheachdhlíthiúla 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 dhearbhú 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 an Stáit tionscnaimh 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 an Stáit tionscnaimh.

Airteagal V

I bPoblacht Chónaidhme na Gearmáine agus i bPoblacht na hOstaire, ní féidir feidhm a bhaint as an dlínse a shonraítear in Airteagail 6(2) agus 10 i gcaingne ar bharántas nó ar ráthaíocht nó in aon imeachtaí eile tríú páirtí. Féadfar aon duine a bhfuil sainchónaí air i Stát Conarthach eile a agairt i gcúirteanna:

— Phoblacht Chónaidhme na Gearmáine, de bhun Airteagail 68, 72 agus 74 de chód an nós imeachta shibhialta (*Zivilprozessordnung*) maidir le fógraí tríú páirtí;

— Phoblacht na hOstaire, de bhun Airteagal 21 de chód an 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 agus i bPoblacht na hOstaire, de réir Theideal III. Aithneofar mar an gcéanna sna Stáit Chonarthacha eile aon éifeachtaí a bheadh ag breithiúnais a tugadh sna Stáit sin ar thríú páirtithe, de bhun na forálacha atá luaite sa mhír sin roimhe seo a chur i bhfeidhm.

Sch.1

Airteagal Va

In ábhair a bhaineann le cothabháil, folaíonn an focal ''breitheamh'', ''cúirt'' agus ''dlínse'' údaráis riaracháin na Danmhairge.

Sa tSualainn, in imeachtaí achoimre maidir le horduithe íocaíochta (*betalningsföreläggande*) agus cúiteamh (*handräckning*), folaíonn an focal ''cúirt'' seirbhís forghníomhaithe na Sualainne (*kronofogdemyndighet*).

Airteagal Vb

In imeachtaí a bhaineann le díospóid idir máistir loinge farraige atá cláraithe sa Danmhairg, sa Ghréig, in Éirinn nó sa Phortaingéil, agus duine dá fhoireann, maidir le luach saothair nó le coinníollacha eile seirbhíse, cinnteoidh cúirt i Stát Conarthach cé acu a cuireadh nó nár cuireadh an díospóid i bhfios don oifigeach taidhleoireachta nó consalach ar a bhfuil cúram na loinge. Cuirfidh sí bac ar na himeachtaí fad a bheidh an díospóid gan cur i bhfios don oifigeach. Déanfaidh sí, uaithi féin, dlínse a dhiúltú más rud é, arna cur i bhfios go cuí don oifigeach, gur fheidhmigh sé na cumhachtaí a tugadh dó san ábhar le coinbhinsiún consalach nó, in éagmais coinbhinsiúin den sórt sin, go ndearna sé, laistigh den tréimhse cheaptha, aon agóid in aghaidh fheidhmiú na dlínse sin.

Airteagal Vc

Nuair a dhéanfar faoi chuimsiú Airteagal 69(5) den Choinbhinsiún maidir leis an bPaitinn Eorpach don chómhargadh, a síníodh i Lucsamburg ar an 15 Nollaig 1975, Airteagail 52 agus 53 den Choinbhinsiún seo a chur chun feidhme ar na forálacha a bhaineann le 'residence' i dtéacs Béarla an chéad Choinbhinsiúin sin, is tuigthe tagairt do 'residence' sa téacs sin a bheith ina tagairt do shainchónaí in Airteagail 52 agus 53 thuasluaite.

Airteagal Vd

Gan dochar do dhlínse Oifig na bPaitinní Eorpacha faoin gCoinbhinsiún chun paitinní Eorpacha a dheonú a síníodh in München ar an 5 Deireadh Fómhair 1973, beidh dlínse eisiach ag cúirteanna gach Stáit Chonarthaigh, ar neamhchead do shainchónaí, in imeachtaí a bhaineann le clárú nó bailíocht aon phaitinne Eorpaí a deonaíodh le haghaidh an Stáit sin nach paitinn Chomhphobail de bhua fhorálacha Airteagal 86 den Choinbhinsiún maidir leis an bPaitinn Eorpach don chómhargadh, a síníodh i Lucsamburg ar an 15 Nollaig 1975.

Airteagal Ve

Measfar freisin gur ionstraimí barántúla de réir bhrí Airteagal 50(1) den Choinbhinsiún coinbhinsiúin maidir le hoibleagáidí cothabhála arna dtabhairt i gcrích os comhair na n-údarás riaracháin nó arna bhfíordheimhniú acu.

Airteagal VI

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

[*Sínithe na Lánchumhachtach arna gceapadh.*]

SECOND SCHEDULE

Text of the 1971 Protocol as amended by the 1978 Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention[1]

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

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.

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 Hellenic Republic to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention.

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 Spain and the Portuguese Republic to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention and the 1982 Convention.

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 Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention of 27 September 1968 and to this Protocol, as adjusted by the 1978 Convention, the 1982 Convention and the 1989 Convention.

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'Etat — de Raad van State,

   —in Denmark: *højesteret,*

   —in the Federal Republic of Germany: *die obersten Gerichtshöfe des Bundes,*

   —in Greece: the ανώτατα δικαστήαια,

   —in Spain: *el Tribunal Supremo,*

   —in France: *la Cour de Cassation* and *le Conseil d'État,*

[1]OJ No. C 27 of 26.1.1998, p.24.

Sch.2

—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 Austria, the *Oberste Gerichtshof*, the *Verwaltungsgerichtshof* and the *Verfassungsgerichtshof*,

—in the Netherlands: *de Hoge Raad*,

—in Portugal: *o Supremo Tribunal de Justiça* and *o Supremo Tribunal Administrativo*,

—in Finland, *korkein oikeus/högsta domstolen* and *korkein hallintooikeus/högsta förvaltningsdomstolen*,

—in Sweden, *Högsta domstolen, Regeringsrätten, Arbetsdomstolen* and *Marknadsdomstolen*,

—in the United Kingdom: the House of Lords and courts to which appliction has been made under the second paragraph of Article 37 or under Article 41 of the Convention;

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 2.3, 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 2.2. 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. Sch.2

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

[*deleted*]

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*) [*deleted*]

Sch.2

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

(*Signatures of the plenipotentiaries*)

Text in the Irish language of the 1971 Protocol as amended by the 1978 Accession Convention, the 1982 Accession Convention, the 1989 Accession Convention and the 1996 Accession Convention[1]

PRÓTACAL

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

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 ábhair shibhialta agus tráchtála agus an Phrótacail atá i gceangal leis an gCoinbhinsiúin sin, a síníodh sa Bhruiséil ar an 27 Meán Fómhair 1968, agus fós i dtaobh léiriú an Phrótacail seo.

Beidh dlínse freisin ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú a thabhairt i dtaobh léiriú an Choinbhinsiúin ar aontú Ríocht na Danmhairge, na hÉireann agus Ríocht Aontaithe na Breataine Móire agus Thuaisceart Éireann do Choinbhinsiún an 27 Meán Fómhair 1968 agus don Phrótacal seo.

Beidh dlínse freisin ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú a thabhairt i dtaobh léiriú an Choinbhinsiúin ar aontú na Poblachta Heilléanaí do Choinbhinsiún an 27 Meán Fómhair 1968 agus don Phrótacal seo, arna n-oiriúnú le Coinbhinsiún 1978.

[1] IO Uimh. C27 an 26.1.1998, lch.28.

Beidh dlínse freisin ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú a thabhairt i dtaobh léiriú an Choinbhinsiúin ar aontú Ríocht na Spáinne agus Phoblacht na Portaingéile do Choinbhinsiún an 27 Meán Fómhair 1968 agus don Phrótacal seo, arna n-oiriúnú le Coinbhinsiún 1978 agus Coinbhinsiún 1982. Sch.2

Beidh dlínse freisin ag Cúirt Bhreithiúnais na gComhphobal Eorpach chun rialú a thabhairt i dtaobh léiriú an Choinbhinsiúin ar aontú Phoblacht na hOstaire, Phoblacht na Fionlainne agus Ríocht na Sualainne do Choinbhinsiún an 27 Meán Fómhair 1968 agus don Phrótacal seo, mar atá arna n-oiriúnú le Coinbhinsiúin 1978, 1982 agus 1989.

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*,

   — sa Danmhairg: *højesteret*,

   — i bPoblacht Chónaidhme na Gearmáine: *die obersten Gerichtshöfe des Bundes*,

   — sa Ghréig: τα ανώτατα δικαστήαια,

   — sa Spáinn: *el Tribunal Supremo*,

   — sa Fhrainc: *la Cour de Cassation* agus *le Conseil d'État*,

   — in Éirinn: an Chúirt Uachtarach,

   — san Iodáil: *la Corte Suprema de Cassazione*,

   — i Lucsamburg: *la Cour supérieure de justice* ina suí di mar *Cour de Cassation*,

   — san Ostair: an *Oberste Gerichtshof*, an *Verwaltungsgerichtshof* agus an *Verfassungsgerichtshof*,

   — san Ísiltír: *de Hoge Raad*,

   — sa Phortaingéil: *o Supremo Tribunal de Justiça* agus *o Supremo Tribunal Administrativo*,

   — san Fhionlainn: *korkein oikeus/högsta domstolen* agus *korkein hallintooikeus/högsta förvaltningsdomstolen*,

   — sa tSualainn, *Högsta domstolen*, *Regeringsrätten*, *Arbetsdomstolen* agus *Marknadsdomstolen*,

   — sa Ríocht Aontaithe: an *House of Lords* agus cúirteanna a ndearnadh iarratas chucu faoin dara mír d'Airteagal 37 nó faoi Airteagal 41 den Choinbhinsiún,

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 ionstraime eile a luaitear in Airteagal 1 a tharraingt anuas i gcás a

Sch.2

bheidh ar feitheamh os comhair cúirte dá dtagraítear in Airteagal 2(1), iarrfaidh an chúirt sin ar an gCúirt Bhreithiúnais, má mheasann sí gur gá breith 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 i mír 1, a iarraidh ar an gCúirt Bhreithiúnais rialú a thabhairt uirthi.

Airteagal 4

1. Féadfaidh údarás inniúil Stáit Chonarthaig a iarraidh ar an gCúirt Bhreithiúnais rialú a thabhairt ar cheist i dtaob léiriú an Choinbhinsiúin nó i dtaobh léiriú ceann de na hionstraimí eile a luaitear in Airteagal 1 má bhíonn breithiúnais 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 be 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 iaratas 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 hEoropa, agus na cinn sin den Phrótacal ar Reacht na Cúirte Breithiúnais atá i gceangal leis, is infheidhme nuair a iarrtar ar an gCúirt réamhrialú a thabhairt, beidh feidhm acu mar an gcéanna, ach amháin mura 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

[*scriosta*]

Airteagal 7

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

Airteagal 8

Tiocfaidh an Prótacal seo i bhfeidhm ar an gcéad lá den tríú mí i ndiaidh thaisceadh 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 ábhair 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 Stát a shíneoidh an Prótacal seo:

(*a*) taisceadh gach ionstraime daingniúcháin;

(*b*) dáta an Phrótacail seo a theacht i bhfeidhm;

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

(*d*) [*scriosta*].

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 de Stáit a shínithe.

THIRD SCHEDULE

Titles V and VI of the 1978 Accession Convention[1] as amended by the 1989 Accession Convention[2]

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 recognised 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 recognised 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

[*deleted*]

Article 36

[*deleted*]

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. The texts drawn up in the Danish, English and Irish

[1]OJ No. L 304 of 30.10.1978, p.11.
[2]OJ No. L 285 3.10.1989, p.8.

languages shall be authentic under the same conditions as the original texts of the 1968 Convention and the 1971 Protocol. Sch.3

Article 38

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 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.

FOURTH SCHEDULE

Titles V and VI of the 1982 Accession Convention[1]

Title V

TRANSITIONAL PROVISIONS

Article 12

1. The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention and 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, 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 be recognized and enforced in accordance with the provisions of title III of the 1968

[1]OJ No. L 388 of 31.12.1982, p.3.

Sch.4

Convention, as amended by the 1978 Convention and this Convention, if jurisdiction was founded upon rules which accorded with the provisions of Title II of the 1968 Convention, as amended, or with the provisions of a convention which was in force between the State of origin and the State addressed when the proceedings were instituted.

Title VI

FINAL PROVISIONS

Article 13

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the 1968 Convention, of the 1971 Protocol and of the 1978 Convention in the Danish, Dutch, English, French, German, Irish and Italian languages to the Government of the Hellenic Republic.

The texts of the 1968 Convention, of the 1971 Protocol and of the 1978 Convention, drawn up in the Greek language, shall be annexed to this Convention. The texts drawn up in the Greek language shall be authentic under the same conditions as the other texts of the 1968 Convention, the 1971 Protocol and the 1978 Convention.

Article 14

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 15

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and those States which have put into force the 1978 Convention in accordance with Article 39 of that Convention.

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

Article 16

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 17

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

FIFTH SCHEDULE

Titles VI and VII of the 1989 Accession Convention[1]

Title VI

TRANSITIONAL PROVISIONS

Article 29

1. The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention, the 1982 Convention and 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, 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 be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention, as amended by the 1978 Convention, the 1982 Convention and this Convention, if jurisdiction was founded upon rules which accorded with the provisions of Title II of the 1968 Convention, as amended, or with the provisions of a convention which was in force between the State of origin and the State addressed when the proceedings were instituted.

Title VII

FINAL PROVISIONS

Article 30

1. The Secretary-General of the Council of the European Communities shall transmit a certified copy of the 1968 Convention, of the 1971 Protocol, of the 1978 Convention and of the 1982 Convention in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages to the Governments of the Kingdom of Spain and of the Portuguese Republic.

2. The texts of the 1968 Convention, of the 1971 Protocol, of the 1978 Convention and of the 1982 Convention, drawn up in the Portuguese and Spanish languages, are set out in Annexes II, III, IV and V to this Convention. The texts drawn up in the Portuguese and Spanish languages shall be authentic under the same conditions as the other texts of the 1968 Convention, the 1971 Protocol, the 1978 Convention and the 1982 Convention.

Article 31

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 32

1. This Convention shall enter into force on the first day of the third month following the date on which two signatory States, of

[1]OJ No. L 285 of 3.10.1989, p.8.

Sch.5

which one is the Kingdom of Spain or the Portuguese Republic, deposit their instruments of ratification.

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

Article 33

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 34

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

SIXTH SCHEDULE

Titles V and VI of the 1996 Accession Convention[1]

Title V

TRANSITIONAL PROVISIONS

Article 13

1. The 1968 Convention and the 1971 Protocol, as amended by the 1978 Convention, the 1982 Convention, the 1989 Convention and 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, 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 be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention, as amended by the 1978 Convention, the 1982 Convention, the 1989 Convention and this Convention, if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended, of the 1968 Convention, or with the provisions of a convention which was in force between the State of origin and the State addressed when the proceedings were instituted.

[1]OJ No. C 15 of 15.1.1997, p.4.

FINAL PROVISIONS

Article 14

1. The Secretary-General of the Council of the European Union shall transmit a certified copy of the 1968 Convention, of the 1971 Protocol, of the 1978 Convention, of the 1982 Convention and of the 1989 Convention in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Spanish and Portuguese languages to the Governments of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

2. The texts of the 1968 Convention, of the 1971 Protocol, of the 1978 Convention, of the 1982 Convention and of the 1989 Convention, drawn up in the Finnish and Swedish languages, shall be authentic under the same conditions as the other texts of the 1968 Convention, the 1971 Protocol, the 1978 Convention, the 1982 Convention and the 1989 Convention.

Article 15

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 Union.

Article 16

1. This Convention shall enter into force on the first day of the third month following the date on which two signatory States, one of which is the Republic of Austria, the Republic of Finland or the Kingdom of Sweden, deposit their instruments of ratification.

2. This Convention shall produce its effects for any other signatory State on the first day of the third month following the deposit of its instrument of ratification.

Article 17

The Secretary-General of the Council of the European Union 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 18

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all 12 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Government of each signatory State.

SEVENTH SCHEDULE

Text of the Lugano Convention[1]

CONVENTION

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

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THIS CONVENTION,

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

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

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

TAKING INTO ACCOUNT the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Accession Conventions under the successive enlargements of the European Communities,

PERSUADED that the extension of the principles of that Convention to the States parties to this instrument will strengthen legal and economic cooperation in Europe,

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

HAVE in this spirit DECIDED to conclude this Convention and

HAVE AGREED AS FOLLOWS:

Title I

SCOPE

Article 1

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

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

[1]OJ No. L 319 of 25.11.1988, p.9.

3. social security; Sch.7

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 — Burgerlijk Wetboek*) and Article 638 of the judicial code (*Code judiciaire — Gerechtelijk Wetboek*),

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

—in the Federal Republic of Germany: Article 23 of the code of civil procedure (*Zivilprozeβordnung*),

—in Greece: Article 40 of the code of civil procedure (*Κωδιχαζ πολιτιχήζ σιχονομίαζ),*

—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 Iceland: Article 77 of the Civil Proceedings Act (*lög um meδferδ einkamála í héraδi*),

—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 Norway: Section 32 of the Civil Proceedings Act (*tvistemålsloven*),

—in Austria: Article 99 of the Law on Court Jurisdiction (*Jurisdiktionsnorm*),

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

—in Switzerland: *le for du lieu du séquestre/Gerichtsstand des Arrestortes/foro del luogo del sequestro* within the meaning of Article 4 of the *loi fédérale sur le droit international privé/Bundesgesetz über das internationale Privatrecht/legge federale sul diritto internazionale privato*,

—in Finland: the second, third and fourth sentences of Section 1 of Chapter 10 of the Code of Judicial Procedure (*oikeudenkäymiskaari/rättegångsbalken*),

—in Sweden: the first sentence of Section 3 of Chapter 10 of the Code of Judicial Procedure (*Rättegångsbalken*),

—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 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; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, this place shall be the place of business through which he was engaged;

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;

Sch.7

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. 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

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;

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

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.

Sch.7

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:

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.

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 the 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

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.

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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. Sch.7

SECTION 5

Exclusive Jurisdiction

Article 16

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

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

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

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:

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(*a*) in writing or evidenced in writing, or

(*b*) in a form which accords with practices which the parties have established between themselves, or

(*c*) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

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.

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

3. 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 juridiction they purport to exclude have exclusive jurisdiction by virtue of Article 16.

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

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

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.

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.

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 stay its proceedings until such time as the jurisdiction of the court first seised is established.

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

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.

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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 Section 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;

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 of origin, 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 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 28

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

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

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

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

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 of origin by reason of an appeal.

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, it has been declared enforceable there.

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland

Sch.7 when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 32

1. The application shall be submitted:

—in Belgium, to the *tribunal de première instance* or *rechtbank van eerste aanleg*,

—in Denmark, to the *byret*,

—in the Federal Republic of Germany, to the presiding judge of a chamber of the *Landgericht*,

—in Greece, to the *Μονομελές Πρωτοδικείο*,

—in Spain, to the *Juzgado de Primera Instancia*,

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

—in Ireland, to the High Court,

—in Iceland, to the *héraðsdómari*,

—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 Norway, to the *herredsrett* or *byrett as namsrett*,

—in Austria, to the *Landesgericht* or the *Kreisgericht*,

—in Portugal, to the *Tribunal Judicial de Círculo*,

—in Switzerland:

(*a*) in respect of judgments ordering the payment of a sum of money, to the *juge de la mainlevée/Rechtsöffnungsrichter/giudice competente a pronunciare sul rigetto dell'opposizione*, within the framework of the procedure governed by Articles 80 and 81 of the *loi fédérale sur la poursuite pour dettes et la faillite/Bundesgesetz über Schuldbetreibung und Konkurs/legge federale sulla esecuzione e sul fallimento*;

(*b*) in respect of judgments ordering a performance other than the payment of a sum of money, to the *juge cantonal d'exequatur compétent/zuständiger kantonaler Vollstreckungsrichter/giudice cantonale competente a pronunciare l'exequatur*,

—in Finland, to the *ulosotonhaltija/överexekutor*,

—in Sweden, to the *Svea hovrätt*,

—in the United Kingdom:

(*a*) 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;

(*b*) 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;

(*c*) 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. Sch.7

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

1. 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 *rechtsbank van eerste aanleg,*

—in Denmark, with the *landsret,*

—in the Federal Republic of Germany, with the *Oberlandesgericht,*

—in Greece, with the *Εφετείο,*

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—in Spain, with the *Audiencia Provincial*,

—in France, with the *cour d'appel*,

—in Ireland, with the High Court,

—in Iceland, with the *héraðsdómari*,

—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 *arrondissementsrechtsbank*,

—in Norway, with the *lagmannsrett*,

—in Austria, with the *Landesgericht* or the *Kreisgericht*,

—in Portugal, with the *Tribunal da Relação*,

—in Switzerland, with the *tribunal cantonal / Kantonsgericht / tribunale cantonale*,

—in Finland, with the *hovioikeus / hovrätt*,

—in Sweden, with the *Svea hovrätt*,

—in the United Kingdom:

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

(*b*) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;

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

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

—in Belgium, Greece, Spain, France, Italy, Luxembourg and in 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 Iceland, by an appeal to the *Hæstiréttur*,

—in Norway, by an appeal *(kjæremål* or *anke*) to the *Hoyesteretts Kjæremålsutvalg* or *Hoyesterett*,

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

—in Portugal, by an appeal on a point of law,

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

—in Finland, by an appeal to the *korkein oikeus / högsta domstolen*,

—in Sweden, by an appeal to the *högsta domstolen*,

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

Article 38

The court with which the appeal under Article 37 (1) 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 of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged. Sch.7

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

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

1. 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 Greece, to the *εφετείο*,

—in Spain, to the *Audiencia Provincial*,

—in France, to the *cour d'appel*,

—in Ireland, to the High Court,

—in Iceland, to the *héraðsdómari*,

—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 Norway, to the *lagmannsrett*,

—in Austria, to the *Landesgericht* or the *Kreisgericht*,

—in Portugal, to the *Tribunal da Relação*,

—in Switzerland, to the *tribunal cantonal / Kantonsgericht / tribunale cantonale*,

—in Finland, to the *hovioikeus / hovrätt*,

—in Sweden, to the *Svea hovrätt*,

—in the United Kingdom:

(*a*) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;

(*b*) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;

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(*c*) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

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

Article 41

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

—in Belgium, Greece, Spain, France, Italy, Luxembourg and in 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 Iceland, by an appeal to the *Hæstiréttur*,

—in Norway, by an appeal (*kjæremål* or *anke*) to the *Hoyesteretts kjæremålsutvalg* or *Hoyesterett*,

—in Austria, by a *Revisionsrekurs*,

—in Portugal, by an appeal on a point of law,

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

—in Finland, by an appeal to the *korkein oikeus / högsta domstolen*,

—in Sweden, by an appeal to the *högsta domstolen*,

—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 of origin.

Article 44

An applicant who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal 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 or in Iceland in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from, respectively, the Danish Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

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.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State of origin, 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 of origin.

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 Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative *ad litem*.

Sch.7

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, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 *et seq*. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

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 addressed 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.

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 the 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.

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 in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed. Sch.7

However, 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 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.

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 54a

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

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 under 5. (*o*), (*p*) or (*q*) of this Article.

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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 on any ship;

(*c*) salvage;

(*d*) agreement relating to the use or hire of any ship whether by charterparty or otherwise;

(*e*) agreement relating to the carriage of goods in any ship whether by charterparty 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 under 5. (*o*) and (*p*) of this Article, to include a ''*forbud*'', where that is the only procedure allowed in respect of such a claim under Articles 646 to 653 of the law on civil procedure (*lov om rettens pleje*).

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

RELATIONSHIP TO THE BRUSSELS CONVENTION AND TO OTHER CONVENTIONS

Article 54b

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

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

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

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

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

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

Article 55

Subject to the provisions of Articles 54 (2) and 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 the Swiss Confederation and France on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15 June 1869,

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

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

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

Sch.7

—the Convention between the Swiss Confederation and Italy on the recognition and enforcement of judgments, signed at Rome on 3 January 1933,

—the Convention between Sweden and the Swiss Confederation on the recognition and enforcement of judgments and arbitral awards signed at Stockholm on 15 January 1936,

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

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

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

—the Convention between the Kingdom of Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,

—the Convention between Austria and the Swiss Confederation on the recognition and enforcement of judgments, signed at Berne on 16 December 1960,

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

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

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

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

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

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

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

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

—the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982, Sch.7

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

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

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

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

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

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

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

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

Article 58

(*None*)

Sch.7

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.

Title VIII

FINAL PROVISIONS

Article 60

The following may be parties to this Convention:

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

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

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

Article 61

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

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

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

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

Article 62 Sch.7

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

(*a*) the States referred to in Article 60 (*b*);

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

2. If an acceding State wishes to furnish details for the purposes of Protocol 1, negotiations shall be entered into to that end. A negotiating conference shall be convened by the Swiss Federal Council.

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

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

Article 63

Each acceding State shall, when depositing its instrument of accession, communicate the information required for the application of Articles 3, 32, 37, 40, 41 and 55 of this Convention and furnish, if needs be, the details prescribed during the negotiations for the purposes of Protocol 1.

Article 64

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

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

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

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

Article 65

The following are annexed to this Convention:

—a Protocol 1, on certain questions of jurisdiction, procedure and enforcement,

Sch.7

—a Protocol 2, on the uniform interpretation of the Convention,

—a Protocol 3, on the application of Article 57.

These Protocols shall form an integral part of the Convention.

Article 66

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

Article 67

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

(*a*) the deposit of each instrument of ratification or accession;

(*b*) the dates of entry into force of this Convention in respect of the Contracting States;

(*c*) any denunciation received pursuant to Article 64;

(*d*) any declaration received pursuant to Article Ia of Protocol 1;

(*e*) any declaration received pursuant to Article Ib of Protocol 1;

(*f*) any declaration received pursuant to Article IV of Protocol 1;

(*g*) any communication made pursuant to Article VI of Protocol 1.

Article 68

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

(*Signatures of Plenipotentiaries of the fourteen Contracting States.*)

EIGHTH SCHEDULE

Text of Protocol 1[1]

Protocol 1

on certain questions of jurisdiction, procedure and enforcement

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

[1]OJ No. L 319 of 25.11.1988, p.29.

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. Sch.8

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 Ia

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

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

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

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

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

3. This reservation shall cease to have effect on 31 December 1999. It may be withdrawn at any time.

Article Ib

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

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

Sch.8

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

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 Spain, in Austria and in Switzerland. Any person domiciled in another Contracting State may be sued in the courts:

—of the Federal Republic of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozeßordnung*) concerning third-party notices,

—of Spain, pursuant to Article 1482 of the civil code,

—of Austria, pursuant to Article 21 of the code of civil procedure (*Zivilprozeßordnung*) concerning third-party notices,

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

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 Spain, in Austria and in Switzerland in accordance with Title III. Any effects which judgments given in these States may have on third parties by application of the provisions in the preceding paragraph shall also be recognized in the other Contracting States.

Article Va

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

In civil and commercial matters, the expression ‘court’ includes the Finnish *ulosotonhaltija / överexekutor*.

Article Vb Sch.8

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

Article Vc

(*None*)

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.

Article VI

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

NINTH SCHEDULE

Domicile.

Part I

1. An individual is domiciled in the State, or in a state other than a Contracting State if, but only if, he is ordinarily resident in the State or in that other state.

2. An individual is domiciled in a place in the State if, but only if, he is domiciled in the State and is ordinarily resident or carries on any profession, business or occupation in that place.

Part II

1. Tá sainchónaí ar dhuine sa Stát nó i stát seachas Stát Conarthach i gcás go bhfuil cónaí air de ghnáth sa Stát nó sa stát eile sin, agus sa chás sin amháin.

2. Tá sainchónaí ar dhuine in áit sa Stát i gcás go bhfuil sainchónaí air sa Stát agus go bhfuil cónaí air de ghnáth, nó gairm, gnó nó slí bheatha á sheoladh aige, san áit sin, agus sa chás sin amháin.

Part III

Sch.9

1. A corporation or association has its seat in the State if, but only if—

(*a*) it was incorporated or formed under the law of the State, or

(*b*) its central management and control is exercised in the State.

2. A corporation or association has its seat in a particular place in the State if, but only if, it has its seat in the State and—

(*a*) it has its registered office or some other official address at that place, or

(*b*) its central management and control is exercised in that place or it is carrying on business in that place.

3. Subject to *paragraph 4* of this Part, a corporation or association has its seat in a state other than the State if, but only if—

(*a*) it was incorporated or formed under the law of that state, or

(*b*) its central management and control is exercised in that state.

4. A corporation or association shall not be regarded as having its seat in a Contracting State other than the State if—

(*a*) it has its seat in the State by virtue of *paragraph 1 (a)* of this Part, or

(*b*) it is shown that the courts of that other state would not regard it for the purposes of Article 16.2 as having its seat there.

5. In this Part—

''association'' means an unincorporated body of persons;

''business'' includes any activity carried on by a corporation or association;

''corporation'' means a body corporate;

''official address'' means, in relation to a corporation or association, an address which it is required by law to register, notify or maintain for the purpose of receiving notices or other communications.

Part IV

1. Tá suíomh ag corparáid nó comhlachas sa Stát i gcás—

(*a*) gur corpraíodh í nó gur foirmíodh é faoi dhlí an Stáit, nó

(*b*) go bhfuil bainistíocht lárnach agus rialú na corparáide nó an chomhlachais á bhfeidhmiú sa Stát,

agus sa chás sin amháin.

2. Tá suíomh ag corparáid nó comhlachas in áit áirithe sa Stát i gcás go bhfuil a suíomh nó a shuíomh sa Stát agus—

(*a*) go bhfuil oifig chláraithe nó seoladh éigin eile oifigiúil aici nó aige ag an áit sin, nó Sch.9

(*b*) go bhfuil bainistíocht lárnach agus rialú na corparáide nó an chomhlachais á bhfeidhmiú san áit sin nó gnó á sheoladh aici nó aige san áit sin,

agus sa chás sin amháin.

3. Faoi réir *mhír 4* den Chuid seo, tá suíomh ag corparáid nó comhlachas i stát seachas an Stát i gcás—

(*a*) gur corpraíodh í nó gur foirmíodh é faoi dhlí an stáit sin, nó

(*b*) go bhfuil bainistíocht lárnach agus rialú na corparáide nó an chomhlachais á bhfeidhmiú sa stát sin,

agus sa chás sin amháin.

4. Ní mheasfar suíomh corparáide nó comhlachais a bheith i Stát Conarthach seachas an Stát i gcás—

(*a*) go bhfuil suíomh ag an gcorparáid nó ag an gcomhlachas sa Stát de bhua *mhír 1 (a*) den Chuid seo, nó

(*b*) go dtaispeánfar nach measfadh cúirteanna an stáit eile sin suíomh a bheith ag an gcorparáid nó ag an gcomhlachas ansin chun críocha Airteagal 16.2.

5. Sa Chuid seo—

ciallaíonn ''comhlachas'' comhlacht neamhchorpraithe daoine;

ciallaíonn ''corparáid'' comhlacht corpraithe;

folaíonn ''gnó'' aon ghníomhaíocht atá á seoladh ag corparáid nó comhlachas;

ciallaíonn ''seoladh oifigiúil'', i ndáil le corparáid nó comhlachas, seoladh a cheanglaítear uirthi nó air, le dlí, a chlárú, a chur in iúl nó a choimeád chun fógraí nó cumarsáidí eile a fháil.

Part V

A trust is domiciled in the State if, but only if, the law of the State is the system of law with which the trust has its closest and most real connection.

Part VI

Tá sainchónaí ar iontaobhas sa Stát i gcás gurb é dlí an Stáit an córas dlí is mó a bhfuil dlúthbhaint agus baint dháiríre aige leis, agus sa chás sin amháin.