

LECTURE TEN

Jurisdiction over actions *In Personam*, where the defendant is domiciled in the E.C.

Aim:

To provide an analysis of the jurisdiction provisions of *Regulation 44/2001/EC* (formerly the *1968 Brussels Convention*) in matters relating to contract and matters relating to tort.

Objectives.

After careful study of the following notes, and other prescribed readings for this lecture, you will be able to:

1. Discuss the scope of the Regulation as provided for in Article 1 and explain the provisions of *Articles 2 and 4*;
2. Discuss the special jurisdiction provisions of *Article 5* in matters relating to contract; and in matters relating to tort;
3. Discuss the exclusive jurisdiction provisions of *Article 22*; and the impact of *Arts.23, 24, 27 and 28*.

Introduction.

Whereas the English court enjoys extensive, *discretionary* powers of jurisdiction over a defendant who is *not* domiciled within the EC., for example, by way of a defendant's presence in England or by way of granting leave to serve a writ out of the jurisdiction, the enactment of the *Civil Jurisdiction and Judgements Act 1982*, which gave the force of law to the *1968 Brussels Convention*, has heralded significantly different and less extensive powers over a defendant who *is* domiciled within the EC. In essence, the mandatory provisions of the Convention replaced the exercise of discretion under the traditional rules; and the mere presence of the defendant in England no longer gave the English courts jurisdiction if the defendant is domiciled in some other Member State of the EC. The essence of those changes brought and incorporated into English law via a Statute has been retained by the coming into force on 1st March 2002 of *Regulation 44/2001/EC*.

Nature and Scope of the Brussels Convention.

In England and Wales, the *1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* (the '*Brussels Convention*') provided the essential basis of the modern law on jurisdiction and the enforcement of judgements over a defendant who is domiciled in a Contracting State(i.e., a Member State of the EC / EU where the convention applied). The Brussels Convention had been agreed to by the original six Contracting States of the EEC, viz; France, Germany, Italy, Belgium, Luxembourg and the Netherlands. Indeed, these States were obliged by *the 'old' Article 220 of the Treaty of Rome* (now *Art.293EC*), to enter into such a convention with regard to the *recognition of foreign judgements*. However, the scope of the Brussels Convention was extended by including the provisions relating to *jurisdiction*. Furthermore, *Article 63 of the Brussels Convention* provided that any State which subsequently joined the E.C. (such as the U.K., Eire and Denmark in 1973; Greece in 1981; Spain and Portugal in 1986; and Finland, Austria and Sweden in 1995) would be bound by its terms.

s.1(1) CJA 1982 confirms that the purpose of the *CJA 1982* was to implement the provisions not only of the *Brussels Convention 1968* but also the *Protocol on Interpretation 1971*, which provides for uniform interpretation throughout the Community and *the Accession Convention 1978* (under which the first of the new Member States: U.K.; Eire; and Denmark, acceded to the 1968 Convention).

s.2(1) CJA 1982 specifies that '*the Conventions shall have the force of law in the United Kingdom, and judicial notice shall be taken of them*'.

Two recent amendments have been made to the scope of the jurisdiction principles, and both have been incorporated into English law:

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- 1 The **Lugano Convention 1988** which extended the principles of the Brussels Convention to the *European Free Trade Association* (EFTA) in order that the advantages of, inter alia, a uniform law of jurisdiction could be enjoyed by EFTA countries.¹ The Lugano Convention has been given the force of law by the **Civil Jurisdiction and Judgments Act 1991** which has amended the **CJJA 1982**. In essence, whereas the provisions of the Lugano Convention are virtually identical to those of the Brussels Convention, as they apply to non-EC Contracting States the ECJ does not have jurisdiction to interpret any of its provisions. This, of course, could lead to differences in interpretation even though **Protocol 2 of the Lugano Convention** required the parties to 'pay due account to the [relevant] principles laid down ... by the courts of other Contracting States.'
- 2 Secondly, the **San Sebastian Convention 1989** made adjustments to the Brussels Convention on the accession of Spain and Portugal to the EC and, consequently, the Brussels Convention.

The adjustments were necessary not only to provide for the accession of Spain and Portugal but also to eliminate differences between the Brussels Convention and some improvements on the Brussels Convention that were incorporated into the Lugano Convention. Thus the improvements brought about by the Lugano Convention have been incorporated (albeit with some minor differences) into the Brussels Convention by the San Sebastian Convention! These improvements have been enacted by Order in Council made under **s.14 CJJA 1982**.²

In addition to the above, and even more recently, primacy must now be accorded to **Council Regulation (EC) No 44/2001** of 22 December 2000³ on **Jurisdiction and the Recognition and enforcement of Judgments in Civil and Commercial Matters**.

Scope of Regulation 44/2001.

Article 1 of the Regulation provides that: '*This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal.*'

Whereas this appears to be a very wide application, Art.1 then goes on to specify matters to which the Regulation does not apply, viz; '*revenue, customs or administrative matters*'. In addition, four classes of cases are expressly excluded even though they may be regarded as civil and commercial matters. They are:

1. Matters of '*status or lega* under the **Brussels Convention 1968**.*l capacity of natural persons, rights in property arising out of the matrimonial relationship, wills and succession*'.
2. Bankruptcy, proceedings relating to winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.
3. Social Security
4. **Arbitration**. **Article 1(4)** provides that; '*the Convention shall not apply to ... arbitration*'.

That *all* provisions relating to arbitration are excluded under the Convention was initially confirmed in **The Atlantic Emperor**.⁴ (But see now the EC Regulations, where this may now be in doubt.)

FACTS : A dispute had arisen between M, the Swiss purchaser, and S, the Italian seller of a cargo of oil. The dispute arose because the oil was contaminated with water. M had telexed S the terms of the contract, one of which subjected the contract to English law and provided for arbitration in London. However, S did not reply to this telex. Whereas a significant part of the dispute revolved around the issue of whether the telexed terms were part of the contract, the main issue was: did M's request to the English court to appoint an arbitrator come within the Convention? S alleged that it did on the basis that it was a commercial matter and, by coming within the scope of the Convention, S could only be sued in their own jurisdiction unless it could be proved that they had contracted to submit to another jurisdiction (**Art.2**

¹ EFTA being the trading bloc which, at that time, was the single most important trading partner of the EC

² Whereas the Article numbers in the Brussels and Lugano Conventions are the same, significant differences which, nevertheless, remain between the Conventions are to be found in relation to certain aspects of special and exclusive jurisdiction in Articles: 5(1); 16(1)(b); and 17(5). These differences have been eliminated by the replacement of the Brussels Convention and the coming into force of **Regulation 44/2001/EC**

Regulation 44/2001, adopted under **Art.65EC**, has NOT been adopted by Denmark: here, the **Brussels Convention** remains in force.

³ Official Journal of the European Communities 2001 L 12/1 16.1.2001

⁴ **The Atlantic Emperor**; **Marc Rich & Co. v Societa Italiana Impianti PA** (Case C-190/89) [1992] 1 Lloyd's Rep 342

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Brussels Convention). Otherwise, contended S, it would be possible to evade the application of the Convention simply by alleging the existence of an arbitration clause.

HELD: (ECJ) That reference *solely* to the subject matter of the dispute would suffice to determine whether the dispute was within the scope of the Convention. Here, the reference was to 'arbitration'. Accordingly it was irrelevant that the validity or otherwise of the arbitration term was to be determined as a preliminary point: once the subject matter of the dispute came within an excluded category then the litigation fell outside the scope of the Convention.

Meaning Of 'Civil and Commercial Matters'.

There is no definition of this term within the Convention. Apart from *Art.1* providing that it does not include 'revenue, customs or administrative matters' guidance as to what the term does encompass has been left for case law to establish. One of the first cases, *L.T.U. v Eurocontrol*⁵ had to decide whether litigation with a public authority constitutes a 'civil and commercial matter' under the *Brussels Convention 1968*.

L.T.U., a German airline corporation, disputed the validity of charges imposed by Eurocontrol, a public authority and international organisation, which provided air safety services. Eurocontrol was acting within the exercise of its powers when it sought to collect charges from L.T.U. for the use of its services. Although the use of the services was obligatory and the rate of charge was fixed unilaterally, i.e. it was non-negotiable, Eurocontrol succeeded in obtaining a judgement in Belgium, the Belgian court expressly finding the matter to be commercial in nature. However, when the German court was asked to enforce this judgement it referred the question of interpretation of 'civil and commercial matters' to the European court.

HELD: This was not a civil or commercial matter. Accordingly, the enforcement of the judgement fell outside the scope of the Convention. The court made it clear that the meaning of a 'civil and commercial matter' would be derived from the Convention and not from the provisions of the national laws involved in the litigation.

Commenting on this decision, *Hartley*, in *Civil Jurisdiction and Judgments*, 1984, p13, said that: 'unless the public authority was acting as an ordinary citizen and not claiming any special prerogatives' the matter under litigation will lie outside the scope of the Convention.

Another case which fell outside the scope of a 'civil and commercial matter' was: *Netherlands State v Ruffer*.⁶ Here, a claim was made by the Dutch public waterways authority for reimbursement of the costs of removing the wreck of a German vessel following a collision. Dutch law classified the action as one in tort. **HELD:** The action arose from international treaty obligations and, thus, would be regarded by many Contracting States as an administrative action.

Another recent case on the meaning of 'civil and commercial matter' is *Menten v The Federal Republic of Germany*.⁷ As a result of a fraudulent claim made by M, the German government had paid compensation to him and his wife amounting to 550,000 DM. The German government sought restitution of this sum when the fraud was discovered. They succeeded in obtaining judgments in the German courts and then attempted to enforce them against M in the Netherlands.

HELD: (by the Dutch court). The claim for repayment of the money, the original payment of which had been induced by fraud, was a matter 'rooted in private law': it had nothing to do with public authority powers. Accordingly, the matter was within the 'civil and commercial' category under the Brussels Convention

Interpretation of the Convention by English Courts (See later for position under Regulation 44/2001).

A consequence of 'the Conventions' having the force of law (*s.2(1) CJA 1982*) is that English courts can, and sometimes must, refer questions relating to the interpretations of the Conventions to the ECJ: *Arts 1-4 of the Protocol on Interpretation 1971*.

However, the Protocol on Interpretation contains two limitations on when a national court can request such a ruling, viz;

⁵ *L.T.U. v Eurocontrol* [1976] ECR 1541

⁶ *Netherlands State v Ruffer* [1981] 3 CMLR 293.

⁷ *Menten v The Federal Republic of Germany* [1991] ILPr 259

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1. 'the national court must ... consider that a decision on the question is necessary to enable it to give judgement.' So, if the English court is of the opinion that the meaning under the Convention is clear then no reference to the ECJ is necessary.
2. With regard to a jurisdiction case, the House of Lords *must* request a preliminary ruling where the meaning of a term is in doubt, whereas a court (other than the House of Lords) when sitting in an appellate capacity *may* request such a ruling. A court at first instance is *not* empowered to make such a request. **This process is in marked contrast with the procedure under Art.234EC where any court may request a preliminary ruling.**

If the English court doesn't believe that it is necessary to seek a ruling from the ECJ on a provision of the Convention, then **s.3(1) CJA 1982** provides that the matter must be determined 'in accordance with the principles laid down by and any relevant decisions ... [of that court]'.

Cheshire & North point out: "There is a substantial body of case law on the Brussels Convention ... [and] The English courts are bound by these decisions and are required to take judicial notice of them."

Collier adds: 'When the (ECJ) has had to decide whether the provision in question should be interpreted in accordance with its meaning under the law of a Member State, because it is either the *lex fori* or the *lex causae* or in accordance with the basic principles of the Convention itself, which are sometimes called 'Community' principles, it has, except in one case⁸ adopted the latter opinion.'

The approach to interpreting Community law by the English courts is entirely different from that adopted when interpreting English statutes. The reason for this is that the function of the English court when interpreting the Brussels Convention is "to seek to give effect to its purpose and not to give it 'a narrow literalistic construction'," per *Potter J* in *New Hampshire Insurance Co. v Strabag Bau* (1990).⁹ In this case, *Potter J* also adopted *Lord Diplock's* dictum in *Henn & Derby v DPP* (1980),¹⁰ where *Lord Diplock* said that:

"The European court in contrast to English courts, applies teleological rather than historical methods to the interpretation of the Treaties and other Community legislation. It seeks to give effect to what it conceives to be the spirit rather than the letter of the Treaties: sometimes, indeed, to an English judge it may seem to the exclusion of the letter. It views the Communities as living and expanding organisms and the interpretation of the provisions of the Treaties as changing to match their growth."

However, perhaps the most remarkable aid to interpreting provisions of the Brussels Convention is that **s.3(3) CJA 1982** permits unconditional reference to be made to the *Jenard Report* (on the 1968 Convention) and to the *Schlosser Report* (on the 1971 Protocol on Interpretation and the 1978 accession Convention). The Reports 'may be considered in ascertaining the meaning or effect of any provision of the Convention and shall be given such weight as is appropriate in the circumstances.'

Interpretation of Regulation 44/2001

It is hardly surprising to note that as a Regulation is an act of the Institutions of the EC (secondary legislation made under the authority of **Art.249EC**), its interpretation may be sought via the 'ordinary' procedure provided for making a reference to the ECJ under **Art.234EC** – i.e., the authority to make a reference is **no longer confined to the courts at the higher levels of the judicial hierarchy**, i.e., the House of Lords and other appellate courts.

Jurisdiction

Articles 2-29 of Regulation 44/2001 contain the principles relating to jurisdiction. An overview of these provisions of the Regulation reveals that:

- Art. 1** provides that the Regulation applies to Civil & Commercial matters; and
- Art. 2** is the source of the basic jurisdictional principle. *Whatever the nationality of the defendant*, he is sued in the courts of the Member State where he is domiciled (see *infra*).
- Art. 3** In essence, this provides that when the defendant is domiciled in the E.C., his presence in England is insufficient reason to exercise jurisdiction here.

⁸ *Case 12/76 Tessili v. Dunlop A C* [1976] E.C.R. 1473

⁹ *New Hampshire Insurance Co. v. Strabag Bau* [1990] 2 Lloyd's Rep. 61 (QBD), [1992] 1 Lloyd's Rep. 361 (CA)

¹⁰ *Henn and Darby v. D.P.P.* [1981] A.C. 850

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- Art. 4** Provides for the application of the 'traditional (common law) rules' of English jurisdiction if the defendant is not domiciled within the E.C. (See *infra*).
- Arts. 5 & 6** Provide for Special Jurisdiction; i.e., notwithstanding the basic jurisdictional principle in Art. 2, Arts. 5, and 6 provide for circumstances in which a court other than that of D's domicile shall have jurisdiction.
- Arts. 8-14** Contain provisions relating to insurance matters.
- Arts. 15-17** Deal with Consumer Contracts.
- Arts.18-21** Deal with individual contracts of employment
- Art.22** Provides for Exclusive Jurisdiction; i.e. when the provisions of Art 22 apply, a particular court has jurisdiction to the exclusion of all other courts and irrespective of D's domicile.
- Art.23** Refers to Prorogation of Jurisdiction (Agreements on what court(s) are to have jurisdiction).
- Art.24** This provides for jurisdiction via submission.
- Arts.27-29** Relate to Lis Pendens (where several courts may claim exclusive jurisdiction, the principle is 'first come first served').

Provisions of the Convention in more detail

The basic principle is contained in **Art.2** which states that: "*Subject to the provisions of this Regulation, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that state alone.*"

However, whereas the general rule is that: "*The jurisdiction of the courts of the defendant's domicile is comprehensive and covers all matters within the scope of the Convention*" (per **Collier**), it is subject to two exceptions, viz; "*A defendant cannot be sued in the courts for his domicile if some other court has exclusive jurisdiction [Art.16] and where the defendant is a party to a contractual agreement to submit to another jurisdiction [Art.17].*" (Ibid., p139)

With regard to the jurisdiction of the forum (say the English courts), **Art.3** provides (in essence) that the court's jurisdiction can no longer be founded on presence of the defendant in the forum, i.e. the jurisdiction '*shall not be applicable*' against persons domiciled in the E.C.¹¹

Article 4 then states that:

"If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to the provisions of Article 22 & 23 [(which refer to exclusive jurisdiction and prorogation of jurisdiction)], be determined by the law of that Member State."

In other words, *if the defendant is not domiciled within another Contracting State, the traditional rules of jurisdiction of the English courts come into play.*

Clearly, it is necessary to explain the meaning of terminology such as 'domicile', and 'exclusive jurisdiction' and then to explain the circumstances leading to the submission to a particular jurisdiction.

Domicile

That '*domicile*' is a significant concept in **Regulation 44/2001**, there is no doubt. However, '*domicile*' is not defined in the Regulation, possibly because it had basically the same meaning in the jurisdiction of each of the six original Contracting States to its predecessor, the Brussels Convention 1968, and its meaning was akin to habitual residence. Yet, there was no equation of domicile with habitual residence in the Brussels Convention nor in the current Regulation since **Art.5(2)** provides a separate reference to the latter concept!

Article 59 of the Regulation provides a two-stage process for the determination of a defendant's domicile. It provides that:

1. in order to determine whether a party is domiciled in the Member State whose courts are seised of the matter, the [national/English] court shall apply its internal law.
2. if a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

¹¹ This was the first point of difference between the 1968 Convention and the 'traditional rules' as noted by **Collier**, *supra*. Furthermore, see again his second point with regard to service of a writ out of the jurisdiction being a matter of right

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'Domicile' of a company or other legal person, as provided for in **Art.60**, is where it has its:

- a) statutory seat, or
- b) central administration, or
- c) principal place of business.

Interpretation of Provisions of the Regulation / Effect of Case Law Decided Under the Brussels Convention

Art.68(2) of the Regulation provides that: "In so far as this Regulation replaces the provisions of the Brussels Convention, any reference to the Convention shall be understood as a reference to this Regulation". Overall, as few substantive changes have been made between the 'old' and the 'new' provisions, 'old' case law will hereafter be cited, where appropriate, as authority for the interpretation of provisions of the Regulation.

Special Jurisdiction and Exclusive Jurisdiction.

Whereas the basic principle and general rule of jurisdiction is that D, who is domiciled in a Member State, 'shall, whatever [his] nationality, be sued in the courts of that state' and that state alone, **Articles 5, and 6** provide for circumstances in which a court *other than that of D's domicile* shall have jurisdiction. Accordingly, if P has an arguable case, such that he elects to sue D in that other Member State, the jurisdiction of the courts of D's domicile is then *ousted*. Such special (or concurrent) circumstances in which P has a choice of jurisdiction is referred to simply as '*special jurisdiction*.'

Under **Article 22**, however, five circumstances are provided for in which courts other than those of D's domicile have *exclusive jurisdiction*. In such circumstances the jurisdiction of the courts of D's domicile is ousted: there is not concurrent jurisdiction, simply the replacement of one jurisdiction by another, *irrespective* of D's domicile *and/or* P's preferred choice of law. Where the (rare) possibility arises for the courts of two Member States to have exclusive jurisdiction (e.g., in relation to short term tenancies in immovable property for no more than six consecutive months and where the tenant is a natural person and both landlord and tenant are domiciled in the same Member State), **Art.29** provides that the court first seised alone claims exclusive jurisdiction.

Special Jurisdiction.

The Regulation provides for eleven cases of special jurisdiction, seven of which are contained in **Art.5**. Three of the **Art.5** cases are of particular significance. They are: (1) Contract; (3) Tort; and (5) a claim arising out of the running of a branch or agency or other establishment.

Art.5(1): Contract

Article 5(1) provides that: in matters relating to a contract, [special jurisdiction may be exercised] 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.

This article gives rise to five questions for resolution:

- (i) What constitutes 'matters relating to a contract?'
- (ii) Where is the place of performance?
- (iii) What is the obligation in question?
- (iv) What is a matter relating to an individual contract of employment?
- (v) How is a dispute relating to the existence of the agreement to be resolved.

(i) Matters relating to a contract

The ECJ has decided that to establish the meaning of '*a matter relating to a contract*', a Convention or Community concept will be applied as opposed to a meaning given by a particular national law but that the wider meaning which case law has shown to be encompassed by this approach "*is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another:*" **Jakob Hante's case** [1992].¹²

¹² *Case C-26/91, Jakob Hante's case* [1992] ECR 3697.

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Cases illustrating the meaning of '*matters relating to a contract*' include:

***Martin Peters v Z.N.A.V.* [1983].¹³** Peters, a German construction company, was sued by an association that had legal personality and which had its registered office in the Netherlands. Peters was a member of this association. In essence, as Peters had succeeded in winning a contract, it was subject to a binding rule of the association (ZNAV) that it should pay a sum of money by way of compensation to the unsuccessful members who had tendered for the work and also make a contribution to the upkeep of the association's office. Peters' response to being sued in the Dutch courts for non-payment was to contest jurisdiction of the Dutch courts claim that they should be sued in the courts of their domicile (seat), ie., Germany. The contention was dismissed as it was for the plaintiff to elect where to sue in '*matters relating to a contract.*' The matter was referred to the ECJ for a preliminary ruling.

HELD: An obligation to pay money arising from the relationship between an association and its members involved close links of the same kind as are created between parties to a contract. It was a relationship that came within Art.5(1) even though a number of Contracting States wouldn't recognise this relationship as a matter relating to a contract.

***Arcado v Haviland* [1988].¹⁴** The Belgian Cour d'Appel sought from the ECJ an answer to the question of whether '*... proceedings relating to the wrongful repudiation of an (independent) commercial agency agreement and the payment of commission due under such an agreement [were] proceedings in matters relating to a contract within the meaning of Art.5(1) of the Brussels Convention ... ?*'

HELD: A claim for commission under a commercial agency agreement and, indeed, a claim for damages for the wrongful premature repudiation of the agency agreement were both matters relating to a contract.

(ii) The Place of Performance

The ECJ said this was to be established by the national court using its own conflict of laws rules. Accordingly, it is unique in that it is the only instance in which a national law has been used to interpret a provision of the Convention: ***Tessili v Dunlop*** (1976). This decision has frequently been doubted in the light of subsequent cases employing 'Convention concepts'. . However, the Regulation {**Art.5(1)(b)**} has now clarified 'place of performance of the obligation' for goods and services by expressing it to be in the Member State where the good(s) / service(s) were delivered or performed or should have been delivered or performed. Accordingly, a purchaser / debtor domiciled in the EC but outside the UK may now claim that the courts of his domicile have jurisdiction over a claim by an unpaid English seller of the good(s) / service(s).

(iii) 'the obligation in question'

***De Bloos v Bouyer* [1976].¹⁵** In a dispute involving exclusive distribution rights, the Belgian distributor sought redress from the French manufacturer in the Belgian courts under **Art.5(1) of the Brussels Convention**. Bouyer contested the jurisdiction of the Dutch courts on the basis that they were not domiciled in Belgium. Amongst the issues to be decided was: what was 'the obligation in question?'

HELD: The obligation in question refers to the obligation which constitutes '*the basis of the legal proceedings, namely the contractual obligation of the grantor which corresponds to the contractual right relied upon by the grantee in support of the application.*' That reduced to the Bouyer's non-performance in the place of performance of the obligation enabling De Bloos to invoke the special jurisdiction provisions of Art.5(1) of the Brussels Convention.

The ***De Bloos*** case has been followed in the English case of ***Medway Packaging v Meurer Maschinen* [1990].¹⁶** D, a German firm of machinery manufacturers agreed with P, an English firm of machinery distributors, that P should have the exclusive right to distribute D's machinery in England. When D authorised another firm to distribute its machinery in England a dispute arose between D and P as to whether proper notice of the termination of their agreement had been given by D.

¹³ ***Martin Peters v Z.N.A.V. (Case 34/82)***, [1983] ECR 987.

¹⁴ ***Arcado v Haviland (Case 9/87)*** [1988] ECR 1539.

¹⁵ ***De Bloos v Bouyer (Case 14/76)*** [1976] ECR 1497.

¹⁶ ***Medway Packaging v Meurer Maschinen*** [1990] 2 Lloyd's Rep 112.

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HELD: (CA.) Applying *De Bloos*, it could be said that the obligation to give notice of the termination 'could reasonably be regarded as the principal obligation in this case'. Accordingly, as notice had to be given in England the service of the writ on D was not set aside.

The meaning of 'the obligation in question' has now been refined by the *House of Lords* in:

Union Transport Group v Continental Lines [1992].¹⁷ Here, a charterparty required Belgian shipowners to nominate (in London) a vessel to carry telegraph poles from Florida to Bangladesh. In fact the vessel was not nominated and this was a factor in a dispute over a number of issues - one of which was whether the English court had jurisdiction under *Art.5(1)*.

HELD: Where a dispute concerned a number of obligations under the same contract the *principal obligation* was 'the obligation in question'. In this case, that obligation was to nominate (the nomination to be performed in London), the reason being that such nomination was an essential prerequisite both for identifying the subject matter of the contract and for enabling performance of the other obligations under the contract.

(iv) A matter relating to an individual contract of employment

That *the place of performance* of the employee's contract of employment is '... where [he] habitually carries out his work' was added to *Art.5(1)* by the *Accession Convention 1989*.

The 'obligation in question' is the 'characteristic performance' of the contract, i.e. the work. Accordingly, the employee will be able to sue the employer in the place where he (the employee) 'habitually carries out his work', if such a place is identifiable. Thus, the effect of the 1989 amendment was to confirm the earlier decisions of *Ivenel v Schwab* (1982).¹⁸ and *Schenavai v Kreischer* (1987).¹⁹ Whereas, prior to the 1989 amendment, an employee who did not 'habitually carry out his work' in a particular forum may have had to sue his employer in the employer's country of domicile, this restriction has now been relaxed so the employee can sue the business that engaged him where it 'was or is now situated' which, of course, may have nothing to do with the place where it is domiciled.²⁰

Mercury Publicity v Wolfgang Loerke (1991).²¹ In a contract made in England, a German firm had been appointed as the sole advertising agent in Germany by the English firm, Mercury Publicity. The central issue in the dispute that arose between the companies was where was the place of performance of the obligation in question within the meaning of *Art.5(1)*? Whereas Mercury tried to establish it was in England, the place where payment under the contract was to be made, Loerke tried to establish that it was in Germany on the basis that it was a contract of employment of a commercial agent and as such it came within the wider ambit of a contract of employment in the master-servant relationship.

HELD: (CA) Individual contracts of employment are characterised by '*those cases of a personal nature in the relationship between master and servant where inequality of bargaining power might well become critical and where [denial of recognition of this] might well deprive the employee or agent of the protection of restrictive agreements and of other statutory and union protection which had been negotiated for this benefit*'. Accordingly, Loerke was not working under a contract of employment and English law was deemed to be the law most closely connected with the performance of the contract.

Comparative Point: *Brussels and Lugano Conventions*.

Whereas the *Lugano Convention* vests jurisdiction in the courts of the '*place of business through which [the employee] was engaged*' the Brussels Convention as amended vested jurisdiction in '*the place where the business which engaged the employee was or is now situated*'.

¹⁷ *Union Transport Group v Continental Lines* [1992] 1 Lloyd's Rep 229.

¹⁸ *Ivenel v. Schwab Case* 133/81 [1982] E.C.R. 1891.

¹⁹ *Schenavai v Kreischer* [1987] ECR 239,

²⁰ compare the pre-amended *Art.5(1)* case of *Six Constructions v Paul Humbert* (1990); the employer had to be sued in Belgium, the country of his domicile See also: *Effer v. Kanter, Case 38/81*, [1982] ECR 825; and *Tesam Distribution v. Schuh Mode Team*, (1989) The Times, 24 October (CA).

²¹ *Mercury Publicity v Wolfgang Loerke* (1991) *The Times*, 21 October

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Art:5(3): Tort.

Article 5(3) provides for special jurisdiction in relation to torts i.e. '*in matters relating to tort, delict or quasi delict, in the courts for the place where the harmful event occurred*'.

As to what is classified as a tort is to be decided in accordance with community concepts: *Netherlands v Ruffer* [1981].

Whereas the *Jenard Report* did not answer the question of whether '*the place where the harmful event occurred*' referred to the place where the act which initiated the damage occurred or the place where the damage took effect, the answer that it was '*both*' was given in the decision in: *Bier v Mines de Potasse D'Alsace* [1978].²²

Here, the French defendant was alleged to have poured effluents into the Rhine in France and the ensuing pollution was alleged to have damaged the Dutch plaintiff's property in the Netherlands. Thus, it was necessary to decide where the harmful event occurred if litigation was to proceed.

HELD: Both the French and Dutch courts had jurisdiction.

Art.5(5): Branches and Agencies

Here, **Art 5(5)** provides: '*as regards a dispute arising out of the operations of a branch, agency or other establishment, [special jurisdiction exists] in the courts for the place in which the branch, agency or other establishment is situated.*'

Accordingly, it was held in *De Bloos v. Bouyer* (1976) that the appointment of an 'exclusive distributor' in Belgium did not amount to the setting-up of a 'branch or agency or other establishment'. The applicable test is whether the 'branch or agency' is subject to the defendant's direction or control. A more recent case, *Blanckaert & Willems v. Trost* (1981),²³ has decided that a 'branch' must appear as '*an easily discernible extension of the parent body*'. Furthermore, it was decided in *New Hampshire Insurance Co. v Strabag Bau* (1990) that '*branch, agency or other establishment*' must be a branch, etc. of the defendant: P's position in that respect is irrelevant.

Jurisdiction over Matters Relating to Insurance and Consumer Contracts

The special jurisdictional rules applicable to matters relating to insurance and consumer contracts are contained in articles 7-12A (Insurance) and 13-15 (Consumer Contracts).

Matters Relating to Insurance: Articles 8-14

Art.9 provides that the insured may sue the insurer where either of them is domiciled; or, where the defendant is a co-insurer, in the courts of the Member State in which proceedings are brought against the leading insurer. If an insurer is not domiciled in a Member State, but has a branch or agency or other establishment in one of the Member States, then, should a dispute arise out of the operations of that branch or agency or other establishment, he may be sued in that state.

Art.10 provides that in respect of liability insurance or insurance of immovable property, the insurer may be sued in the place where the harmful event occurred.

Art.11 provides that, if the law of the forum permits, the insurer may be joined with the insured in proceedings which the injured party may bring against the insured.

Matters Relating to Consumer Contracts

Art.15 provides that a consumer contract is one concluded by a person acting outside his trade or profession.

Art.16(1) is a '*special jurisdiction*' provision in that it provides that a consumer can elect to bring proceedings against the other party to the contract either in the courts of the Member State where that party is domiciled or in the courts of the place where the consumer is domiciled. However, **Art.16(2)** provides that proceedings can be brought against the consumer only in the courts of the Member State where the consumer is domiciled.

Exclusive Jurisdiction: Article 22.

Article 22 of the Regulations gives jurisdiction to a particular court to the exclusion of all other courts and, when it does so, it applies irrespective of the defendant's domicile.²⁴

²² *Bier v Mines de Potasse D'Alsace* (Case 21/76) [1978] 1 QB 708.

²³ *Blanckaert & Willems v Trost* [1981] ECR 819.

²⁴ N.B. : Since **article 22** applies 'irrespective of domicile', then it applies even if D is not domiciled in a Member State

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Art.22 is a provision which overrides other provisions of the Regulations. Thus, when a court has exclusive jurisdiction, such jurisdiction cannot be ousted by agreement (Art.23) or submission to the courts of another state (Art.24). For example, Article 23(5) provides that: '*Agreements ... conferring jurisdiction shall have no legal force ... if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of article 22.*' Furthermore, Article 25 provides that where '*a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another state have exclusive jurisdiction by virtue of article 22, it shall declare of its own motion that it has no jurisdiction*'.

There are five types of dispute in which the courts have exclusive jurisdiction:

- (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 [exclusive] jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Contracting State.
- (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 association of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat*'.
- (3) Proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept.
- (4) {First paragraph, only}: In proceedings concerned with the registration or validity of patents, trade marks or designs, or other similar rights required to be deposited or registered, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place.
- (5) In proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Prorogation of Jurisdiction: Articles 23 & 24

Prorogation of jurisdiction is the conferring of jurisdiction on a court by the consent of both parties (**Art.23**) or by one of the parties submitting to the jurisdiction of the court after commencement of proceedings by the plaintiff (**Art.24**).

Article 23: Consent of both parties

In certain circumstances it is permissible for the parties to a contract to confer exclusive jurisdiction on the court(s) of a Contracting State to settle any disputes which may arise between them. As noted, such an agreement conferring jurisdiction on a court is the first of the two instances referred to as *prorogation of jurisdiction*. **Article 17(1)** as amended by the **San Sebastian Convention** provides that:

If the parties, one or more of whom is domiciled in a Member State, have agreed that the court or the courts of a Member 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 jurisdiction shall be exclusive unless the parties have agreed otherwise. 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.*

Jurisdiction via Submission: Article 24

Art.24 provides the courts of a Member State with the jurisdiction to hear a case unless, say, it is to be governed by **Art.22** or the defendant makes an appearance solely to contest the jurisdiction of that court. That is, **Art.24** defers to **Art.22** though it displaces an agreement on jurisdiction under **Art.23**.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

Lis Pendens / Parallel Proceedings: Arts.27-29.

Special jurisdiction over an issue could mean, for example, that a court in more than one Member State is seised of the same dispute at the same time. Accordingly, this generates a requirement for a rule to determine which court shall proceed with the hearing and which court should decline to hear it or, at least, stay the proceedings. The basic rule relating to proceedings between *the same parties*, which arises from *the same cause of action* and which is brought in the courts of more than one Member State, is contained in **Article 27 of the Regulation**. **Article 27** provides that:

1. *Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member 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.*
2. *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.*

[i.e., in effect, Lis Pendens means 'first come, first served'].

Within Section 9 of the Regulation (i.e., Arts.27-30), note:

Related Actions: Art.28.

Article 28(3) provides that where a number of actions 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', then a court other than that first seised may stay its own proceedings (i.e. wait until the proceedings are ended); or, under **Art.28(2)**, may decline jurisdiction if the court first seised has jurisdiction over all the actions and its law permits the consolidation of related actions.

Provisional or Protective Measures: Mareva (or 'Freezing') Injunctions; Article 31

Article 24 provides that an application may be made 'to the courts of a Contracting State' for such provisional, including protective, measures [e.g. a Mareva Injunction] as may be available under the law of that State even if, under this Convention, the courts of another Contracting State have jurisdiction in the substance of the matter'. A Mareva injunction is such a measure available to a plaintiff in an English court, the High Court having the power under **s.37(3) of the Supreme Court Act 1981** to grant it.

FURTHER READING

Briggs, The Conflict of Laws. Oxford: OUP, 2002, Ch.3;

Clarkson & Hill, Jaffey on the Conflict of Laws, 2/e. London: Butterworths, 2002, Ch.3, (particularly: pp60-99; 110-119; and 129-134);

McClellan & Beevers, Morris: The Conflict of Laws, 6/e. London: Sweet & Maxwell, 2005, Ch.4;

O'Brien, Smith's Conflict of Laws, 2/e. London: Cavendish, 1999, Ch.13;

Workshop Questions

1. Consider whether or not the English courts have jurisdiction to hear the following case: Nik Nax, a clothing manufacturer in Leicester, England, telephoned an order for a large quantity of lace material from Paddy Wacks, an importing company based in Dublin, Ireland. The arrangement was for Paddy Wacks to secure the contract goods from Cottania, a country outside the EC, and then to transport half of it directly to Leicester with the other half being directed to a warehouse in another part of Dublin which Nik Nax rented for storage. A deposit was required and this was paid by Nik Nax. However, the first delivery of the lace material that was delivered was of inferior quality. Nik Nax is concerned that the invoice which accompanied the consignment contains on the reverse a clause that states: "*All disputes which arise from this contract are to be litigated in Dublin, Ireland.*" It is the contention of Paddy Wacks that the sub-standard lace is due to the fault of the consignors who are also based in Dublin. Nevertheless, Nik Nax wishes to institute proceedings in the English courts with a view to recovering its deposit.
2. Consider whether or not the English courts have jurisdiction to hear the following case: Delboy, who lives and works in England, bought two houses last year, one in France and one in Spain. Each cost £70,000. The houses were conveyed into the names, respectively, of his son, Rodney, and his wife, Madonna. Delboy intended that whilst the conveyances would be in the names of Rodney and Madonna, the houses would be transferred to him when he so requested. However, Delboy's relationships both with his son and with his wife have broken down to the extent that neither will complete the transfers as requested by Delboy. Moreover, Madonna has left Delboy and is living with Sting in the house in Spain. Delboy is now seeking declarations that the two houses are held on trust for him and orders that they should be transferred to him. Rodney spends most of the year in England, though at present he is in France. Whereas Madonna now resides in Spain she will be in England next month on a brief holiday.
3. Stratospheric Lubrications (SL), a multi-national corporation having its headquarters in Ruritania, contracted with S-Cargo (S-C), a French air cargo company, based in Paris, to supply aviation fuel to S-Cargo's fleet in all European airports. The contract specified that the English courts would have exclusive jurisdiction to settle any dispute which might arise in connection with the contract. Moreover, in the event of dispute arising, it was specified in the contract that the law of Utopia would apply. Whereas the contract price had been agreed at \$10 per barrel, unforeseen circumstances tripled the price of oil with the result that SL claimed *force majeure* and refused to supply any more aviation fuel at the contract price. In response, S-C commenced proceedings in Paris where the legal adviser to SL claimed before a French court that Utopian law permitted the termination of a contract in such circumstances. The dispute has now proceeded and SL has relied upon the exclusive jurisdiction clause and contested the jurisdiction of the French court.

Advise S-C as to the jurisdictional issues involved in this dispute.
4. Consider the jurisdiction of the English courts regarding the following : A contract negotiated in London by an Italian travelling salesman for the sale of silk blouses allegedly made in Milan but, so it transpires, really made in Macao. The salesman has authority to transmit orders back to the Italian company which markets the blouses: contracts are then sent to customers by the company. The salesman is paid a small retainer by this, and two other Italian companies and earns 20% commission on sales negotiated.
5. Consider whether or not the English courts have jurisdiction over the following : A contract broken when a Dutch trade union blacks cargo being sent c.i.f. from Japan to England, thus inducing the Japanese seller of the cargo to fail to perform its contract with the English purchaser. The contract was negotiated in Tokyo.
6. Consider whether or not the English courts have jurisdiction over the following : A contract entered into in England between an Irish construction company and an English company to build an apartment block in Spain, the contract expressed to be governed by English law. A question has now arisen as to the title to the land on which building is about to start.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000²⁵ ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof, Having regard to the proposal from the Commission,²⁶ ; Having regard to the opinion of the European Parliament,²⁷; Having regard to the opinion of the Economic and Social Committee,²⁸ ; Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. In order to establish progressively such an area, the Community should adopt, amongst other things, the measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market.
- (2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation are essential.
- (3) This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (4) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the Treaty, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by Conventions on the Accession of the New Member States to that Convention (hereinafter referred to as the .Brussels Convention.).²⁹ On 16 September 1988 Member States and EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is a parallel Convention to the 1968 Brussels Convention. Work has been undertaken for the revision of those Conventions, and the Council has approved the content of the revised texts. Continuity in the results achieved in that revision should be ensured.
- (6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.
- (7) The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.
- (8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Accordingly common rules on jurisdiction should, in principle, apply when the defendant is domiciled in one of those Member States.
- (9) A defendant not domiciled in a Member State is in general subject to national rules of jurisdiction applicable in the territory of the Member State of the court seised, and a defendant domiciled in a Member State not bound by this Regulation must remain subject to the Brussels Convention.
- (10) For the purposes of the free movement of judgments, judgments given in a Member State bound by this Regulation should be recognised and enforced in another Member State bound by this Regulation, even if the judgment debtor is domiciled in a third State.
- (11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
- (12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.
- (13) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.

²⁵ Official Journal of the European Communities 2001 L 12/1 16.1.2001

²⁶ OJ C 376, 28.12.1999, p. 1.

²⁷ Opinion delivered on 21 September 2000 (not yet published in the Official Journal).

²⁸ OJ C 117, 26.4.2000, p. 6.

²⁹ OJ L 299, 31.12.1972, p. 32. ; OJ L 304, 30.10.1978, p. 1. ; OJ L 388, 31.12.1982, p. 1. ; OJ L 285, 3.10.1989, p. 1. ; OJ C 15, 15.1.1997, p. 1. For a consolidated text, see OJ C 27, 26.1.1998, p. 1.

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- (14.) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, must be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.
- (15.) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.
- (16.) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.
- (17.) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.
- (18.) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.
- (19.) Continuity between the Brussels Convention and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Communities and the 1971 Protocol³⁰ should remain applicable also to cases already pending when this Regulation enters into force.
- (20.) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (21.) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.
- (22.) Since the Brussels Convention remains in force in relations between Denmark and the Member States that are bound by this Regulation, both the Convention and the 1971 Protocol continue to apply between Denmark and the Member States bound by this Regulation.
- (23.) The Brussels Convention also continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 299 of the Treaty.
- (24.) Likewise for the sake of consistency, this Regulation should not affect rules governing jurisdiction and the recognition of judgments contained in specific Community instruments.
- (25.) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.
- (26.) The necessary flexibility should be provided for in the basic rules of this Regulation in order to take account of the specific procedural rules of certain Member States. Certain provisions of the Protocol annexed to the Brussels Convention should accordingly be incorporated in this Regulation.
- (27.) In order to allow a harmonious transition in certain areas which were the subject of special provisions in the Protocol annexed to the Brussels Convention, this Regulation lays down, for a transitional period, provisions taking into consideration the specific situation in certain Member States.
- (28.) No later than five years after entry into force of this Regulation the Commission will present a report on its application and, if need be, submit proposals for adaptations.
- (29.) The Commission will have to adjust Annexes I to IV on the rules of national jurisdiction, the courts or competent authorities and redress procedures available on the basis of the amendments forwarded by the Member State concerned; amendments made to Annexes V and VI should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission(1),³¹

HAS ADOPTED THIS REGULATION:

³⁰ OJ L 204, 2.8.1975, p. 28. OJ L 304, 30.10.1978, p. 1. OJ L 388, 31.12.1982, p. 1. OJ L 285, 3.10.1989, p. 1. OJ C 15, 15.1.1997, p. 1. For a consolidated text see OJ C 27, 26.1.1998, p. 28.

³¹ OJ L 184, 17.7.1999, p. 23.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

CHAPTER I SCOPE

Article 1

1. This Regulation 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.
2. The Regulation shall not apply to:
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration.
3. In this Regulation, the term .Member State. shall mean Member States with the exception of Denmark.

CHAPTER II JURISDICTION

Section 1 General provisions

Article 2

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

Article 3

1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.
2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.

Article 4

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Articles 22 and 23, be determined by the law of that Member State.
2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

Section 2 Special jurisdiction

Article 5

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

1.
 - (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - . in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - . in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,
 - (c) if subparagraph (b) does not apply then subparagraph (a) applies;
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 or may occur;
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;

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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 Member 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 Member 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, provided the claims 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;
2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
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 Member State in which the property is situated.

Article 7

Where by virtue of this Regulation a court of a Member 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 Member State, shall also have jurisdiction over claims for limitation of such liability.

Section 3 Jurisdiction in matters relating to insurance

Article 8

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.

Article 9

1. An insurer domiciled in a Member State may be sued:
 - (a) in the courts of the Member State where he is domiciled, or
 - (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled,
 - (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.
2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 10

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 11

1. 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.
2. Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

Article 12

1. Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section 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 13

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 policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member 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 14.

Article 14

The following are the risks referred to in Article 13(5):

1. any loss of or damage to:
 - (a) seagoing 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 point 1(a) in so far as, in respect of the latter, the law of the Member 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 point 1(b);
3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
4. any risk or interest connected with any of those referred to in points 1 to 3;
5. notwithstanding points 1 to 4, all large risks, as defined in Council Directive 73/239/EEC,³² as amended by Council Directives 88/357/EEC³³ and 90/618/EEC,³⁴ as they may be amended.

Section 4 Jurisdiction over consumer contracts

Article 15

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:
 - (a) it is a contract for the sale of goods on instalment credit terms; or
 - (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
 - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.
2. Where a consumer enters into a contract with a party who is not domiciled in the Member State but has a branch, agency or other establishment in one of the Member 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.

³² OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

³³ OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2000/26/EC.

³⁴ OJ L 330, 29.11.1990, p. 44.

LECTURE TEN

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.
2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.
3. This Article 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 17

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

Section 5 Jurisdiction over individual contracts of employment

Article 18

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.
2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 19

An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled; or
2. in another Member State:
 - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
 - (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
2. The provisions of this Section 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 21

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 employee to bring proceedings in courts other than those indicated in this Section.

Section 6 Exclusive jurisdiction

Article 22

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

1. in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.
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 Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

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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 of the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Member 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 Member State in which the deposit or registration has been applied for, has taken place or is under the terms of a Community instrument or an international convention deemed to have taken place.
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 Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State;
5. in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Section 7 Prorogation of jurisdiction

Article 23

1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member 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 jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. 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.
2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to writing.
3. Where such an agreement is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.
4. The court or courts of a Member 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.
5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

Section 8 Examination as to jurisdiction and admissibility

Article 25

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

1. Where a defendant domiciled in one Member State is sued in a court of another Member 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 Regulation.

LECTURE TEN

2. 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.
3. Article 19 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters³⁵ shall apply instead of the provisions of paragraph 2 if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to this Regulation.
4. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Convention.

Section 9 Lis pendens . related actions

Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member 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.
2. 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 28

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. 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 29

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.

Article 30

For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
2. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Section 10 Provisional, including protective, measures

Article 31

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

CHAPTER III RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Regulation, judgment. means any judgment given by a court or tribunal of a Member 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.

³⁵ OJ L 160, 30.6.2000, p. 37.

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Section 1 Recognition

Article 33

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. 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 Chapter, apply for a decision that the judgment be recognised.
3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 34

A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Article 35

1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.
2. 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 Member State of origin based its jurisdiction.
3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.

Article 36

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

Article 37

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.
2. A court of a Member 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 38

1. A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.
2. 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 39

1. The application shall be submitted to the court or competent authority indicated in the list in Annex II.
2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

LECTURE TEN

Article 40

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.
2. 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 Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.
3. The documents referred to in Article 53 shall be attached to the application.

Article 41

The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 42

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 43

1. The decision on the application for a declaration of enforceability may be appealed against by either party.
2. The appeal is to be lodged with the court indicated in the list in Annex III.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.
5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability 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 44

The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

Article 45

1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.
2. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 46

1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member 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.
2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.
3. The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 47

1. When a judgment must be recognised in accordance with this Regulation, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required.
2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.
3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

Article 48

1. Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
2. An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

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

Article 50

An applicant who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

Article 51

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

Article 52

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

Section 3 Common provisions

Article 53

1. A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.
2. A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54

The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.

Article 55

1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or competent authority 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 Member States.

Article 56

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative ad litem.

CHAPTER IV AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 57

1. A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedures provided for in Articles 38, et seq. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the Member State addressed.
2. Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of paragraph 1.
3. The instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

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4. Section 3 of Chapter III shall apply as appropriate. The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI to this Regulation.

Article 58

A settlement which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The court or competent authority of a Member State where a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.

CHAPTER V GENERAL PROVISIONS

Article 59

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 60

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat, or
 - (b) central administration, or
 - (c) principal place of business.
2. For the purposes of the United Kingdom and Ireland .statutory seat. means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 61

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Article 62

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

Article 63

1. A person domiciled in the territory of the Grand Duchy of Luxembourg and sued in the court of another Member State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court if the final place of delivery of the goods or provision of the services is in Luxembourg.
2. Where, under paragraph 1, the final place of delivery of the goods or provision of the services is in Luxembourg, any agreement conferring jurisdiction must, in order to be valid, be accepted in writing or evidenced in writing within the meaning of Article 23(1)(a).
3. The provisions of this Article shall not apply to contracts for the provision of financial services.
4. The provisions of this Article shall apply for a period of six years from entry into force of this Regulation.

Article 64

1. In proceedings involving a dispute between the master and a member of the crew of a seagoing ship registered in Greece or in Portugal, concerning remuneration or other conditions of service, a court in a Member State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It may act as soon as that officer has been notified.
2. The provisions of this Article shall apply for a period of six years from entry into force of this Regulation.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

Article 65

1. The jurisdiction specified in Article 6(2), and Article 11 in actions on a warranty of guarantee or in any other third party proceedings may not be resorted to in Germany and Austria. Any person domiciled in another Member State may be sued in the courts:
 - (a) of Germany, pursuant to Articles 68 and 72 to 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,
 - (b) of Austria, pursuant to Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices.
2. Judgments given in other Member States by virtue of Article 6(2), or Article 11 shall be recognised and enforced in Germany and Austria in accordance with Chapter III. Any effects which judgments given in these States may have on third parties by application of the provisions in paragraph 1 shall also be recognised in the other Member States.

CHAPTER VI TRANSITIONAL PROVISIONS

Article 66

1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.
2. However, if the proceedings in the Member State of origin were instituted before the entry into force of this Regulation, judgments given after that date shall be recognised and enforced in accordance with Chapter III,
 - (a) if the proceedings in the Member State of origin were instituted after the entry into force of the Brussels or the Lugano Convention both in the Member State of origin and in the Member State addressed;
 - (b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

CHAPTER VII RELATIONS WITH OTHER INSTRUMENTS

Article 67

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments.

Article 68

1. This Regulation shall, as between the Member States, supersede the Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 299 of the Treaty.
2. In so far as this Regulation replaces the provisions of the Brussels Convention between Member States, any reference to the Convention shall be understood as a reference to this Regulation.

Article 69

Subject to Article 66(2) and Article 70, this Regulation shall, as between Member States, supersede the following conventions and treaty concluded between two or more of them:

- the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899,
- the Convention between Belgium and the Netherlands on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925,
- the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930,
- the Convention between Germany and Italy on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 9 March 1936,
- the Convention between 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 Germany and 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 Netherlands and Italy on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 17 April 1959,
- the Convention between 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,

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- the Convention between 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 Greece and 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,
- the Convention between Belgium and Italy 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 Netherlands and 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 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 Spain and France on the Recognition and Enforcement of Judgment 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, and
- the Treaty between Belgium, the Netherlands and Luxembourg in Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 24 November 1961, in so far as it is in force.

Article 70

1. The Treaty and the Conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.
2. 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 Regulation.

Article 71

1. This Regulation shall not affect any conventions to which the Member States are 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, paragraph 1 shall be applied in the following manner:
 - (a) this Regulation shall not prevent a court of a Member 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 Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;
 - (b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member 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 Regulation which concern the procedure for recognition and enforcement of judgments may be applied.

PRIVATE INTERNATIONAL LAW : CONFLICT OF LAWS

Article 72

This Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of this Regulation pursuant to Article 59 of the Brussels Convention, not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

CHAPTER VIII FINAL PROVISIONS

Article 73

No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

Article 74

1. The Member States shall notify the Commission of the texts amending the lists set out in Annexes I to IV. The Commission shall adapt the Annexes concerned accordingly.
2. The updating or technical adjustment of the forms, specimens of which appear in Annexes V and VI, shall be adopted in accordance with the advisory procedure referred to in Article 75(2).

Article 75

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its rules of procedure.

Article 76

This Regulation shall enter into force on 1 March 2002. This Regulation is binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

BRUSSELS CONVENTION 1968

on jurisdiction and the enforcement of judgments in civil and commercial matters³⁶

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;³⁷

HAVE DECIDED to conclude this Convention

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.³⁸

The Convention shall not apply to:

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

TITLE II JURISDICTION

S e c t i o n 1 : G e n e r a l p r o v i s i o n s

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 retspleje),³⁹
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozeßordnung),
- in Greece, Article 40 of the code of civil procedure (**ΚΩΔΙΚΑΣ ΠΟΛΙΤΙΚΗΣ ΔΙΚΟΝΟΜΙΑΣ**),

³⁶ Text as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland - hereafter referred to as the '1978 Accession Convention' - by the Convention of 25 October 1982 on the accession of the Hellenic Republic - hereafter referred to as the '1982 Accession Convention' - and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic - hereafter referred to as the '1989 Accession Convention'

³⁷ The Preamble of the 1989 Accession Convention contained the following text:

'MINDFUL that on 16 September 1988 the Member States of the Community and the Member States of the European Free Trade Association concluded in Lugano the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, which extends the principles of the Brussels Convention to the States becoming parties to that Convention'

³⁸ Second sentence added by Article 3 of the 1978 Accession Convention.

³⁹ As amended by a Communication of 8 February 1988 made in accordance with Article VI of the annexed Protocol, and confirmed by Annex I (d) (1) to the 1989 Accession Convention.

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- in France: Articles 14 and 15 of the civil code (Code civil),
- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland,
- in Italy: Articles 2 and 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile),
- in Luxembourg: Articles 14 and 15 of the civil code (Code civil),
- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering),
- in 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 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.⁴⁰

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.

S e c t i o n 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;⁴¹
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;⁴²
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;⁴³
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.⁴⁴

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;

⁴⁰ Second subparagraph as amended by Article 4 of the 1978 Accession Convention, by Article 3 of the 1982 Accession Convention and by Article 3 of the 1989 Accession Convention.

⁴¹ Point 1 as amended by Article 4 of the 1989 Accession Convention.

⁴² Point 2 as amended by Article 5 (3) of the 1978 Accession Convention.

⁴³ Point 6 added by Article 5 (4) of the 1978 Accession Convention.

⁴⁴ Point 7 added by Article 5 (4) of the 1978 Accession Convention.

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2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
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.⁴⁵

*Article 6 a*⁴⁶

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 Articles 4 and 5 point 5.

*Article 8*⁴⁷

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 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*⁴⁸

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

⁴⁵ Point 4 added by Article 5 of the 1989 Accession Convention.

⁴⁶ Article added by Article 6 of the 1978 Accession Convention.

⁴⁷ Text as amended by Article 7 of the 1978 Accession Convention.

⁴⁸ Text as amended by Article 8 of the 1978 Accession Convention.

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3. which is concluded between a policy-holder and an insurer, both of whom are domiciled in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or
4. which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or
5. which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12a.

*Article 12a*⁴⁹

The following are the risks referred to in point 5 of Article 12:

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 point 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 point 1 (b) above;
3. Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1 (a) above, in particular loss of freight or charter-hire;
4. Any risk or interest connected with any of those referred to in points 1 to 3 above.

S e c t i o n 4⁵⁰: **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 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

⁴⁹ Article added by Article 9 of the 1978 Accession Convention

⁵⁰ Text as amended by Article 10 of the 1978 Accession Convention

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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.

S e c t i o n 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;⁵¹
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.

S e c t i o n 6 : Prorogation of jurisdiction

Article 17⁵²

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

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

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.

⁵¹ Point 1 as amended by Article 6 of the 1989 Accession Convention.

⁵² Text as amended by Article 11 of the 1978 Accession Convention and by Article 7 of the 1989 Accession Convention.

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S e c t i o n 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.⁵³

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.

S e c t i o n 8 : Lis pendens - related actions

*Article 21*⁵⁴

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.

S e c t i o n 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.

S e c t i o n 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.

⁵³ Second subparagraph as amended by Article 12 of the 1978 Accession Convention.

⁵⁴ Text as amended by Article 8 of the 1989 Accession Convention.

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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;⁵⁵
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;⁵⁶
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.⁵⁷

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.⁵⁸

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 point 1 of Article 27 may not be applied to the rules relating to jurisdiction.⁵⁹

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.⁶⁰

S e c t i o n 2 : E n f o r c e m e n t

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.⁶¹

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.⁶²

⁵⁵ Point 2 as amended by Article 13 (1) of the 1978 Accession Convention

⁵⁶ Point 4 as amended by Annex I (a) (2) first subparagraph to the 1989 Accession Convention.

⁵⁷ Point 5 added by Article 13 (2) of the 1978 Accession Convention and amended by Annex I (d) (2) second subparagraph to the 1989 Accession Convention.

⁵⁸ As amended by Annex I (d) (3) first subparagraph to the 1989 Accession Convention.

⁵⁹ As amended by Annex I (d) (3) second subparagraph to the 1989 Accession Convention.

⁶⁰ Second subparagraph added by Article 14 of the 1978 Accession Convention and amended by Annex I (d) (4) to the 1989 Accession Convention.

⁶¹ Text as amended by Article 9 of the 1989 Accession Convention.

⁶² Second subparagraph added by Article 15 of the 1978 Accession Convention.

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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,⁶³
 - in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
 - in Greece, to the ΜΟΝΟΜΕΛΕΣ ΠΡΩΤΟΔΙΚΕΙΟ ,
 - 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 the Netherlands, to the presiding judge of the arrondissementsrechtbank,
 - in Portugal, to the Tribunal Judicial de Círculo,
 - in the United Kingdom:
 1. in England and Wales, to the High Court of Justice, or in the case of 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.⁶⁴
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.

Article 37⁶⁵

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,

⁶³ As amended by a Communication of 8 February 1988 made in accordance with Article VI of the annexed Protocol, and confirmed by Annex I (d) (5) to the 1989 Accession Convention.

⁶⁴ First subparagraph as amended by Article 16 of the 1978 Accession Convention, by Article 4 of the 1982 Accession Convention and by Article 10 of the 1989 Accession Convention.

⁶⁵ Text as amended by Article 17 of the 1978 Accession Convention, by Article 5 of the 1982 Accession Convention and by Article 11 of the 1989 Accession Convention.

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- in Denmark, with the landsret,
 - in the Federal Republic of Germany, with the Oberlandesgericht,
 - in Greece, with the ΕΠΕΤΕΙΟ ,
 - 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 the Netherlands, with the arrondissementsrechtbank,
 - in Portugal, with the Tribunal da Relação,
 - 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 Portugal, by an appeal on a point of law,
 - 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.⁶⁶

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.⁶⁷

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 ΕΠΕΤΕΙΟ ,
 - in Spain, to the Audiencia Provincial,
 - in France, to the court d'appel,
 - in Ireland, to the High Court,
 - in Italy, to the corte d'appello,
 - in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,
 - in the Netherlands, to the gerechtshof,
 - in Portugal, to the Tribunal da Relação,
 - in the United Kingdom:

⁶⁶ As amended by Annex I (d) (6) first subparagraph to the 1989 Accession Convention.

⁶⁷ Second subparagraph added by Article 18 of the 1978 Accession Convention and amended by Annex I (d) (6) second subparagraph to the 1989 Accession Convention.

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- (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.⁶⁸
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*⁶⁹

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 Portugal, by an appeal on a point of law,
- 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.⁷⁰

*Article 44*⁷¹

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 is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

S e c t i o n 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.⁷²

⁶⁸ First subparagraph as amended by Article 19 of the 1978 Accession Convention, by Article 6 of the 1982 Accession Convention and by Article 12 of the 1989 Accession Convention.

⁶⁹ Text as amended by Article 20 of the 1978 Accession Convention, by Article 7 of the 1982 Accession Convention and by Article 13 of the 1989 Accession Convention.

⁷⁰ As amended by Annex I (d) (7) to the 1989 Accession Convention.

⁷¹ Text as amended by Article 21 of the 1978 Accession Convention and by Annex I (d) (8) to the 1989 Accession Convention.

⁷² Point 2 as amended by Article 22 of the 1978 Accession Convention.

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*Article 47*⁷³

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 point 2 of Articles 46 and 47 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.⁷⁴

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.⁷⁵

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. ...⁷⁶.

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.⁷⁷

TITLE VI : TRANSITIONAL PROVISIONS

*Article 54*⁷⁸

The provisions of the 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 instruments 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

⁷³ As amended by Annex I (d) (9) to the 1989 Accession Convention.

⁷⁴ First paragraph as amended by Article 14 of the 1989 Accession Convention.

⁷⁵ As amended by Annex I (d) (10) to the 1989 Accession Convention.

⁷⁶ Third paragraph deleted by Article 15 of the 1989 Accession Convention.

⁷⁷ Second subparagraph added by Article 23 of the 1978 Accession Convention.

⁷⁸ Text as replaced by Article 16 of the 1989 Accession Convention.

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Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.⁷⁹

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 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.⁸⁰

*Article 54a*⁸¹

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

⁷⁹ Title V of the 1978 Accession Convention contains the following transitional provisions:

Article 34

1. The 1968 Convention and the 1971 Protocol, with the amendments made by this Convention, shall apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of this Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed.
2. However, as between the six Contracting States to the 1968 Convention, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention as amended.
3. Moreover, as between the six Contracting States to the 1968 Convention and the three States mentioned in Article 1 of this Convention, and as between those three States, judgments given after the date of entry into force of this Convention between the State of origin and the State addressed in proceedings instituted before that date shall also be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention as amended if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended, or with provisions of a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.'

Title V of the 1982 Accession Convention contains the following transitional provisions:

Article 12

1. The 1968 Convention and the 1971 Protocol, as amended by the 1978 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 State of origin and the State addressed, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III of the 1968 Convention, as amended by the 1978 Convention, and by this Convention if jurisdiction was founded upon rules which accorded with the provisions of Title II, as amended by the 1968 Convention 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.'

Title VI of the 1989 Accession Convention contains the following 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.'

⁸⁰ This paragraph replaces Article 35 of Title V of the 1978 Accession Convention which was extended to the Hellenic Republic by Article 1 (2) of the 1982 Accession Convention. Article 28 of the 1989 Accession Convention provided for the deletion of both these provisions.

⁸¹ Article added by Article 17 of the 1989 Accession Convention. It corresponds to Article 36 of Title V of the 1978 Accession Convention which was extended to the Hellenic Republic by Article 1 (2) of the 1982 Accession Convention. Article 28 of the 1989 Accession Convention provided for the deletion of both these provisions.

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- (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 (5) (o), (p) or (q) of this Article.
 3. Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.
 4. When in the case of a charter by demise of a ship the charterer alone is liable in respect of a maritime claim relating to that ship, the claimant may arrest that ship or any other ship owned by the charterer, but no other ship owned by the owner may be arrested in respect of such claim. The same shall apply to any case in which a person other than the owner of a ship is liable in respect of a maritime claim relating to that ship.
 5. The expression '*maritime claim*' means a claim arising out of one or more of the following:
 - (a) damage caused by any ship either in collision or otherwise;
 - (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
 - (c) salvage;
 - (d) agreement relating to the use or hire of any ship whether by 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 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).

TITLE VII : RELATIONSHIP 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:

- 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 1934,⁸²
- the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934,⁸³

⁸² Fourth indent added by Article 24 of the 1978 Accession Convention

⁸³ Fifth indent added by Article 24 of the 1978 Accession Convention.

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- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936,
- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958,
- the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,
- the Convention between the United Kingdom and the Federal Republic of Germany for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Bonn on 14 July 1960,⁸⁴
- 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 1961,⁸⁵
- the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962,
- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,
- the Convention between the United Kingdom and the Republic of Italy for the reciprocal recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 7 February 1964, with amending Protocol signed at Rome on 14 July 1970,⁸⁶
- 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 1967,⁸⁷
- the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969,⁸⁸
- 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 1973,⁸⁹
- 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 1983,⁹⁰

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.⁹¹
2. With a view to its uniform interpretation, paragraph 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;

⁸⁴ Ninth indent added by Article 24 of the 1978 Accession Convention.

⁸⁵ 10th indent added by Article 8 of the 1982 Accession Convention.

⁸⁶ 13th indent added by Article 24 of the 1978 Accession Convention.

⁸⁷ 14th indent added by Article 24 of the 1978 Accession Convention.

⁸⁸ 15th indent added by Article 18 of the 1989 Accession Convention.

⁸⁹ 16th indent added by Article 18 of the 1989 Accession Convention.

⁹⁰ 17th indent added by Article 18 of the 1989 Accession Convention.

⁹¹ First paragraph as amended by Article 25 (1) of the 1978 Accession Convention and by Article 19 of the 1989 Accession Convention.

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(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.⁹²

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.⁹³

*Article 58*⁹⁴

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.

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.⁹⁵

TITLE VIII : FINAL PROVISIONS

Article 60

...⁹⁶

*Article 61*⁹⁷

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*⁹⁸

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.

⁹² Paragraph 2 added by Article 19 of the 1989 Accession Convention. This paragraph corresponds to Article 25 (2) of the 1978 Accession Convention which was extended to the Hellenic Republic by Article 1 (2) of the 1982 Accession Convention. Article 28 of the 1989 Accession Convention provided for the deletion of both these provisions.

⁹³ Paragraph added by Article 25 (1) of the 1978 Accession Convention.

⁹⁴ Text as amended by Article 20 of the 1989 Accession Convention.

⁹⁵ Second subparagraph added by Article 26 of the 1978 Accession Convention.

⁹⁶ Article 21 of the 1989 Accession Convention provides for the deletion of Article 60 as amended by Article 27 of the 1978 Convention.

⁹⁷ Ratification of the 1978 and 1982 Accession Conventions was governed by Articles 38 and 14 of those Conventions. The ratification of the 1989 Accession Convention is governed by Article 31 of that Convention, which reads as follows:

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.'

⁹⁸ The entry into force of the 1978 and 1982 Accession Conventions was governed by Articles 39 and 15 of those Conventions.

The entry into force of the 1989 Accession Convention is governed by Article 32 of that Convention, which reads as follows:

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 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.'

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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*⁹⁹

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

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) ...;¹⁰⁰
- (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*¹⁰¹

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.

⁹⁹ Notification concerning the 1978 and 1982 Accession Conventions is governed by Articles 40 and 16 of those Conventions. Notification concerning the 1989 Accession Convention is governed by Article 33 of that Convention, which reads as follows:

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.'

¹⁰⁰ Article 22 of the 1989 Accession Convention provides for the deletion of letter (c) as amended by Article 28 of the 1978 Accession Convention.

¹⁰¹ An indication of the authentic texts of the Accession Conventions is to be found in the following provisions:

- with regard to the 1978 Accession Convention, in Article 41 of that Convention, which reads as follows:

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.'

- with regard to the 1982 Accession Convention, in Article 17 of that Convention, which reads as follows:

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.'

- with regard to the 1989 Accession Convention, in Article 34 of that Convention, which reads as follows:

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.'