REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 June 2008

on the law applicable to contractual obligations (Rome I)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([2]),

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.

(2) According to Article 65, point (b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement that principle.

(4) On 30 November 2000 the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters ([3]). The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

(5) The Hague Programme ([4]), adopted by the European Council on 5 November 2004, called for work to be pursued actively on the conflict-of-law rules regarding contractual obligations (Rome I).

(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([5]) (Brussels I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ([6]).

(8) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

(9) Obligations under bills of exchange, cheques and promissory notes and other negotiable instruments should also cover bills of lading to the extent that the obligations under the bill of lading arise out of its negotiable character.

(10) Obligations arising out of dealings prior to the conclusion of the contract are covered by Article 12 of Regulation (EC) No 864/2007. Such obligations should therefore be excluded from the scope of this Regulation.

(11) The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations.

(12) An agreement between the parties to confer on one or more courts or tribunals of a Member State exclusive jurisdiction to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law has been clearly demonstrated.

(13) This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.

([1]) OJ C 318, 23.12.2006, p. 56.

([2]) Opinion of the European Parliament of 29 November 2007 (not yet published in the Official Journal) and Council Decision of 5 June 2008.

([3]) OJ C 12, 15.1.2001, p. 1.

([4]) OJ C 53, 3.3.2005, p. 1.

([5]) OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

([6]) OJ L 199, 31.7.2007, p. 40.

(14) Should the Community adopt, in an appropriate legal instrument, rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.

(15) Where a choice of law is made and all other elements relevant to the situation are located in a country other than the country whose law has been chosen, the choice of law should not prejudice the application of provisions of the law of that country which cannot be derogated from by agreement. This rule should apply whether or not the choice of law was accompanied by a choice of court or tribunal. Whereas no substantial change is intended as compared with Article 3(3) of the 1980 Convention on the Law Applicable to Contractual Obligations [1] (the Rome Convention), the wording of this Regulation is aligned as far as possible with Article 14 of Regulation (EC) No 864/2007.

(16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation.

(17) As far as the applicable law in the absence of choice is concerned, the concept of 'provision of services' and 'sale of goods' should be interpreted in the same way as when applying Article 5 of Regulation (EC) No 44/2001 in so far as sale of goods and provision of services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.

(18) As far as the applicable law in the absence of choice is concerned, multilateral systems should be those in which trading is conducted, such as regulated markets and multilateral trading facilities as referred to in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [2], regardless of whether or not they rely on a central counterparty.

(19) Where there has been no choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract. Where the contract cannot be categorised as being one of the specified types or where its elements fall within more than one of the specified types, it should be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence. In the case of a contract consisting of a bundle of rights and obligations capable of being categorised as falling within more than one of the specified types of contract, the characteristic performance of the contract should be determined having regard to its centre of gravity.

(20) Where the contract is manifestly more closely connected with a country other than that indicated in Article 4(1) or (2), an escape clause should provide that the law of that other country is to apply. In order to determine that country, account should be taken, *inter alia*, of whether the contract in question has a very close relationship with another contract or contracts.

(21) In the absence of choice, where the applicable law cannot be determined either on the basis of the fact that the contract can be categorised as one of the specified types or as being the law of the country of habitual residence of the party required to effect the characteristic performance of the contract, the contract should be governed by the law of the country with which it is most closely connected. In order to determine that country, account should be taken, *inter alia*, of whether the contract in question has a very close relationship with another contract or contracts.

(22) As regards the interpretation of contracts for the carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the Rome Convention. Consequently, single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods. For the purposes of this Regulation, the term 'consignor' should refer to any person who enters into a contract of carriage with the carrier and the term 'the carrier' should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.

(23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.

(24) With more specific reference to consumer contracts, the conflict-of-law rule should make it possible to cut the cost of settling disputes concerning what are commonly relatively small claims and to take account of the development of distance-selling techniques. Consistency with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in Regulation (EC) No 44/2001 and this Regulation, bearing in mind that a joint declaration by the Council and the Commission on Article 15 of Regulation (EC) No 44/2001 states that 'for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer's residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities'. The declaration also states that 'the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by

[1] OJ C 334, 30.12.2005, p. 1.

[2] OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2008/10/EC (OJ L 76, 19.3.2008, p. 33).

whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor.'.

(25) Consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, and the contract is concluded as a result of such activities.

(26) For the purposes of this Regulation, financial services such as investment services and activities and ancillary services provided by a professional to a consumer, as referred to in sections A and B of Annex I to Directive 2004/39/EC, and contracts for the sale of units in collective investment undertakings, whether or not covered by Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ([1]), should be subject to Article 6 of this Regulation. Consequently, when a reference is made to terms and conditions governing the issuance or offer to the public of transferable securities or to the subscription and redemption of units in collective investment undertakings, that reference should include all aspects binding the issuer or the offeror to the consumer, but should not include those aspects involving the provision of financial services.

(27) Various exceptions should be made to the general conflict-of-law rule for consumer contracts. Under one such exception the general rule should not apply to contracts relating to rights *in rem* in immovable property or tenancies of such property unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis ([2]).

(28) It is important to ensure that rights and obligations which constitute a financial instrument are not covered by the general rule applicable to consumer contracts, as that could lead to different laws being applicable to each of the instruments issued, therefore changing their nature and preventing their fungible trading and offering. Likewise, whenever such instruments are issued or offered, the contractual relationship established between the issuer or the offeror and the consumer should not necessarily be subject to the mandatory application of the law of the country of habitual residence of the consumer, as there is a need to ensure uniformity in the terms and conditions of an issuance or an offer. The same rationale should apply with regard to the multilateral systems covered by Article 4(1)(h), in respect of which it should be ensured that the law of the country of habitual residence of the consumer will not interfere with the rules applicable to contracts concluded within those systems or with the operator of such systems.

(29) For the purposes of this Regulation, references to rights and obligations constituting the terms and conditions governing the issuance, offers to the public or public take-over bids of transferable securities and references to the subscription and redemption of units in collective investment undertakings should include the terms governing, *inter alia*, the allocation of securities or units, rights in the event of over-subscription, withdrawal rights and similar matters in the context of the offer as well as those matters referred to in Articles 10, 11, 12 and 13, thus ensuring that all relevant contractual aspects of an offer binding the issuer or the offeror to the consumer are governed by a single law.

(30) For the purposes of this Regulation, financial instruments and transferable securities are those instruments referred to in Article 4 of Directive 2004/39/EC.

(31) Nothing in this Regulation should prejudice the operation of a formal arrangement designated as a system under Article 2(a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ([3]).

(32) Owing to the particular nature of contracts of carriage and insurance contracts, specific provisions should ensure an adequate level of protection of passengers and policy holders. Therefore, Article 6 should not apply in the context of those particular contracts.

(33) Where an insurance contract not covering a large risk covers more than one risk, at least one of which is situated in a Member State and at least one of which is situated in a third country, the special rules on insurance contracts in this Regulation should apply only to the risk or risks situated in the relevant Member State or Member States.

(34) The rule on individual employment contracts should not prejudice the application of the overriding mandatory provisions of the country to which a worker is posted in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([4]).

([1]) OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2008/18/EC of the European Parliament and of the Council (OJ L 76, 19.3.2008, p. 42).

([2]) OJ L 280, 29.10.1994, p. 83.

([3]) OJ L 166, 11.6.1998, p. 45.

([4]) OJ L 18, 21.1.1997, p. 1.

(35) Employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by agreement or which can only be derogated from to their benefit.

(36) As regards individual employment contracts, work carried out in another country should be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.

(37) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of 'overriding mandatory provisions' should be distinguished from the expression 'provisions which cannot be derogated from by agreement' and should be construed more restrictively.

(38) In the context of voluntary assignment, the term 'relationship' should make it clear that Article 14(1) also applies to the property aspects of an assignment, as between assignor and assignee, in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term 'relationship' should not be understood as relating to any relationship that may exist between assignor and assignee. In particular, it should not cover preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should be strictly limited to the aspects which are directly relevant to the voluntary assignment or contractual subrogation in question.

(39) For the sake of legal certainty there should be a clear definition of habitual residence, in particular for companies and other bodies, corporate or unincorporated. Unlike Article 60(1) of Regulation (EC) No 44/2001, which establishes three criteria, the conflict-of-law rule should proceed on the basis of a single criterion; otherwise, the parties would be unable to foresee the law applicable to their situation.

(40) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, should not exclude the possibility of inclusion of conflict-of-law rules relating to contractual obligations in provisions of Community law with regard to particular matters.

This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ([1]).

(41) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the *Official Journal of the European Union* on the basis of information supplied by the Member States.

(42) The Commission will make a proposal to the European Parliament and to the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude, on their own behalf, agreements with third countries in individual and exceptional cases, concerning sectoral matters and containing provisions on the law applicable to contractual obligations.

(43) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to attain its objective.

(44) 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, Ireland has notified its wish to take part in the adoption and application of the present Regulation.

(45) In accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(46) 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, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

([1]) OJ L 178, 17.7.2000, p. 1.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Material scope

1. This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

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

2. The following shall be excluded from the scope of this Regulation:

(a) questions involving the status or legal capacity of natural persons, without prejudice to Article 13;

(b) obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;

(c) obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;

(d) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(e) arbitration agreements and agreements on the choice of court;

(f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;

(g) the question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party;

(h) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(i) obligations arising out of dealings prior to the conclusion of a contract;

(j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance [1] the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Article 18.

4. In this Regulation, the term 'Member State' shall mean Member States to which this Regulation applies. However, in Article 3(4) and Article 7 the term shall mean all the Member States.

Article 2

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

CHAPTER II

UNIFORM RULES

Article 3

Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the

[1] OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2008/19/EC (OJ L 76, 19.3.2008, p. 44).

parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

(c) a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

(d) notwithstanding point (c), a tenancy of immovable property concluded for temporary private use for a period of no more than six consecutive months shall be governed by the law of the country where the landlord has his habitual residence, provided that the tenant is a natural person and has his habitual residence in the same country;

(e) a franchise contract shall be governed by the law of the country where the franchisee has his habitual residence;

(f) a distribution contract shall be governed by the law of the country where the distributor has his habitual residence;

(g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;

(h) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

Article 5

Contracts of carriage

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

2. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply.

The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where:

(a) the passenger has his habitual residence; or

(b) the carrier has his habitual residence; or

(c) the carrier has his place of central administration; or

(d) the place of departure is situated; or

(e) the place of destination is situated.

3. Where it is clear from all the circumstances of the case that the contract, in the absence of a choice of law, is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

Article 6

Consumer contracts

1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another

person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

4. Paragraphs 1 and 2 shall not apply to:

(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

(b) a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ([1]);

(c) a contract relating to a right *in rem* in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;

(d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;

(e) a contract concluded within the type of system falling within the scope of Article 4(1)(h).

([1]) OJ L 158, 23.6.1990, p. 59.

Article 7

Insurance contracts

1. This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.

2. An insurance contract covering a large risk as defined in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ([2]) shall be governed by the law chosen by the parties in accordance with Article 3 of this Regulation.

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

(a) the law of any Member State where the risk is situated at the time of conclusion of the contract;

(b) the law of the country where the policy holder has his habitual residence;

(c) in the case of life assurance, the law of the Member State of which the policy holder is a national;

(d) for insurance contracts covering risks limited to events occurring in one Member State other than the Member State where the risk is situated, the law of that Member State;

(e) where the policy holder of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country of habitual residence of the policy holder.

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

([2]) OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of conclusion of the contract.

4. The following additional rules shall apply to insurance contracts covering risks for which a Member State imposes an obligation to take out insurance:

(a) the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;

(b) by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.

5. For the purposes of paragraph 3, third subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.

6. For the purposes of this Article, the country in which the risk is situated shall be determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services [1] and, in the case of life assurance, the country in which the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.

Article 8

Individual employment contracts

1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.

Article 9

Overriding mandatory provisions

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Article 10

Consent and material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 11

Formal validity

1. A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is

[1] OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2005/14/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 14).

formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

2. A contract concluded between persons who, or whose agents, are in different countries at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or of the law of either of the countries where either of the parties or their agent is present at the time of conclusion, or of the law of the country where either of the parties had his habitual residence at that time.

3. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation, or of the law of the country where the act was done, or of the law of the country where the person by whom it was done had his habitual residence at that time.

4. Paragraphs 1, 2 and 3 of this Article shall not apply to contracts that fall within the scope of Article 6. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.

5. Notwithstanding paragraphs 1 to 4, a contract the subject matter of which is a right *in rem* in immovable property or a tenancy of immovable property shall be subject to the requirements of form of the law of the country where the property is situated if by that law:

(a) those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract; and

(b) those requirements cannot be derogated from by agreement.

Article 12

Scope of the law applicable

1. The law applicable to a contract by virtue of this Regulation shall govern in particular:

(a) interpretation;

(b) performance;

(c) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

(e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

Article 13

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 14

Voluntary assignment and contractual subrogation

1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The concept of assignment in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims.

Article 15

Legal subrogation

Where a person (the creditor) has a contractual claim against another (the debtor) and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether and to what extent the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 16

Multiple liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the law governing the debtor's obligation towards the creditor also governs the debtor's right to

claim recourse from the other debtors. The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.

Article 17

Set-off

Where the right to set-off is not agreed by the parties, set-off shall be governed by the law applicable to the claim against which the right to set-off is asserted.

Article 18

Burden of proof

1. The law governing a contractual obligation under this Regulation shall apply to the extent that, in matters of contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 11 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER III

OTHER PROVISIONS

Article 19

Habitual residence

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

2. Where the contract is concluded in the course of the operations of a branch, agency or any other establishment, or if, under the contract, performance is the responsibility of such a branch, agency or establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

3. For the purposes of determining the habitual residence, the relevant point in time shall be the time of the conclusion of the contract.

Article 20

Exclusion of *renvoi*

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law, unless provided otherwise in this Regulation.

Article 21

Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 22

States with more than one legal system

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State where different territorial units have their own rules of law in respect of contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 23

Relationship with other provisions of Community law

With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.

Article 24

Relationship with the Rome Convention

1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.

2. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to that Convention shall be understood as a reference to this Regulation.

Article 25

Relationship with existing international conventions

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 26

List of Conventions

1. By 17 June 2009, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the *Official Journal of the European Union*:

(a) a list of the conventions referred to in paragraph 1;

(b) the denunciations referred to in paragraph 1.

Article 27

Review clause

1. By 17 June 2013, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If appropriate, the report shall be accompanied by proposals to amend this Regulation. The report shall include:

(a) a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any; and

(b) an evaluation on the application of Article 6, in particular as regards the coherence of Community law in the field of consumer protection.

2. By 17 June 2010, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced.

Article 28

Application in time

This Regulation shall apply to contracts concluded after 17 December 2009.

CHAPTER IV

FINAL PROVISIONS

Article 29

Entry into force and application

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 17 December 2009 except for Article 26 which shall apply from 17 June 2009.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 17 June 2008.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	J. LENARČIČ

Convention on the law applicable to contractual obligations (consolidated version)

First Protocol on the interpretation of the 1980 Convention by the Court of Justice (consolidated version)

Second Protocol conferring on the Court of Justice powers to interpret the 1980 Convention (consolidated version)

(98/C 27/02)

PRELIMINARY NOTE

The signing on 29 November 1996 of the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Rome Convention on the law applicable to contractual obligations and to the two Protocols on its interpretation by the Court of Justice has made it desirable to produce a consolidated version of the Rome convention and of those two Protocols.

These texts are accompanied by three Declarations, one made in 1980 with regard to the need for consistency between measures to be adopted on choice-of-law rules by the Community and those under the Convention, a second, also made in 1980, on the interpretation of the Convention by the Court of Justice and a third, made in 1996, concerning compliance with the procedure provided for in Article 23 of the Rome Convention as regards carriage of goods by sea.

The text printed in this edition was drawn up by the General Secretariat of the Council, in whose archives the originals of the instruments concerned are deposited. It should be noted, however, that this text has no binding force. The official texts of the instruments consolidated are to be found in the following Official Journals.

Language version of the Official Journal	1980 Convention	1984 Accession	1988 First Protocol	1988 Second Protocol	1992 Accession Convention	1996 Accession Convention
German	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
English	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Danish	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
French	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Greek	L 146, 31. 5. 1984, p. 7	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Irish	Special Edition (L 266)	Special Edition (L 146)	Special Edition (L 48)	Special Edition (L 48)	Special Edition (L 333)	Special Edition (C 15)
Italian	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10

Language version of the Official Journal	1980 Convention	1984 Accession	1988 First Protocol	1988 Second Protocol	1992 Accession Convention	1996 Accession Convention
Dutch	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Spanish	Special Edition, Chapter 1, Volume 3, p. 36 (See also OJ L 333, p. 17)	Special Edition, Chapter 1, Volume 4, p. 36 (See also OJ L 333, p. 72)	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Portuguese	Special Edition, Chapter 1, Volume 3, p. 36 (See also OJ L 333, p. 7)	Special Edition, Chapter 1, Volume 4, p. 72 (See also OJ L 333, p. 74)	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Finnish	C 15, 15. 1. 1997, p. 70	C 15, 15. 1. 1997, p. 66	C 15, 15. 1. 1997, p. 60	C 15, 15. 1. 1997, p. 64	C 15, 15. 1. 1997, p. 68	C 15, 15. 1. 1997, p. 53
Swedish	C 15, 15. 1. 1997, p. 70	C 15, 15. 1. 1997, p. 66	C 15, 15. 1. 1997, p. 60	C 15, 15. 1. 1997, p. 64	C 15, 15. 1. 1997, p. 68	C 15, 15. 1. 1997, p. 53

ANNEX

CONVENTION

on the law applicable to contractual obligations [1]

opened for signature in Rome on 19 June 1980

PREAMBLE

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

ANXIOUS to continue in the field of private international law the work of unification of law which has already been done within the Community, in particular in the field of jurisdiction and enforcement of judgments,

WISHING to establish uniform rules concerning the law applicable to contractual obligations,

HAVE AGREED AS FOLLOWS:

TITLE I

SCOPE OF THE CONVENTION

Article 1

Scope of the Convention

1. The rules of this Convention shall apply to contractual obligations in any situation involving a choice between the laws of different countries.

2. They shall not apply to:

(a) questions involving the status or legal capacity of natural persons, without prejudice to Article 11;

(b) contractual obligations relating to:

— wills and succession,

— rights in property arising out of a matrimonial relationship,

— rights and duties arising out of a family relationship, parentage, marriage or affinity, including maintenance obligations in respect of children who are not legitimate;

(c) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(d) arbitration agreements and agreements on the choice of court;

(e) questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organization or winding up of companies and other bodies corporate or unincorporate and the personal liability of officers and members as such for the obligations of the company or body;

(f) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party;

(g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(h) evidence and procedure, without prejudice to Article 14.

3. The rules of this Convention do not apply to contracts of insurance which cover risks situated in the territories of the Member States of the European

[1] Text as amended by the Convention of 10 April 1984 on the accession of the Hellenic Republic — hereafter referred to as the '1984 Accession Convention' —, by the Convention of 18 May 1992 on the accession of the Kingdom of Spain and the Portuguese Republic — hereafter referred to as the '1992 Accession Convention' — and by the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden — hereafter referred to as the '1996 Accession Convention'.

Economic Community. In order to determine whether a risk is situated in those territories the court shall apply its internal law.

4. The proceeding paragraph does not apply to contracts of re-insurance.

Article 2

Application of law of non-contracting States

Any law specified by this Convention shall be applied whether or not it is the law of a Contracting State.

TITLE II

UNIFORM RULES

Article 3

Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties.

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law at the country which cannot be derogated from by contract, hereinafter called 'mandatory rules'.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a separable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.

Article 5

Certain consumer contracts

1. This Article applies to a contract the object of which is the supply of goods or services to a person ('the consumer') for a purpose which can be regarded as being outside his trade or profession, or a contract for the provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection

afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

— if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or

— if the other party or his agent received the consumer's order in that country, or

— if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to:

(a) a contract of carriage;

(b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

5. Notwithstanding the provisions of paragraph 4, this Article shall apply to a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 6

Individual employment contracts

1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or

(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

Article 7

Mandatory rules

1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

Article 8

Material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Convention if the contract or term were valid.

2. Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph.

Article 9

Formal validity

1. A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of the country where it is concluded.

2. A contract concluded between persons who are in different countries is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of one of those countries.

3. Where a contract is concluded by an agent, the country in which the agent acts is the relevant country for the purposes of paragraphs 1 and 2.

4. An act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which under this Convention governs or would govern the contract or of the law of the country where the act was done.

5. The provisions of the preceding paragraphs shall not apply to a contract to which Article 5 applies, concluded in the circumstances described in paragraph 2 of Article 5. The formal validity of such a contract is governed by the law of the country in which the consumer has his habitual residence.

6. Notwithstanding paragraphs 1 to 4 of this Article, a contract the subject matter of which is a right in immovable property or a right to use immovable property shall be subject to the mandatory requirements of form of the law of the country where the property is situated if by that law those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract.

Article 10

Scope of applicable law

1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

(a) interpretation;

(b) performance;

(c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages in so far as it is governed by rules of law;

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

(e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

Article 11

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law only if the other party to the contract was aware of this incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 12

Voluntary assignment

1. The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person ('the debter') shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.

2. The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

Article 13

Subrogation

1. Where a person ('the creditor') has a contractual claim upon another ('the debtor'), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.

2. The same rule applies where several persons are subject to the same contractual claim and one of them has satisfied the creditor.

Article 14

Burden of proof, etc.

1. The law governing the contract under this Convention applies to the extent that it contains, in the law of contract, rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognized by the law of the forum or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

Article 15

Exclusion of convoi

The application of the law of any country specified by this Convention means the application of the rules of law in force in that country other than its rules of private international law.

Article 16

'Ordre public'

The application of a rule of the law of any country specified by this Convention may be refused only if such application is manifestly incompatible with the public policy ('ordre public') of the forum.

Article 17

No retrospective effect

This Convention shall apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State.

Article 18

Uniform interpretation

In the interpretation and application of the preceding uniform rules, regard shall be had to their international character and to the desirability of achieving uniformity in their interpretation and application.

Article 19

States with more than one legal system

1. Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Convention.

2. A State within which different territorial units have their own rules of law in respect of contractual obligations shall not be bound to apply this Convention to conflicts solely between the laws of such units.

Article 20

Precedence of Community law

This Convention shall not affect the application of provisions which, in relation to particular matters, lay down choice of law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

Article 21

Relationship with other conventions

This Convention shall not prejudice the application of international conventions to which a Contracting State is, or becomes, a party.

Article 22

Reservations

1. Any Contracting State may, at the time of signature, ratification, acceptance or approval, reserve the right not to apply:

(a) the provisions of Article 7 (1);

(b) the provisions of Article 10 (1) (e).

2. . . .[1]

3. Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

TITLE III

FINAL PROVISIONS

Article 23

1. If, after the date on which this Convention has entered into force for a Contracting State, that State wishes to adopt any new choice of law rule in regard to any particular category of contract within the scope of this Convention, it shall communicate its intention to the other signatory States through the Secretary-General of the Council of the European Communities.

2. Any signatory State may, within six months from the date of the communication made to the Secretary-General, request him to arrange consultations between signatory States in order to reach agreement.

3. If no signatory State has requested consultations within this period or if within two years following the communication made to the Secretary-General no agreement is reached in the course of consultations, the Contracting State concerned may amend its law in the manner indicated. The measures taken by that State shall be brought to the knowledge of the other signatory States through the Secretary-General of the Council of the European Communities.

[1] Paragraph deleted by Article 2 (1) of the 1992 Accession Convention.

Article 24

1. If, after the date on which this Convention has entered into force with respect to a Contracting State, that State wishes to become a party to a multilateral convention whose principal aim or one of whose principal aims is to lay down rules of private international law concerning any of the matters governed by this Convention, the procedure set out in Article 23 shall apply. However, the period of two years, referred to in paragraph 3 of that Article, shall be reduced to one year.

2. The procedure referred to in the preceding paragraph need not be followed if a Contracting State or one of the European Communities is already a party to the multilateral convention, or if its object is to revise a convention to which the State concerned is already a party, or if it is a convention concluded within the framework of the Treaties establishing the European Communities.

Article 25

If a Contracting State considers that the unification achieved by this Convention is prejudiced by the conclusion of agreements not covered by Article 24 (1), that State may request the Secretary-General of the Council of the European Communities to arrange consultations between the signatory States of this Convention.

Article 26

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 27 [1]

Article 28

1. This Convention shall be open from 19 June 1980 for signature by the States party to the Treaty establishing the European Economic Community.

2. This Convention shall be subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of the European Communities [2].

Article 29 [3]

1. This Convention shall enter into force on the first day of the third month following the deposit of the seventh instrument of ratification, acceptance or approval.

2. This Convention shall enter into force for each signatory State ratifying, accepting or approving at a later date on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

[1] Article deleted by Article 2 (1) of the 1992 Accession Convention.

[2] Ratification of the Accession Conventions is governed by the following provisions of those conventions:

— as regards the 1984 Accession Convention, by Article 3 of that Convention, which reads as follows:

'*Article 3*

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.',

— as regards the 1992 Accession Convention, by Article 4 of that Convention, which reads as follows:

'*Article 4*

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.',

— as regards the 1996 Accession Convention, by Article 5 of that Convention, which reads as follows:

'*Article 5*

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

[3] The entry into force of the Accession Conventions is governed by the following provisions of those Conventions:

— as regards the 1984 Accession Convention, by Article 4 of that Convention, which reads as follows:

'*Article 4*

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and seven States which have ratified the Convention on the law applicable to contractual obligations.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.',

— as regards the 1992 Accession Convention, by Article 5 of that Convention which reads as follows:

'*Article 5*

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Kingdom of Spain or the Portuguese Republic and by one State which has ratified the Convention on the law applicable to contractual obligations.

Article 30

1. This Convention shall remain in force for 10 years from the date of its entry into force in accordance with Article 29 (1), even for States for which it enters into force at a later date.

2. If there has been no denunciation it shall be renewed tacitly every five years.

3. A Contracting State which wishes to denounce shall, not less than six months before the expiration of the period of 10 or five years, as the case may be, give notice to the Secretary-General of the Council of the European Communities. Denunciation may be limited to any territory to which the Convention has been extended by a declaration under Article 27 (2) [1].

4. The denunciation shall have effect only in relation to the State which has notified it. The Convention will remain in force as between all other Contracting States.

Article 31 [2]

The Secretary-General of the Council of the European Communities shall notify the States party to the Treaty establishing the European Economic Community of:

(a) the signatures;

(b) deposit of each instrument of ratification, acceptance or approval;

(c) the date of entry into force of this Convention;

(d) communications made in pursuance of Articles 23, 24, 25, 26 and 30 [3];

(e) the reservations and withdrawals of reservations referred to in Article 22.

Article 32

The Protocol annexed to this Convention shall form an integral part thereof.

Article 33 [4]

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, these 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 thereof to the Government of each signatory State.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.',

— as regards the 1996 Accession Convention, by Article 6 of that Convention, which reads as follows:

'*Article 6*

1. This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Republic of Austria, the Republic of Finland or the Kingdom of Sweden and by one Contracting State which has ratified the Convention on the law applicable to contractual obligations.

2. This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.'.

[1] Phrase deleted by the 1992 Accession Convention.

[2] Notification concerning the Accession Convention is governed by the following provisions of those Conventions:

— as regards the 1984 Accession Convention, by Article 5 of that Convention, which reads as follows:

'*Article 5*

The Secretary-General of the Council of the European Communities shall notify 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.',

— as regards the 1992 Accession Convention, by Article 6 of that Convention, which reads as follows:

'*Article 6*

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.',

— as regards the 1996 Accession Convention, by Article 7 of that Convention, which reads as follows:

'*Article 7*

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

(a) the deposit of each instrument of ratification;

(b) the dates of entry into force of this Convention for the Contracting States.'.

[3] Point (d) as amended by the 1992 Accession Convention.

[4] An indication of the authentic texts of the Accession Convention is to be found in the following provisions:

— as regards the 1984 Accession Convention, in Articles 2 and 6 of that Convention, which reads as follows:

'*Article 2*

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Irish and Italian languages to the Government of the Hellenic Republic.

The text of the Convention on the law applicable to contractual obligations in the Greek language is annexed hereto. The text in the Greek language shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.'

In witness whereof the undersigned, being duly authorized thereto, having signed this Convention.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the plenipotentiaries]

'*Article 6*
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.',

— as regards the 1992 Accession Convention, in Articles 3 and 7 of that Convention, which read as follows:

'*Article 3*
The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages to the Governments of the Kingdom of Spain and the Portuguese Republic.
The text of the Convention on the law applicable to contractual obligations in the Portuguese and Spanish languages is set out in Annexes I and II to this Convention. The texts drawn up in the Portuguese and Spanish languages shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.'

'*Article 7*
This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 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.',

— as regards the 1996 Accession Convention, in Articles 4 and 8 of that Convention, which read as follows:

'*Article 4*
1. The Secretary-General of the Council of the European Union shall transmit a certified copy of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992 in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Spanish and Portuguese languages to the Governments of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.
2. The text of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992 in the Finnish and Swedish languages shall be authentic under the same conditions as the other texts of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992.'

'*Article 8*
This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all 12 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Government of each signatory State.'

PROTOCOL [1]

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

'Notwithstanding the provisions of the Convention, Denmark, Sweden and Finland may retain national provisions concerning the law applicable to questions relating to the carriage of goods by sea and may amend such provisions without following the procedure provided for in Article 23 of the Convention of Rome. The national provisions applicable in this respect are the following:

— in Denmark, paragraphs 252 and 321 (3) and (4) of the "Solov" (maritime law),

— in Sweden, Chapter 13, Article 2 (1) and (2), and Chapter 14, Article 1 (3), of "sjölagen" (maritime law),

— in Finland, Chapter 13, Article 2 (1) and (2), and Chapter 14, Article 1 (3), of "merilaki"/"sjölagen" (maritime law).'

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

---

[1] Text as amended by the 1996 Accession Convention.

JOINT DECLARATION

At the time of the signature of the Convention on the law applicable to contractual obligations, the Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland,

I. anxious to avoid, as far as possible, dispersion of choice of law rules among several instruments and differences between these rules, express the wish that the institutions of the European Communities, in the exercise of their powers under the Treaties by which they were established, will, where the need arises, endeavour to adopt choice of law rules which are as far as possible consistent with those of this Convention;

II. declare their intention as from the date of signature of this Convention until becoming bound by Article 24, to consult with each other if any one of the signatory States wishes to become a party to any convention to which the procedure referred to in Article 24 would apply;

III. having regard to the contribution of the Convention on the law applicable to contractual obligations to the unification of choice of law rules within the European Communities, express the view that any State which becomes a member of the European Communities should accede to this Convention.

In witness whereof the undersigned, being duly authorized thereto, have signed this Joint Declaration.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland,

On signing the Convention on the law applicable to contractual obligations;

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

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

Declare themselves ready:

1. to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;

2. to arrange meetings at regular intervals between their representatives.

In witness whereof the undersigned, being duly authorized thereto, have signed this Joint Declaration.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

FIRST PROTOCOL [1]

on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980

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

HAVING REGARD to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

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

[Plenipotentiaries designated by the Member States]

WHO, meeting within the Council of the European Communities, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of:

(a) the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as 'the Rome Convention';

(b) the Convention on accession to the Rome Convention by the States which have become Members of the European Communities since the date on which it was opened for signature;

(c) this Protocol.

Article 2

Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

(a) — in Belgium:

'la Cour de cassation' ('het Hof van Cassatie') and 'le Conseil d'État' ('de Raad van State'),

— in Denmark:

'Højesteret',

— in the Federal Republic of Germany:

'die obersten Gerichtshöfe des Bundes',

— in Greece:

'Τα ανώτατα Δικαστήρια',

— in Spain:

'el Tribunal Supremo',

— in France:

'la Cour de cassation' and 'le Conseil d'État',

— in Ireland:

the Supreme Court,

— in Italy:

'la Corte suprema di cassazione' and 'il Consiglio di Stato',

— in Luxembourg:

'la Cour Supérieure de Justice', when sitting as 'Cour de cassation',

— in Austria:

the 'Oberste Gerichtshof', the 'Verwaltungsgerichtshof' and the 'Verfassungsgerichtshof',

— in the Netherlands:

'de Hoge Raad',

— in Portugal:

'o Supremo Tribunal de Justiça' and 'o Supremo Tribunal Administrativo',

[1] Text as amended by the 1996 Accession Convention.

— in Finland:

'korkein oikeus/högsta domstolen', 'korkein hallinto-oikeus/högsta förvaltningsdomstolen', 'markkinatuomioistuin/marknadsdomstolen' and 'työtuomioistuin/arbetsdomstolen',

— in Sweden:

'Högsta domstolen', 'Regeringsrätten', 'Arbetsdomstolen' and 'Marknadsdomstolen',

— in the United Kingdom:

the House of Lords and other courts from which no further appeal is possible;

(b) the courts of the Contracting States when acting as appeal courts.

Article 3

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the provisions contained in the instruments referred to in Article 1 if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 2. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.

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

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

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

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

Article 4

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

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

Article 5 [1]

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

Article 6 [2]

1. To enter into force, this Protocol must be ratified by seven States in respect of which the Rome Convention is in force. This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last such State to take this step. If, however, the Second Protocol conferring on the Court of Justice of the European Communities certain powers to interpret the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988 [3] enters into force on a later date, this Protocol shall enter into force on the date of entry into force of the Second Protocol.

2. Any ratification subsequent to the entry into force of this Protocol shall take effect on the first day of the third month following the deposit of the instrument of ratification, provided that the ratification, acceptance or approval of the Rome Convention by the State in question has become effective.

Article 7 [4]

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

(a) the deposit of each instrument of ratification;

(b) the date of entry into force of this Protocol;

(c) any designation communicated pursuant to Article 3 (3);

(d) any communication made pursuant to Article 8.

Article 8

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

---

[1] See footnote 2 on page 41.
[2] See footnote 3 on page 41.
[3] See page 44.
[4] See footnote 2 on page 42.

Article 9

This Protocol shall have effect for as long as the Rome Convention remains in force under the conditions laid down in Article 30 of that Convention.

Article 10

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

Article 11 [1]

This Protocol, 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.

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

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

---

[1] See footnote 4 on page 42.

JOINT DECLARATIONS

Joint Declaration

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland,

On signing the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

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

Declare themselves ready to organize, in cooperation with the Court of Justice of the European Communities, an exchange of information on judgments which have become *res judicata* and have been handed down pursuant to the Convention on the law applicable to contractual obligations by the courts referred to in Article 2 of the said Protocol. The exchange of information will comprise:

— the forwarding to the Court of Justice by the competent national authorities of judgments handed down by the courts referred to in Article 2 (a) and significant judgments handed down by the courts referred to in Article 2 (b),

— the classification and the documentary exploitation of these judgments by the Court of Justice including, as far as necessary, the drawing up of abstracts and translations, and the publication of judgments of particular importance,

— the communication by the Court of Justice of the documentary material to the competent national authorities of the States parties to the Protocol and to the Commission and the Council of the European Communities.

In witness whereof, the undersigned Plenipotentiaries have affixed their signature below this Joint Declaration.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

Joint Declaration

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland,

On signing the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

Having regard to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations,

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

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

Express the view that any State which becomes a member of the European Communities should accede to this Protocol.

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

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

SECOND PROTOCOL

conferring on the Court of Justice of the European Communities certain powers to interpret the Convention on the law applicable to contractual obligations; opened for signature in Rome on 19 June 1980

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

WHEREAS the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as 'the Rome Convention', will enter into force after the deposit of the seventh instrument of ratification, acceptance or approval;

WHEREAS the uniform application of the rules laid down in the Rome Convention requires that machinery to ensure uniform interpretation be set up and whereas to that end appropriate powers should be conferred upon the Court of Justice of the European Communities, even before the Rome Convention enters into force with respect to all the Member States of the European Economic Community,

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

[Plenipotentiaries designated by the Member States]

WHO, meeting within the Council of the European Communities, having exchanged their full powers; found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

1. The Court of Justice of the European Communities shall, with respect to the Rome Convention, have the jurisdiction conferred upon it by the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988 [1]. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of the Court of Justice shall apply.

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

Article 2 [2]

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

Article 3 [3]

This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification of the last Signatory State to complete that formality.

Article 4 [4]

This Protocol, 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.

([1]) See page 34.
([2]) See footnote 2 on page 41.
([3]) See footnote 3 on page 41.
([4]) See footnote 4 on page 42.

In witness whereof, the undersigned Plenipotentiaries have affixed their signature below this Protocol.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

I

(Information)

COUNCIL

REPORT

on the Convention on the law applicable to contractual obligations [1]

by Mario Giuliano

Professor, University of Milan

(who contributed the introduction and the comments on Articles 1, 3 to 8, 10, 12, and 13)

and Paul Lagarde

Professor, University of Paris I

(who contributed the comments on Articles 2, 9, 11, and 14 to 33)

(1) The text of the Convention on the law applicable to contractual obligations was published in Official Journal No L 266 of 9 October 1980.

The Convention, open for signature in Rome on 19 June 1980, was signed on that day by the Plenipotentiaries of the following seven Member States: Belgium, Germany, France, Ireland, Italy, Luxembourg and the Netherlands.

CONTENTS

INTRODUCTION

1. Proposal by the Governments of the Benelux countries to the Commission of the European Communities

On 8 September 1967 the Permanent Representative of Belgium extended to the Commission, in the name of his own Government and those of the Kingdom of the Netherlands and the Grand Duchy of Luxembourg, an invitation to collaborate with the experts of the Member States, on the basis of the draft Benelux convention, in the unification of private international law and codification of the rules of conflict of laws within the Community.

The object of this proposal was to eliminate the inconveniences arising from the diversity of the rules of conflict, notably in the field of contract law. Added to this was 'an element of urgency', having regard to the reforms likely to be introduced in some Member States and the consequent 'danger that the existing divergences would become more marked'.

In the words of Mr T. Vogelaar, Director-General for the Internal Market and Approximation of Legislation at the Commission, in his opening address as chairman of the meeting of government experts on 26 to 28 February 1969: 'This proposal should bring about a complete unification of the rules of conflict. Thus in each of our six countries, instead of the existing rules of conflict and apart from cases of application of international Agreements binding any Member State, identical rules of conflict would enter into force both in Member States' relations *inter se* and in relations with non-Community States. Such a development would give rise to a common corpus of unified legal rules covering the territory of the Community's Member States. The great advantage of this proposal is undoubtedly that the level of legal certainty would be raised, confidence in the stability of legal relationships fortified, agreements on jurisdiction according to the applicable law facilitated, and the protection of rights acquired over the whole field of private law augmented. Compared with the unification of substantive law, unification of the rules of conflict of laws is more practicable, especially in the field of property law, because the rules of conflict apply solely to legal relations involving an international element' (1).

2. Examination of the proposal by the Commission and its consequences

In examining the proposal by the Benelux countries the Commission arrived at the conclusion that at least in some special fields of private international law the harmonization of rules of conflict would be likely to facilitate the workings of the common market.

Mr Vogelaar's opening address reviews the grounds on which the Commission's conclusion was founded and is worth repeating here:

'According to both the letter and spirit of the Treaty establishing the EEC, harmonization is recognized as fulfilling the function of permitting or facilitating the creation in the economic field of legal conditions similar to those governing an internal market. I appreciate that opinions may differ as to the precise delimitation of the inequalities which directly affect the functioning of the common market and those having only an indirect effect. Yet there are still legal fields in which the differences between national legal systems and the lack of unified rules of conflict definitely impede the free movement of persons, goods, services and capital among the Member States.

Some will give preference to the harmonization or unification of substantive law rather than the harmonization of rules of conflict. As we know, the former has already been achieved in various fields. However, harmonization of substantive law does not always contrive to keep pace with the dismantling of economic frontiers. The problem of the law to be applied will therefore continue to arise as long as substantive law is not unified. The number of cases in which the question of applicable law must be resolved increases with the growth of private law relationships across frontiers.

At the same time there will be a growing number of cases in which the courts have to apply a foreign law. The Convention signed on 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters uniformly governs the international jurisdiction of the courts within the

Community. It should help to facilitate and expedite many civil actions and enforcement proceedings. It also enables the parties. in many matters, to teach agreements assigning jurisdiction and to choose among several courts. The outcome may be that preference is given to the court of a State whose law seems to offer a better solution to the proceedings. To prevent this "forum shopping", increase legal certainty, and anticipate more easily the law which will be applied, it would be advisable for the rules of conflict to be unified in fields of particular economic importance so that the same law is applied irrespective of the State in which the decision is given.

To sum up, there are three main considerations guiding our proposal for harmonizing the rules of conflict for a few well-defined types of legal relations. The first is dictated by the history of private international law: to try to unify everything is to attempt too much and would take too long. The second is the urgent necessity for greater legal certainty in some sectors of major economic importance. the third is the wish to forestall any aggravation of the differences between the rules of private international law of the various Member States' (2).

These were in fact the motives which prompted the Commission to convene a meeting of experts from the Member States in order to obtain a complete picture of the present state of the law and to decide whether and to what extent a harmonization or unification of private international law within the Community should be undertaken. The invitation was accompanied by a questionnaire designed to facilitate the discussion (3).

3. Favourable attitude of Member States to the search for uniform rules of conflict, the setting of priorities and establishment of the working group to study and work out these rules

The meeting in question took place on 26 to 28 February 1969. It produced a first survey of the situation with regard to prospects for and possible advantage of work in the field of unification of rules of conflict among Member States of the European Communities (4).

However, it was not until the next meeting on 20 to 22 October 1969 that the government experts were able to give a precise opinion both on the advisability and scope of harmonization and on the working procedure and organization of work.

As regards advisability of harmonization the Member States' delegations (with the sole exception of the German delegation) declared themselves to be fundamentally in agreement on the value of the work in making the law more certain in the Community. The German delegation, while mentioning some hesitation on this point in professional and business circles, said that this difference of opinion was not such as to affect the course of the work at the present time.

As regards the scope of harmonization, it was recognized (without prejudice to future developments) that a start should be made on matters most closely involved in the proper functioning of the common market, more specifically:

1. the law applicable to corporeal and incorporeal property;
2. the law applicable to contractual and non-contractual obligations;
3. the law applicable to the form of legal transactions and evidence;
4. general matters under the foregoing heads (renvoi, classification, application of foreign law, acquired rights, public policy, capacity, representation).

As for the legal basis of the work, it was the unanimous view that the proposed harmonization, without being specifically connected with the provisions of Article 220 of the EEC Treaty, would be a natural sequel to the Convention on jurisdiction and enforcement of judgments.

Lastly, on the procedure to be followed, all the delegations were in favour of that adopted for work on the Conventions already signed or in process of drafting under Article 220 and of seeking the most suitable ways of expediting the work (5).

The results of the meeting were submitted through the Directorate-General for the Internal Market an Approximation of Legislation to the Commission with a proposal to seek the agreement of Member States for continuance of the work and preparation of a preliminary draft Convention establishing uniformity of law in certain relevant areas of private international law.

The Commission acceded to the proposal. At its meeting on 15 January 1970 the Committee of Permanent Representatives expressly authorized the Group to continue its work on harmonization of the rules of private international law, on the understanding that the preliminary draft or drafts would give priority to the four areas previously indicated.

Following the abovementioned decision of the Permanent Representatives Committee, the Group met on 2 and 3 February 1970 and elected its chairman, Mr P. Jenard, Director of Administration in the Belgian Ministry of Foreign Affairs and External Trade, and its vice-chairman, Prof. Miccio, Counsellor to the Italian Court of Cassation.

Having regard to the decision of the previous meeting that the matters to be given priority should be divided into four sectors, the Group adopted the principle that each of the four sectors should have its own rapporteur appointed as follows, to speed up the work:

1. in the case of the law applicable to corporeal and incorporeal property, by the German delegation;
2. in the case of the law applicable to contractual and extracontractual obligations, by the Italian delegation:
3. in the case of the law applicable to the form of legal transactions and evidence, by the French delegation;
4. in general matters, by the Netherlands delegation, in agreement with the Belgian and Luxembourg delegations.

As a result the following were appointed: Prof. K. Arndt, Oberlandsgerichtspräsident a.d.; Prof. M. Giuliano, University of Milan; Prof. P. Lagarde, University of Paris I; Mr T. van Sasse van Ysselt, Director in the Netherlands Ministry of Justice.

Other matters were dealt with at the same meeting, notably the kind of cenvention to be prepared, as to which the great majority of delegates favoured a universal convention not based upon reciprocity; the method of work; participation of observers from the Hague Conference on Private International Law and the Benelux Commission on Unification of Law (6).

4. Organization, progress and initial results of the Group's work at the end of 1972

The Group took as its starting point the examination and discussion of the questionnaires prepared by the rapporteurs, Messrs Giuliano, Lagarde and van Sasse van Ysselt in their respective fields. They were discussed at a meeting of the rapporteurs chaired by Mr Jenard on 1 to 4 June 1970. The three questionnaires were subjected to a thorough analysis, extending both to the rules of conflict (national or established by convention) in force in the Community Member States and to the evolutionary trends already apparent in case law and legal theory in certain countries or worthy of consideration in relation to certain present-day reqirements in international life. This oral analysis was further supplemented by the written replies given by each rapporteur on the basis of the statutes, case law and legal theory of his own country (of the three Benelux countries in the case of Mr van Sasse) to the questionnaires drawn up by his colleagues and himself (7).

This preliminary work and material enabled each of the rapporteurs to present an interim report, with draft articles on the matter considered, as a working basis for the Group meetings. It was agreed that these meetings would be devoted to an examination of Mr Giuliano's report on the law applicable to contractual and non-contractual obligations and to the subject matter of Mr Lagarde's and Mr van Sasse van Ysselt's report to the extent that this was relevant to Mr Giuliano's subject.

It was agreed that Mr Arndt's report on the law applicable to corporeal and incorporeal property would be discussed later, Mr Arndt having explained that a comparative study of the principal laws on security rights and interests should precede his report and that the need for such a study had been generally recognized.

Apart from the meeting of rapporteurs in June 1970, the work fully occupied 11 Group plenary sessions, each with an average duration of five days (8).

At its meeting in June 1972 the Group completed the preliminary draft convention on the law applicable to contractual and non-contractual obligations and decided that it should be submitted, together with the reports finalized at a meeting of rapporteurs on 27 and 28 September 1972, to the Permanent Representatives Commitee for transmission to the Governments of the Community Member States (9).

5. Re-examination of Group work in the light of observations by the Governments of original and new Member States of the EEC and results achieved in February 1979

It follows from the foregoing observations that the 1972 draft dealt both with the law applicable to contractual obligations and with that applicable to non-contractual obligations. At the same time it provided solutions relating to the law governing the form of legal transactions and evidence, questions of interpretation of uniform rules and their relationship

with other rules of conflict of international origin, to the extent to which these were connected with the subject of the preliminary draft.

Following the accession of the United Kingdom, Denmark and Ireland to the EEC in 1973 the Commission extended the Group to include government experts from the new Member States and the Permanent Representatives Commitee authorized the enlarged Group to re-examine in the light of observations from the Governments of the original and of the new Member States of the EEC, the preliminary draft convention which the Commission had submitted to it at the end of 1972. The Group elected Prof. Philip as vice-chairman.

Nevertheless the preliminary draft was not re-examined immediately. The need to allow the experts from the new Member States time to consult their respective Governments and interested parties on the one hand and the political uncertainties in the United Kingdom concerning membership of the European Communities (which were not settled until the 1975 referendum) on the other, resulted in a significant reduction (if not suspension) of the Group's activities for about three years. It was not until the end of 1975 that the Group was able properly to resume its work and proceed with the preparation of the Convention on the law applicable to contractual obligations. In fact the Group decided at its meeting in March 1978 to limit the present convention to contracts alone and to begin negotiations for a second Convention, on non-contractual obligations, after the first had been worked out. Most delegations thought it better for reasons of time to finish the part relating to contractual obligations first.

The original preliminary draft, with the limitation referred to, was re-examined in the course of 14 plenary sessions of the Group and three special meetings on transport and insurance contracts; each of the plenary sessions lasted two to five days ([10]). At the meeting in February 1979 the Group finished the draft convention, decided upon the procedure for transmitting the draft to the Council before the end of April and instructed Professors Giuliano and Lagarde to draw up the report; this was then finalized at a meeting of rapporteurs on 18 to 20 June 1979 in which one expert per delegation participated, and transmitted in turn to the Council and to the Governments by the chairman, Mr Jenard.

6. Finalization of the Convention within the Council of the European Communitees

On 18 May 1979 the Group's chairman, Mr Jenard, sent the draft Convention to the President of the Council of the European Communities with a request that the Governments make their comments on the draft by the end of the year so that the Convention could then be concluded during 1980.

On 20 July 1979 Mr Jenard sent the President of the Council a draft report on the Convention, which was the predecessor of this report.

The General Secretariat of the Council received written comments from the Belgian, Netherlands, Danish, Irish, German, Luxembourg and United Kingdom Governments. In addition, on 17 March 1980, the Commission adopted an opinion on the draft Convention, which was published in *Official Journal of the European Communities* No L 94 of 11 April 1980.

On 16 January 1980 the Permanent Representatives Commitee set up an *ad hoc* working party on private international law, whose terms of reference were twofold:

— to finalize the Convention text in the light of the comments made by Member States' Governments,

— to consider whether, and if so within what limits, the Court of Justice of the European Communities should be given jurisdiction to interpret the Convention.

The *ad hoc* working party met twice, from 24 to 28 March and 21 to 25 April 1980, with Mr Brancaccio from the Italian Ministry of Justice in the chair ([11]). Working from the Governments' written comments and others made orally during discussions, the working party reached general agreement on the substantive provisions of the Convention and on the accompanying report.

The only problems unresolved by the working party concerned the problem of where the Convention stood in relation to the Community legal order. They arose in particular in determining the number of ratifications required for the Convention to come into force and in drafting a statement by the Governments of the Member States on the conferral of jurisdiction on the Court of Justice.

Following a number of discussions in the Permanent Representatives Committee, which gradually brought agreement within sight, the Council Presidency deemed circumstances to be ripe politically for the points of disagreement to be discussed by the Ministers of Justice with a good chance of success at a special Council meeting on 19 June 1980 in Rome.

At that meeting, a final round of negotiations produced agreement on a number of seven Member States required to ratify in order for the Convention to come into force. Agreement was also reached on the wording of a joint statement on the interpretation of the Convention by the Court of Justice, which followed word for word the matching statement made by the Governments of the original six Member States of the Community when the Convention on jurisdiction and enforcement was concluded on 27 September 1968 in Brussels. In adopting the statement, the Representatives of Governments of the Member States, meeting within the Council, also instructed the *ad hoc* Council working party on private international law to consider by what means point 1 of the statement could be implemented and report back by 30 June 1981.

With these points settled, the President-in-Office of the Council, Tommaso Morlino, Italian Minister of Justice, recorded the agreement of the Representatives of the Governments of the Member States, meeting within the Council, on the following:

— adoption of the text of the Convention and of the two joint statements annexed to it,

— the Convention would be open for signing from 19 June 1980,

— the Convention and accompanying report would be published in the *Official Journal of the European Communities* for information.

The Convention was signed on 19 June 1980 by the plenipotentiaries of Belgium, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg and the Netherlands.

7. Review of the internal sources and nature of the rules in force in the EEC Member States relating to the law applicable to contractual obligations

The chief aim of the Convention is to introduce into the national laws of the EEC Member States a set of uniform rules on the law applicable to contractual obligations and on certain general points of private international law to the extent that these are linked with those obligations.

Without going here into details of positive law, though it may be necessary to return to it in the comments on the uniform rules, a short survey can now be given of the internal sources and the nature of the rules of conflict at present in force in the Community countries in the field covered by the Convention. This survey will bring out both the value and the difficulties of the unification undertaken by the Group and of which the convention is only the first fruit.

Of the nine Member States of the Community, Italy is the only one to have a set of rules of conflict enacted by the legislature covering almost all the matters with which the Convention is concerned. These rules are to be found for the most part in the second paragraph of Article 17 and in Articles 25, 26, 30 and 31 of the general provisions constituting the introduction to the 1942 Civil Code, and in Articles 9 and 10 of the 1942 Navigation Code.

In the other Member States of the Community, however, the body of rules of conflict on the law applicable to contractual obligations is founded only on customary rules or on rules originating in case law. Academic studies and writings have helped considerably to develop and harmonize these rules.

The position as just stated has not been altered substantially either by the French draft law supplementing the Civil Code in respect of private international law (1967) or by the Benelux Treaty establishing uniform rules of private international law signed in Brussels on 3 July 1969. These two texts are certainly an interesting attempt to codify the rules of conflict and also, in the case of the Benelux countries, to make these rules uniform on an inter-State level. The Group did not fail to take account of their results in its own work. However, the entry into force of the Benelux Treaty has not been pursued, and the French draft law seems unlikely to be adopted in the near future.

8. Universal application of the uniform rules

From the very beginning of its work the Group has professed itself to be in favour of uniform rules which would apply not only to the nationals of Member States and to persons domiciled or resident within the Community but also to the nationals of third States and to persons domiciled or resident therein. The provisions of Article 2 specify the universal application of the convention.

The Group took the view that its main purpose was to frame general rules such as those existing in legislative provisions currently in force in Italy and in the Benelux Treaty and the French draft law. In such a context these general rules, which would become the 'common law' of each Member State for settling conflicts of laws, would not prejudice the detailed regulation of clearly delimited matters

arising from other work, especially that of the Hague Conference on private international law. The application of these particular conventions is safeguarded by the provisions of Article 21.

9. On the normally general nature of the uniform rules in the Convention and their significance in the unification of laws already undertaken in the field of private international law

At the outset of its work the Group had also to determine the nature and scope of the uniform rules of conflict to be formulated. Should they be general rules, to be applied indiscriminately to all contracts, or would it be better to regulate contractual obligations by means of a series of specific rules applicable to the various categories of contract, or again should an intermediate solution be envisaged, namely by adopting general rules and supplementing them by specific rules for certain categories of contract?

Initially the rapporteur advocated the latter method. This provided that, in default of an express of implied choice by the parties, the contract would be governed (subject to specific provisions for certain categories) by one system of law.

When the Group tackled the question of whether to supplement the general rules for determining the law applicable to the contract by some specific rules for certain categories of contract it became clear that the point was no longer as significant as it had been in the context of the rapporteur's initial proposals. The Group's final version of the text of Article 4 provided satisfactory solutions for most of the contracts whose applicable law was the subject of specific rules of conflict in the rapporteur's proposals, notably because of its flexibility. The Group therefore merely provided for some exceptions to the rule contained in Article 4, notably those in Articles 5 and 6 concerning the law applicable respectively to certain consumer contracts and to contracts of employment in default of an express or implied choice by the parties.

The normally general nature of the uniform rules made it necessary to provide for a few exceptions and to allow the judge a certain discretion as to their application in each particular case. This aspect will be dealt with in the comments on a number of Articles in Chapter III of this report.

As declared in the Preamble, in concluding this Convention the nine States which are parties to the Treaty establishing the European Economic Community show their desire to continue in the field of private international law the work of unification already undertaken in the Community, particularly in matters of jurisdiction and enforcement of judgments. The question of accession by third States is not dealt with in the Convention (see page 41, penultimate paragraph).

TITLE I

SCOPE OF THE CONVENTION

Article 1

Scope of the Convention

1. As provided in Article 1 (1) the uniform rules in this Convention apply generally to contractual obligations in situations involving a conflict of laws.

It must be stressed that the uniform rules apply to the abovementioned obligations only 'in situations involving a choice between the laws of different countries'. The purpose of this provision is to define the true aims of the uniform rules. We know that the law applicable to contracts and to the obligations arising from them is not always that of the country where the problems of interpretation or enforcement are in issue. There are situations in which this law is not regarded by the legislature or by the case law as that best suited to govern the contract and the obligations resulting from it. These are situations which involve one or more elements foreign to the internal social system of a country (for example, the fact that one or all of the parties to the contract are foreign nationals or persons habitually resident abroad, the fact that the contract was made abroad, the fact that one or more of the obligations of the parties are to be performed in a foreign country, etc.), thereby giving the legal systems of several countries claims to apply. These are precisely the situations in which the uniform rules are intended to apply.

Moreover the present wording of paragraph 1 means that the uniform rules are to apply in all cases where the dispute would give rise to a conflict between two or more legal systems. The uniform rules also apply if those systems coexist within one State (cf. Article 19 (1)). Therefore the question whether a contract is governed by English or Scots law is within the scope of the Convention, subject to Article 19 (2).

2. The principle embodied in paragraph 1 is however subject to a number of restrictions.

First, since the Convention is concerned only with the law applicable to contractual obligations, property rights and intellectual property are not covered by these provisions. An Article in the original preliminary draft had expressly so provided. However, the Group considered that such a provision would be superfluous in the present text, especially as this would have involved the need to recapitulate the differences existing as between the various legal system of the Member States of the Community.

3. There are also the restrictions set out in paragraph 2 of Article 1.

The first of these, at (a), is the status or legal capacity of natural persons, subject to Article 11; then, at (b), contractual obligations relating to wills and succession, to property rights arising out of matrimonial relationships, to rights and duties arising out of family relationships, parentage, marriage or affinity, including maintenance obligations in respect of illegitimate children. The Group intended this enumeration to exclude from the scope of the Convention all matters of family law.

As regards maintenance obligations, within the meaning of Article 1 of the Hague Convention on the law applicable to maintenance obligations, the Group considered that this exclusion should also extend to contracts which parties unter a legal maintenance obligation make in performance of that obligation. All other contractual obligations, even if they provide for the maintenance of a member of the family towards whom there are no legal maintenance obligations, would fall within the scope of the Convention.

Contrary to the provisions of the second paragraph of Article 1 in the original preliminary draft, the current wording of subparagraph (b) does not in general exclude gifts. Most of the delegations favoured the inclusion of gifts where they arise from a contract within the scope of the Convention, even when made within the family, provided they are not covered by family law. Therefore the only contractual gifts left outside the scope of the uniform

rules are those to which family law, the law relating to matrimonial property rights or the law of succession apply.

The Group unanimously affirmed that matters relating to the custody of children are outside the scope of the Convention, since they fall within the sphere of personal status and capacity. However, the Group thought it inappropriate to specify this exclusion in the text of the Convention itself, thereby intending to avoid an *a contrario* interpretation of the Convention of 27 September 1968.

To obviate any possibility of misconstruction, the present wording of subparagraphs (a) and (b) uses the same terminology as the 1968 Convention on jurisdiction and enforcement of judgments.

4. Subparagraph (c) excludes from the scope of the uniform rules in the first instance obligations arising from bills of exchange, cheques, promissary notes.

In retaining this exclusion, for which provision had already been made in the original preliminary draft, the Group took the view that the provisions of the Convention were not suited to the regulation of obligations of this kind. Their inclusion would have involved rather complicated special rules. Moreover the Geneva Conventions to which several Member States of the Community are parties govern most of these areas. Also, certain Member States of the Community regard these obligations as non-contractual.

Subparagraph (c) also excludes other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character. If a document, though the obligation under it is transferable, is not regarded as a negotiable instrument, it falls outside the exclusion. This has the effect that such documents as bills of lading, similar documents issued in connection with transport contracts, and bonds, debentures, guarantees, letters of indemnity, certificates of deposit, warrants and warehouse receipts are only excluded by subparagraph (c) if, they can be regarded as negotiable instruments; and even then the exclusion only applies with regard to obligations arising out of their negotiable character. Furthermore, neither the contracts pursuant to which such instruments are issued nor contracts for the purchase and sale of such instruments are excluded. Whether a document is characterized as a negotiable instrument is not governed by this Convention and is a matter for the law of the forum (including its rules of private international law).

5. Arbitration agreements and agreements on the choice of court are likewise excluded from the scope of the Convention (subparagraph (d)).

There was a lively debate in the Group on whether or not to exclude agreements on the choice of court. The majority in the end favoured exclusion for the following reasons: the matter lies within the sphere of procedure and forms part of the administration of justice (exercise of State authority); rules on this matter might have endangered the ratification of the Convention. It was also noted that rules on jurisdiction are a matter of public policy and there is only marginal scope for freedom of contract. Each court is obliged to determine the validity of the agreement on the choice of court in relation to its own law, not in relation to the law chosen. Given the nature of these provisions and their fundamental diversity, no rule of conflict can lead to a uniform solution. Moreover, these rules would in any case be frustated if the disputes were brought before a court in a third country. It was also pointed out that so far as concerns relationships within the Community, the most important matters (valitidity of the clause and form) are governed by Article 17 of the Convention of 27 September 1968. The outstanding points, notably those relating to consent, do not arise in practice, having regard to the fact that Article 17 provides that these agreements shall be in writing. Those delegations who thought that agreements on choice of court should be included within the Convention pointed out that the validity of such an agreement would often be dealt with by the application of the same law that governed the rest of the contract in which the agreement was included and should therefore be governed by the same law as the contract. In some systems of law, agreement as to choice of court is itself regarded as a contract and the ordinary choice of law rules are applied to discover the law applicable to such a contract.

As regards arbitration agreements, certain delegations, notably the United Kingdom delegation, had proposed that these should not be excluded from the Convention. It was emphasized that an arbitration agreement does not differ from other agreements as regards the contractual aspects, and that certain international Conventions do not regulate the law applicable to arbitration agreements, while others are inadequate in this respect. Moreover the international Conventions have not been ratified by all the Member States of the Community and, even if they had been, the problem would not be solved because these Conventions are not of universal applications. It was added that there would not be unification within the Community on this important matter in international commerce.

Other delegations, notably the German and French delegations, opposed the United Kingdom proposal,

emphasizing particularly that any increase in the number of conventions in this area should be avoided, that severability is accepted in principle in the draft and the arbitration clause is independent, that the concept of 'closest ties' difficult to apply to arbitration agreements, that procedural and contractual aspects are difficult to separate, that the matter is complex and the experts' proposals show great divergences; that since procedural matters and those relating to the question whether a dispute was arbitrable would in any case be excluded, the only matter to be regulated would be consent; that the International Chamber of Commerce — which, as everyone knows, has great experience in this matter — has not felt the need for further regulation.

Having regard to the fact that the solutions which can and have been considered generally for arbitration are very complex and show great disparity, a delegate proposed that this matter should be studied separately and any results embodied in a Protocol. The Group adopted this proposal and consequently excluded arbitration agreements from the scope of the uniform rules, subject to returning to an examination of these problems and of agreements on the choice of court once the Convention has been finally drawn up.

The exclusion of arbitration agreements does not relate solely to the procedural aspects, but also to the formation, validity and effects of such agreements. Where the arbitration clause forms an integral part of a contract, the exclusion relates only to the clause itself and not to the contract as a whole. This exclusion does not prevent such clauses being taken into consideration for the purposes of Article 3 (1).

6. Subparagraph (e) provides that the uniform rules shall not apply to questions governed by the law of companies, and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organization or winding-up of companies, and other bodies corporate or unincorporate and the personal legal liability of officers and members as such for the obligations of the company or body.

This exclusion in no way implies that this aspect was considered unimportant in the economic life of the Member States of the Community. Indeed, this is an area which, by virtue of its economic importance and the place which it occupies in many provisions of the Treaty establishing the EEC, appears to have the strongest possible reasons for not being separated from Community work in the filed of unification of private international law, notably in conflicts of laws pertaining to economic relations.

Notwithstanding the foregoing considerations, the Group had thought it inadvisable, even in the original preliminary draft, to include companies, firms and legal persons within the scope of the Convention, especially in view of the work being done on this subject within the European Communities ([12]).

Confirming this exclusion, the Group stated that it affects all the complex acts (contractual, administrative, registration) which are necessary to the creation of a company or firm and to the regulation of its internal organization and winding-up, i.e. acts which fall within the scope of company law.

On the other hand, acts or preliminary contracts whose sole purpose is to create obligations between interested parties (promoters) with a view to forming a company or firm are not covered by the exclusion.

The subject may be a body with or without legal personality, profit-making or non-profit-making. Having regard to the differences which exist, it may be that certain relationships will be regarded as within the scope of company law or might be treated as being governed by that law (for example, société de droit civil, nicht-rechtsfähiger Verein, partnership, Vennootschap onder firma, etc.) in some countries but not in others. The rule has been made flexible in order to take account of the diversity of national laws.

Examples of 'internal organization' are: the calling of meetings, the right to vote, the necessary quorum, the appointment of officers of the company or firm, etc. 'Winding-up' would cover either the termination of the company or firm as provided by its constitution or by operation of law, or its disappearance by merger or other similar process.

At the request of the German delegation the Group extended the subparagraph (e) exclusion to the personal liability of members and organs, and also to the legal capacity of companies or firms. On the other hand the Group did not adopt the proposal that mergers and groupings should also be expressly mentioned, most of the delegations being of the opinion that mergers and groupings were already covered by the present wording.

As regards legal capacity, it should be made clear that the reference is to limitations, which may be imposed by law on companies and firms, for example in respect of acquisition of immovable property, not

to *ultra vires* acts by organs of the company or firm, which fall under subparagraph (f).

7. The solution adopted in subparagraph (f) involves the exclusion from the scope of the uniform rules of the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party.

The exclusion affects only the relationships between the principial and third parties, more particularly the question whether the principal is bound *vis-à-vis* third parties by the acts of the agent in specific cases. It does not affect other aspects of the complex field of agency, which also extends to relationships between the principal and the agent and to agent-third party relationships. The exclusion is justified by the fact that it is difficult to accept the principle of freedom of contract on this point. On the other hand, principal-agent and agent-third party relationships in no way differ from other obligations and are therefore included within the scope of the Convention in so far as they are of a contractual nature.

8. The exception in subparagraph (g) concerns 'trusts' in the sense in which they are understood in the common law countries. The English word 'trust' is properly used to define the scope of the exclusion. On the other hand similar institutions under continental laws falls within the provisions of the Convention because they are normally contractual in origin. Nevertheless it will be open to the judge to treat them in the same way as the institutions of the common law countries when they exhibit the same characteristics.

9. Under subparagraph (h) the uniform rules do not apply to evidence and procedure, subject to Article 14.

This exclusion seems to require no comment. The scope and extent to which the exclusion is subject to limitation will be noted in the commentary on Article 14.

10. The question whether contracts of insurance should or should not be included in the sope of the uniform rules was discussed at length by the Group. The solution finally adopted was that which appears in paragraph 3.

Under this paragraph the provisions of the Convention do not apply to contracts of insurance covering risks situated in the territories of Member States of the European Economic Community. This exclusion takes account of work being done within the Community in the field of insurance. Thus the uniform rules apply to contracts of insurance covering risks situate outside those territories. The States are nevertheless free to apply rules based on those in the Convention even to risks situate in the Community, subject to the Community rules which are to be established.

Insurance contracts, where they cover risks situate outside the Community, may also, in appropriate cases, fall under Article 5 of the Convention.

To determine whether a risk is situate in the territories of the Member States of the Community the last phrase of paragraph 3 states that the judge is required to apply his own national law. This expression means the rules in force in the judge's country, to the exclusion of the rules of private international law as stated by Article 15 of the Convention.

11. By virtue of paragraph 4 of Article 1 the exclusion provided for in paragraph 3 does not affect reinsurance contracts. In fact these contracts do not raise the same problems as contracts of insurance, where the need to protect the persons insured must necessarily be taken into account. Thus the uniform rules apply to reinsurance contracts.

Article 2

Application of law of non-Contracting States

This Article underlines the universal character of the uniform rules laid down in this Convention. The Convention does not apply only in situations involving some form of connection with one or other of the Contracting States. It is of universal application in the sense that the choice of law which it lays down may result in the law of a State not party to the Convention being applied. By way of example, under Article 3, parties to a contract may opt for the law of a third State, and in the absence of any choice, that same law may be applied to the contract under Articles 4 and 5 if it is with that State that the contract has the closest links. In other words, the Convention is a uniform measure of private international law which will replace the rules of private international law in force in each of the Contracting States, with regard to the subject matter which it covers and subject to any other convention to which the Contracting States are party (see Article 21).

The solution is consistent with that adopted in most of the Hague Conventions on private international law that deal with choice of laws *(stricto sensu)*. The text follows that of the Hague Convention drafted during the XIIIth session (Conventions of 14 March 1978 on the law applicable to matrimonial property regimes, Article 2, and on the law applicable to agency, Article 4).

TITLE II

UNIFORM RULES

Article 3

Freedom of choice

1. The rule stated in Article 3 (1) under which the contract is governed by the law chosen by the parties simply reaffirms a rule currently embodied in the private international law of all the Member States of the Community and of most other countries.

In French law the rule conferring this power (or 'autonomie de la volonté' as it is called) upon the parties is founded on case law dating back to the judgment delivered on 5 December 1910 by the Court of Cassation in *American Trading Company v. Quebec Steamship Company Limited.* The French draft law of 1967 to supplement the Civil Code in matters of private international law merely confirms the state of French law in this matter by providing in the first paragraph of Article 2312: 'Contracts of an international character and the obligations arising from them shall be subject to the law under which the parties intended to place themselves.'

The firm establishment of the rule in French case law was accompanied by corresponding developments in legal theory. The most eminent contemporary writers declare themselves fundamentally in favour of the principle of the parties' freedom of contract in determining the law applicable to the contract, or, according to the opinion of some legal writers, the 'localization' of the contract in a specific legal system ([13]).

The same applies to the law of the German Federal Republic, where the subject of contractual obligations was not dealt with by the legislature in the final version of the 'introductory law' of 1896. The rule conferring upon the parties the power to specify the law applicable to their contract is nevertheless founded on case law which has been developed and strengthened in recent decades despite the opposition of the great majority of earlier German legal theorists. At all events present-day theory is in entire agreement with the position taken by the case law ([14]).

Unlike the situation in France and Germany, in Italy the principle of freedom of contract of the contracting parties was expressly enacted as early as 1865 in the preliminary provisions of the Civil Code. It is currently based upon the first paragraph of Article 25 of the preliminary provisions of the 1942 Civil Code, in which the freedom of the parties to choose the law applicable to their contract is formally accepted, as in Articles 9 and 10 of the Navigation Code, where it is provided that the power of the parties to designate the applicable law may also be exercised in seamen's contracts and in contracts fot the use of ships, boats and aircraft. According to the preponderant view of theorists and consistent decisions by the Court of Cassation, the law applicable to the contract must be determined primarily on the basis of the express will of the parties; only in default of such a nomination will the law of the contract be determined by the connecting factors stipulated in the abovementioned provisions ([15]).

As regards Belgium, Luxembourg and the Netherlands, the rule that the contracting parties enjoy freedom of contract in choosing the applicable law has also been sanctioned by judicial practice and by contemporary legal writers.

In its judgment of 24 February 1938 in *SA Antwerpia v. Ville d'Anvers* the Belgian Court of Cassation stated for the first time, in terms clearly suggested by the French judgment of 5 December 1910, that: 'the law applicable to contracts, both to their formation and their conditions and effects, (is) that adopted by the parties' ([16]). Several Belgian writers have contributed to the firm establishment of the rule in theory and in practice ([17]).

In the Netherlands the Hoge Raad put the finishing touches to the developments in case law in this field in its judgment of 13 May 1966 in the *Alnati* case. The previous decisions of the Supreme Court and the differing views of writers on the precise scope of the freedom of contract rule would not have permitted definition of the state of Netherlands law in this matter with sufficient certainty ([18]).

At all events the 1969 Benelux Treaty on uniform rules for private international law, even though the signatory States have not pursued its entry into force, is clear evidence of their present views on this subject. Article 13 (1) of the uniform law states: 'Contracts shall be governed by the law chosen by the parties as regards both essential and ancillary provisions'.

English law recognizes that the parties to a contract are free to choose the law which is to govern it ('the proper law of the contract'). This principle of freedom of choice is founded on judicial decisions ([19]). In *Vita Food Products Inc. v. Unus Shipping Co. Ltd* ([20]) Lord Wright indicated that the parties' choice must be *bona fide* and legal and could be avoided on the ground of public policy. In certain areas the parties' freedom of choice is subject to limitations imposed by statute ([20a]), the most important of these being in the field of exemption clauses ([20b]).

The law of Scotland is to similar effect ([20c]) and Irish law draws its inspiration from the same principles as the English and Scottish legal systems.

Under English law (and the situation is similar in Scots law and Irish law), in the case where the parties have not expressly chosen the law to govern their contract ([20d]), the court will consider whether the parties' choice of law to be applied can be inferred from the terms of the contract. The most common case in which the court may infer a choice of the proper law is where the contract contains an arbitration or choice of jurisdiction clause naming a particular country as the seat of arbitration or litigation. Such a clause gives rise to an argument that the law of the country chosen should be applied as the proper law of the contract. This inference however is not conclusive and can be rebutted by any contrary inferences which may be drawn from the other provisions of the contract and the relevant surrounding circumstances ([20e]).

Finally, as regards Denmark, the principle of the freedom of contracting parties to choose the law applicable to their contract already seems to have inspired several opinions by Supreme Court judges during this century. Today at all events this principle forms the basis of Danish case law, as can be seen from the judgment in 1957 in *Baltica v. M. J. Vermaas Scheepvaart bedrijf*, with full support from legal writers ([21]).

2. The principle of the parties' freedom to choose the law applicable is also supported both by arbitration decisions and by international treaties designed to unify certain rules of conflict in relation to contracts.

The rule, which had already been cited in 1929 by the Permanent Court of International Justice in its judgment in the case of the *Brazilian Loans* ([22]), very clearly underlay the award made by the arbitration tribunal on 29 August 1958 in *Saudi Arabia v. Arabian American Oil Company (Aramco)* in which it was stated that the 'principles of private international law to be consulted in order to find the law applicable are those relating to freedom of choice, by virtue of which, in an agreement which is international in character, the law expressly chosen by the parties must be applied first . . .' ([23]). Similarly in the arbitration findings given on 15 March 1963 in *Sapphire International Petroleums Ltd v. National Iranian Oil Company*, the sole arbitrator, Mr Cavin, affirmed that it is the will of the parties that determines the law applicable in matters of contract ([24]). The rule was reaffirmed even more recently by the sole arbitrator, Mr Dupuy, in the award which he made on 19 January 1977 in *Libyan Arab Republic v. California Asiatic Oil Company and Texaco Overseas Petroleum Company* ([25]).

As regards international treaties, the rule of freedom of choice has been adopted in the Convention on the law applicable to international sales of goods concluded at the Hague on 15 June 1955 which entered into force on 1 September 1964. Article 2 of this Convention, which is in force among several European countries, provides that: 'The sale shall be governed by the internal law of the country nominated by the contracting parties.'

Article VIII of the European Convention on international commercial arbitration concluded at Geneva on 21 April 1961, which entered into force on 7 January 1964, provides that the parties are free to determine the law which the arbitrators must apply in a dispute.

The same principle forms the basis of the 1965 Convention for the settlement of disputes relating to investments between States and nationals of other States, which entered into force on 14 October 1966, when it provides in Article 42 that 'the Tribunal shall rule on the dispute in accordance with the rules of law adopted by the parties'.

The Hague Convention of 14 March 1978 on the law applicable to agency provides in Article 5 that 'the internal law chosen by the principal and the agent is to govern the agency relationship between them' ([26]).

3. The parties' choice must be express or be demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. This interpretation, which emerges from the sesond sentence of Article 3 (1), has an important consequence.

The choice of law by the parties will often be express but the Convention recognizes the possibility that the Court may, in the light of all the facts, find that the parties have made a real choice of law although this is not expressly stated in the contract. For example, the contract may be in a standard form which is known to be governed by a particular system of law even though there is no express statement to this effect, such as a Lloyd's policy of marine insurance. In other cases a previous course of dealing between the parties under contracts containing an express choice of law may leave the court in no doubt that the contract in question is to be governed by the law previously chosen where the choice of law clause has been omitted in circumstances which do not indicate a deliberate change of policy by the parties. In some cases the choice of a particular forum may show in no uncertain manner that the parties intend the contract to be governed by the law of that forum, but this must always be subject to the other terms of the cntract and all the circumstances of the case. Similarly references in a contract to specific Articles of the French Civil Code may leave the court in no doubt that the parties have deliberately chosen French law, although there is no expressly stated choice of law. Other matters that may impel the court to the conclusion that a real choice of law has been made might include an express choice of law in related transactions between the same parties, or the choice of a place where disputes are to be settled by arbitration in circumstances indicating that the arbitrator should apply the law of that place.

This Article does not permit the court to infer a choice of law that the parties might have made where they had no clear intention of making a choice. Such a situation is governed by Article 4.

4. The last sentence of Article 3 (1) acknowledges that the parties' choice of the law applicable may relate to the whole of the contract or to only part thereof. On the question whether severability (dépeçage) was to be allowed, some experts observed that the contract should in principle be governed by one law, unless that contract, although apparently a single contract, consists in reality of several contracts or parts which are separable and independent of each other from the legal and economic points of view. In the opinion of these experts, no reference to severability should have been made in the text of the Convention itself. In the view of others, on the contrary, severability is directly linked with the principle of freedom of contract and so would be difficult to prohibit. Nevertheless when the contract is severable the choice must be logically consistent, i. e. it must relate to elements in the contract which can be governed by different laws without giving rise to contradictions. For example, an 'index-linking clause' may be made subject to a different law; on the other hand it is unlikely that repudiation of the contract for non-performance would be subjected to two different laws, one for the vendor and the other for the purchaser. Recourse must be had to Article 4 of the Convention if the chosen laws cannot be logically reconciled.

In the opinion of these experts the danger that the argument of severability might be used to avoid certain mandatory provisions is eliminated by the operation of Article 7. The experts concerned also emphasized that severability should not be limited to cases of express choice of law.

The solution adopted in the last sentence of Article 3 (1) is prompted by exactly this kind of idea. The Group did not adopt the idea that the judge can use a partial choice of law as the basis for a presumption in favour of one law invoked to govern the contract in its entirety. Such an idea might be conducive to error in situations in which the parties had reached agreement on the choice of law solely on a specific point. Recourse must be had to Article 4 in the case of partial choice.

5. The first sentence of Article 3 (2) leaves the parties maximum freedom as to the time at which the choice of applicable law can be made.

It may be made either at the time the contract is concluded or at an earlier or later date. The second sentence of paragraph 2 also leaves the parties maximum freedom as to amendment of the choice of applicable law previously made.

The solution adopted by the Group in paragraph 2 corresponds only in part to what seems to be the current state of the law on this point in the Member States of the Community.

In the Federal Republic of Germany and in France the choice of applicable law by the parties can apparently be made even after the contract has been concluded, and the courts sometimes deduce the applicable law from the parties' attitude during the proceedings when they refer with clear agreement to a specific law. The power of the parties to vary the choice of law applicable to their contract also seems to be very widely accepted ([27]).

Case law in the Netherlands seems to follow the same line of interpretation ([28]).

In Italy, however, the Court of Cassation (sitting as a full court) stated in its judgment of 28 June 1966 No 1680 in *Assael Nissim v. Crespi* that; 'the parties' choice of applicable law is not admissible if made after the contract has been drawn up' ([29]).

According to this dictum, which Italian commentators do not wholly support ([30]) the choice can be made only at the time the contract is concluded. Once the choice is made, the parties no longer have the option of agreeing to nominate a law other than that nominated at the time of concluding the contract.

In the laws of England and Wales, Scotland, Northern Ireland and Ireland, there is no clear authority as to the law which governs the possibility of a change in the proper law.

6. The liberal solution adopted by the Group seems to be in accordance with the requirement of logical consistency. Once the principle of freedom of contract has been accepted, and having regard to the fact that the requirement of a choice of law by the parties may arise both at the time of conclusion of the contract and after that time, it seems quite logical that the power of the parties should not be limited solely to the time of conclusion of the contract. The same applies to a change (by a new agreement between the parties) in the applicable law previously chosen.

As to the way in which the choice of law can be changed, it is quite natural that this change should be subject to the same rules as the initial choice.

If the choice of law is made or changed in the course of proceedings the question arises as to the limits within which the choice or change can be effective. However, the question falls within the ambit of the national law of procedure, and can be settled only in accordance with that law.

7. The second sentence of Article 3 (2) states that a change in the applicable law after the contract has been concluded shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties. The purpose of the reservation concerning the formal validity of the contract is to avoid a situation whereby the agreement between the parties to subject the contract to a law other than that which previously governed it could create doubts as to the validity of the contract during the period preceding the agreement between the parties. The preservation of third-party rights appears to be entirely justified. In certain legal systems, a third party may have acquired rights in consequence of a contract concluded betwen two other persons. These rights cannot be affected by a subsequent change in the choice of the applicable law.

8. Article 3 (3) provides that the choice of a foreign law by the parties, whether or not accompanied by the choice of a foreign tribunal, shall not, where all other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of the law of that country which cannot be derogated from by contract, hereinafter called 'mandatory rules'.

This solution is the result of a compromise between two lines of argument which have been diligently pursued within the Group: the wish on the one hand of certain experts to limit the parties' freedom of choice embodied in this Article by means of a correcting factor specifying that the choice of a foreign law would be insufficient *per se* to permit the application of that law if the situation at the moment of choice did not involve another foreign element, and on the other the concern of other experts, notably the United Kingdom experts, that such a correcting factor would be too great an obstacle to the freedom of the parties in situations in which their choice appeared justified, made in good faith, and capable of serving interests worthy of protection. In particular these experts emphasized that departures from the principle of the parties' freedom of choice should be authorized only in exceptional circumstances, such as the application of the mandatory rules of a law other than that chosen by the parties; they also gave several examples of cases in which the choice of a foreign law by the parties was fully justified, although there was apparently no other foreign element in the situation.

The Group recognized that this concern was well founded, while maintaining the principle that the choice by the parties of a foreign law where all the other elements relevant to the situation at the time of the choice are connected with one country only shall not prejudice the application of the mandatory rules of the law of that country.

9. Article 3 (4) merely refers questions relating to the existence and validity of the parties' consent as to the choice of the law applicable to the provisions of Articles 8, 9 and 11. We will return to these matters in the comments on those Articles.

Article 4

Applicable law in the absence of choice

1. In default of an express or implied choice by the parties, there is at present no uniform way of determining the law applicable to contracts in the legal systems of the Member States of the Community (31).

In French and Belgian law no distinction is to be drawn between the express and hypothetical (or presumed) will of the parties. Failing an express choice of applicable law, the courts look for various 'pointers' capable of showing that the contract is located in a particular country. This localization is sometimes regarded subjectively as equivalent to the probable wish of the parties had such a wish been expressed, sometimes objectively as equivalent to the country with which the transaction is most closely connected (32).

The objective concept seems to be receiving more and more support from legal writers and from case law. Following this concept, the Paris Court stated in its judgment of 27 January 1955 *(Soc. Jansen v. Soc. Heurtey)* that, in default of an indication of the will of the parties, the applicable law 'is determined objectively by the fact that the contract is located by its context and economic aspects in a particular country, the place with which the transaction is most closely connected being that in which the contract is to be performed in fulfilment of the obligation characteristic of its nature' (33).

It is this concept of the location of the contracts that is referred to, in terms clearly modelled on the above judgment, in the second paragraph of Article 2313 of the French draft, which states that in default of the expressed will of the parties 'the contract is governed by the law with which it is most closely connected by its economic aspects, and notably by the main place of performance'.

Similarly, in German law the solution adopted by the courts in determining the law of the contract in the absence of choice by the parties is based largely upon the search for 'pointers' capable of showing the 'hypothetischer Parteiwille', the presumed will of the parties, having regard to the general interests at stake in each particular case. If this gives no result, the law applicable to the contract according to German case law is determined by the place of performance: more precisely, by the place of performance of each of the obligations arising from the contract, because the German courts take the view that if the various contractual obligations are to be performed in different countries, each shall be governed by the law of the country in which it is performed (34).

In English law where the parties have not expressly chosen the proper law and no choice can be inferred, the law applicable to the contract is the system of law with which the transaction has its 'closest and most real connection' (35). In such a case the judge does not seek to ascertain the actual intensions of the contracting parties, because that is non-existent, but seeks 'to determine for the parties what is the proper law which, as just and reasonable persons, they ought to have intended if they had thought about the question when they made the contract' (36). In this inquiry, the court has to consider all the circumstances of the case. No one factor is decisive; instead a wide range of factors must be taken into account, such as for instance, the place of residence or business of the parties, the place of performance, the place of contracting and the nature and subject-matter of the contract.

Scots law adopts a similar approach (36a), as does the law of Ireland.

In Italian law, where the presumed will of the parties plays no part, the matter is settled expressly and directly by the legislature. Failing a choice of law by the parties, the obligations arising from the contract are governed by the following:

(a) contracts for employment on board foreign ships or aircraft, by the national law of the ship or aircraft (Naval Code Article 9);

(b) marine, domestic and air hiring contracts, charters and transport contracts, by the national law of the ship or aircraft (Naval Code Article 10);

(c) all other contracts, by the national law of the contracting parties, if common to both; otherwise by the law of the place where the contract was concluded (preliminary provisions of the Civil Code, Article 25, first subparagraph).

The abovementioned laws are of subsidiary effect only; they apply only in default of an expression of the parties' will as to the law applicable. Italian case law so holds and legal writers concur with this view (37).

To conclude this short survey, only the provisions of the third and fourth paragraphs of Article 13 of the 1969 Benelux Treaty which has not entered into force remain to be mentioned. According to the third paragraph, in default of a choice by the parties 'the

contract shall be governed by the law of the country with which it is most closely connected', an according to the fourth paragraph 'when it is impossible to determine that country, the contract shall be governed by the law of the country in which it was concluded'. One may note a tendency in Netherlands case law to formulate special rules of reference for certain types of contract (see 'Journal du Droit Int. 1978, pp. 336 to 344' and 'Neth. Int. Law Rev. 1974, pp. 315 to 316'), i.e. contracts of employment, agency contracts and contracts of carriage.

The foregoing survey has shown that, with the sole exception of Italy, where the subsidiary law applicable to the contract is determined once and for all by hard-and-fast connecting factors, all the other Community countries have preferred and continue to prefer a more flexible approach, leaving the judge to select the preponderant and decisive connecting factor for determining the law applicable to the contract in each specific case among the various elements of the contract and the circumstances of the case.

2. Having considered the advantages and disadvantages of the solutions adopted by the legislatures and the case law of the Member States of the Community and after analyzing a range of ideas and alternatives advanced both by the rapporteur and by several delegates, the Group agreed upon the uniform rule embodied in Article 4.

The first paragraph of this Article provides that, in default of a choice by the parties, the contract shall be governed by the law of the country with which it has the closest connection.

In order to determine the country with which the contract is most closely connected, it is also possible to take account of factors which supervened after the conclusion of the contract.

In fact the beginning of the first paragraph does not mention default of choice by the parties; the expression used is 'to the extent that the law applicable to the contract has not been chosen in accordance with Article 3'. The use of these words is justified by reference to what has been said in paragraph 4 of the commentary on Article 3.

However, the flexibility of the general principle established by paragraph 1 is substantially modified by the presumptions in paragraphs 2, 3 and 4, and by a strictly limited exception in favour of severability at the end of paragraph 1.

3. According to Article 4 (2), it is presumed that the contract has the closest connection with the country in which the party who is to effect the performance which is characteristic of the contract has his habitual residence at the time when the contract is concluded, or, in the case of a body corporate or unincorporate, its central administration. If the contract is concluded by that party in the course of his trade or profession, the country concerned is that in which his principal place of business is situated or, if the contract is to be performed through a place of business other than the principal place of business, the country in which that other place of business is situated. Article 4 (2) establishes a presumption which may be rebutted in accordance with Article 4 (5).

The kind of idea upon which paragraph 2 is based is certainly not entirely unknown to some specialists. It gives effect to a tendency which has been gaining ground both in legal writings and in case law in many countries in recent decades ([18]). The submission of the contract, in the absence of a choice by the parties, to the law appropriate to the characteristic performance defines the connecting factor of the contract from the inside, and not from the outside by elements unrelated to the essence of the obligation such as the nationality of the contracting parties or the place where the contract was concluded.

In addition it is possible to relate the concept of characteristic performance to an even more general idea, namely the idea that his performance refers to the function which the legal relationship involved fulfils in the economic and social life of any country. The concept of characteristic performance essentially links the contract to the social and economic environment of which it will form a part.

Identifying the characteristic performance of a contract obviously presents no difficulty in the case of unilateral contracts. By contrast, in bilateral (reciprocal) contracts whereby the parties undertake mutual reciprocal performance, the counter-performance by one of the parties in a modern economy usually takes the form of money. This is not, of course, the characteristic performance of the contract. It is the performance for which the payment is due, i.e. depending on the type of contract, the delivery of goods, the granting of the right to make use of an item of property, the provision of a service, transport, insurance, banking operations, security, etc., which usually constitutes the centre of gravity and the socio-economic function of the contractual transaction.

As for the geographical location of the characteristic performance, it is quite natural that the country in

which the party liable for the performance is habitually resident or has his central administration (if a body corporate or unincorporate) or his place of business, according to whether the performance in question is in the course of his trade or profession or not, should prevail over the country of performance where, of course, the latter is a country other than that of habitual residence, central administration or the place of business. In the solution adopted by the Group the position is that only the place of habitual residence or of the central administration or of the place of business of the party providing the essential performance is decisive in locating the contract.

Thus, for example, in a banking contract the law of the country of the banking establishment with which the transaction is made will normally govern the contract. It is usually the case in a commercial contract of sale that the law of the vendor's place of business will govern the contract. To take another example, in an agency contract concluded in France between a Belgian commercial agent and a French company, the characteristic performance being that of the agent, the contract will be governed by Belgian law if the agent has his place of business in Belgium ([39]).

In conclusion, Article 4 (2) gives specific form and objectivity to the, in itself, too vague concept of 'closest connection'. At the same time it greatly simplifies the problem of determining the law applicable to the contract in default of choice by the parties. The place where the act was done becomes unimportant. There is no longer any need to determine where the contract was concluded, with all the difficulties and the problems of classification that arise in practice. Seeking the place of performance or the different places of performance and classifying them becomes superfluous.

For each category of contract it is the characteristic performance that is in principle the relevant factor in applying the presumption for determining the applicable law, even in situations peculiar to certain contracts, as for example in the contract of guarantee where the characteristic performance is always that of the guarantor, whether in relation to the principal debtor or the creditor.

To counter the possibility of changes in the connecting factor ('conflits mobiles') in the application of paragraph 2, it has been made clear that the country of habitual residence or of the principal place of business of the party providing the characteristic performance is the country in which he is habitually resident or has his central administration or place of business, as appropriate, 'at the time of conclusion of the contract'.

According to the last part of paragraph 2, if the contract prescribes performance by an establishment other than the principal place of business, it is presumed that the contract has the closest connection with the country of that other establishment.

4. Article 4 (3) establishes that the presumption in paragraph 2 does not operate to the extent that the subject of the contract is a right in immovable property or a right to use immovable property. It is presumed in this case that the contract is most closely connected with the country in which the immovable property is situated.

It is advisable to state that the provision in question merely establishes a presumption in favour of the law of the country in which the immovable property is situate. In other words this is a presumption which, like that in paragraph 2, could also be rebutted if circumstances so required.

For example, this presumption could be rebutted if two persons resident in Belgium were to make a contract for renting a holiday home on the island of Elba (Italy). It might be thought in such a case that the contract was most closely connected with the country of the contracting parties' residence, not with Italy.

Finally it should be stressed that paragraph 3 does not extend to contracts for the construction or repair of immovable property. This is because the main subject-matter of these contracts is the construction or repair rather than the immovable property itself.

5. After a long and animated discussion the Group decided to include transport contracts within the scope of the convention. However, the Group deemed it inappropriate to submit contracts for the carriage of goods to the presumption contained in paragraph 2, having regard to the peculiarities of this type of transport. The contract for carriage of goods is therefore made subject to a presumption of its own, namely that embodied in paragraph 4. This presumption may be rebutted in accordance with Article 4 (5).

According to this fourth paragraph it is presumed in the case of contracts for the carriage of goods that if the country in which the carrier has his principal place of business at the time the contract is concluded is also the country of the place of loading or unloading or of the principal place of business of the consignor, the contract is most closely connected with that country. The term 'consignor' refers in general to any person who consigns goods to the

carrier (Afzender, Aflader, Verzender, Mittente, Caricatore, etc.).

Thus the paragraph 4 presumption rests upon a combination of connecting factors. To counter the possibility of changes in the connecting factor in applying the paragraph, it has been made clear here also that the reference to the country in which the carrier has his principal place of business must be taken to refer to the carrier's place of business 'at the time the contract is concluded'.

It appears that for purposes of the application of this paragraph the places of loading and unloading which enter into consideration are those agreed at the time when the contract is concluded.

It often happens in contracts for carriage that a person who contracts to carry goods for another does not carry them himself but arranges for a third party to do so. In Article 4 (4) the term 'the carrier' means the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.

In addition, the third sentence of paragraph 4 provides that in applying that paragraph single-voyage charterparties and other contracts whose main purpose is the carriage of goods shall be treated as contracts for the carriage of goods. The wording of paragraph 4 is intended to make it clear that charterparties may be considered to be contracts for the carriage of goods in so far as that is their substance.

6. Contracts for the carriage of passengers remain subject to the general presumption, i.e. that provided for in Article 4 (2).

This solution was adopted by majority vote within the Group. Certain delegations favoured the special presumption emodied in paragraph 4, arguing that, as with other types of transport, the need was for a combination of connecting factors, in view of the fact that reference solely to the place where the carrier, who provides the characteristic performance, has his principal place of business may not be a significant connecting factor: by way of example they cited the case of transportation of French or English passengers between London and Paris by an American airline. It was also emphasized that in a mixed contract (passengers and goods) the difficulty of applying two different laws would arise.

Nevertheless the other delegations were against the special presumption, their principal arguments being: the application of several laws to passengers on the same journey would involve serious difficulties; the formulation of paragraph 4 is such that it would hardly ever apply to carriage of passengers, so recourse would usually be had to the first paragraph of Article 4, which does not give the judge sufficiently precise criteria for decision; contracts of carriage normally contain a clause conferring jurisdiction on the court of the carrier's principal place of business, and paragraph 2 would operate so that the law of the court of competent jurisdiction would coincide with the applicable law.

In any event it should be stated that the judge will not be able to exclude consideration of the country in which the carrier has his principal place of business in seeking the places with which the contract is most closely connected.

Finally it is useful to note that the Group repeatedly stressed in the course of the discussions on transport problems that the international conventions took precedence in this matter.

7. Article 4 (2) does not apply when the characteristic performance connot be determined. The case then falls under paragraph 1, i.e. the contract will be governed by the law of the country with which it is most closely connected.

The first part of Article 4 (5) contains precisely that provision.

However, that paragraph also provides for the possibility of disregarding the presumptions in paragraphs 2, 3, and 4 when all the circumstances show the contract to have closer connections with another country. In this case the law of that other country is applied.

The grounds for the latter provision are as follows. Given the entirely general nature of the conflict rule contained in Article 4, the only exemptions to which are certain contracts made by consumers and contracts of employment, it seemed essential to provide for the possibility of applying a law other than those referred to in the presumptions in paragraphs 2, 3 and 4 whenever all the circumstances show the contract to be more closely connected with another country.

Article 4 (5) obviously leaves the judge a margin of discretion as to whether a set of circumstances exists in each specific case justifying the non-application of the presumptions in paragraphs 2, 3 and 4. But this is the inevitable counterpart of a general conflict rule intended to apply to almost all types of contract.

8. Article 4 (1) allows parts of the contract to be severed under certain conditions. The last sentence of this paragraph provides that if one part of the contract can be separated from the rest and is more closely connected with another country, then by way of exception the law of that other country can be applied to that part of the contract.

Discussion of the matter within the Group revealed that no delegation wished to encourage the idea of severability (dépeçage). However, most of the experts were in favour of allowing the court to effect a severance, by way of exception, for a part of the contract which is independent and separable, in terms of the contract and not of the dispute, where that part has a closer connection with another country (for example, contracts for joint venture, complex contracts).

As to whether or not the possibility of severance should be mentioned in the text of the convention itself most delegations were in favour of its being mentioned. It was emphasized in particular that mere reference to the matter in the report would be insufficient by itself, because in some Member States of the Community it is not usual to take account of the report. It was also emphasized that to include it in the text would reduce the risk of variation in the application of the convention on this point, because the text would specify the conditions under which severance was allowed.

The wording of the last sentence in paragraph 1 embodies precisely this idea. The words 'by way of exception' are therefore to be interpreted in the sense that the court must have recourse to severance as seldom as possible.

9. It should be noted that the presumptions mentioned in paragraphs 2, 3 and 4 of Article 4 are only rebuttable presumptions.

Article 5

Certain consumer contracts

1. Article 5 of the convention establishes a specific conflict rule for certain contracts made by consumers. Most of the experts who have participated in the Group's work since 1973 have taken the view that consumer protection, the present aim of several national legislatures, would entail a reversal of the connecting factor provided for in Article 4 or a modification of the principle of freedom of choice provided for in Article 3. On the one hand the choice of the parties should not adversely affect the mandatory provisions of the State in which the consumer is habitually resident; on the other, in this type of contract it is the law of the buyer (the weaker party) which should normally prevail over that of the seller.

2. The definition of consumer contracts corresponds to that contained in Article 13 of the Convention on jurisdiction and enforcement of judgments. It should be interpreted in the light of its purpose which is to protect the weaker party and in accordance with other international instruments with the same purpose such as the Judgments Convention. Thus, in the opinion of the majority of the delegations it will, normally, only apply where the person who supplies goods or services or provides credit acts in the course of his trade or profession. Similarly, the rule does not apply to contracts made by traders, manufacturers or persons in the exercise of a profession (doctors, for example) who buy equipment or obtain services for that trade or profession. If such a person acts partly within, partly outside his trade or profession the situation only falls within the scope of Article 5 if he acts primarily outside his trade or profession. Where the receiver of goods or services or credit in fact acted primarily outside his trade or profession but the other party did not know this and, taking all the circumstances into account should not reasonably have known it, the situation falls outside the scope of Article 5. Thus if the receiver of goods or services holds himself out as a professional, e.g. by ordering goods which might well be used in his trade or profession on his professional paper the good faith of the other party is protected and the case will not be governed by Article 5.

The rule extends to credit sales as well as to cash sales, but sales of securities are excluded. The Group has specifically avoided a more precise definition of 'consumer contract' in order to avoid conflict with the various definitions already given by national legislation. The rule also applies to the supply of services, such as insurance, as well as supply of goods.

3. Paragraph 2 embodies the principle that a choice of law in a consumer contract cannot deprive the consumer of the protection afforded to him by the law of the country in which he has his habitual residence. This principle shall, however, only apply under certain conditions set out in the three indents of paragraph 2.

The first indent reales to situations where the trader has taken steps to market his goods or services in the

country where the consumer resides. It is intended to cover *inter alia* mail order and door-step selling. Thus the trader must have done certain acts such as advertising in the press, or on radio or television, or in the cinema or by catalogues aimed specifically at that country, or he must have made business proposals individually through a middleman or by canvassing. If, for example, a German makes a contract in response to an advertisement published by a French company in a German publication, the contract is covered by the special rule. If, on the other hand, the German replies to an advertisement in American publications, even if they are sold in Germany, the rule does not apply unless the advertisement appeared in special editions of the publication intended for European countries. In the latter case the seller will have made a special advertisement intended for the country of the purchaser.

The Group expressly adopted the words 'steps necessary on his part' in order to avoid the classic problem of determining the place where the contract was concluded. This is a particularly delicate matter in the situations referred to, because it involves international contracts normally concluded by correspondence. The word 'steps' includes *inter alia* writing or any action taken in consequence of an offer or advertisement.

According to the second indent Article 5 shall apply in all situations where the trader or his agent has received the order of the consumer in the country in which the consumer has his habitual residence. This provision is a parallel to Article 3 (2) of the 1955 Hague Convention on international sales.

There is a considerable overlap between the first and the second indents. This overlap is, however, not complete. For example, the second indent applies in situations where the consumer has addressed himself to the stand of a foreign firm at a fair or exhibition taking place in the consumers country or to a permanent branch or agency of a foreign firm established in the consumer's country even though the foreign firm has not advertised in the consumer's country in a way covered by the first indent. The word 'agent' is intended to cover all persons acting on behalf of the trader.

The third indent deals with a situation which is rather special but where, on the other hand, a majority of delegations found a clear need for protecting the consumer under the provisions of Article 5. It covers what one might describe as 'border-crossing excursion-selling', i.e. for example, a situation where a store-owner in country A arranges one-day bus trips for consumers in a neighbouring country B with the main purpose of inducing the consumers to buy in his store. This is a practice well-known in some areas. The situation is not covered by the first indent because there it is required that the consumer has taken in his own country all the steps necessary on his part for the conclusion of the contract. The third indent is, unlike the rest of paragraph 2, limited to contracts for the sale of goods. The condition that the journey was arranged by the seller shall not be understood in the narrow way that the seller must himself have taken care of the transportation. It is sufficient that the seller has arranged the journey by way of an agreement with the transportation company.

In describing the situation in which Article 5 applies to consumer contracts, the Group has not followed the text of Article 13 (1) of the Judgments Convention as amended by the Accession Convention. On the one hand Article 5 contains no special provision for hire purchase contracts and loans on deferred terms. On the other hand, Article 13 of the Judgments Convention has no provisions parallel to the second and third indents of Article 5 (2).

4. Article 5 (3) introduces an exception to Article 4 of the Convention. According to this paragraph, notwithstanding the provisions of Article 4 and in the absence of choice in accordance with Article 3, a contract made by a consumer shall 'be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in the second paragraph of Article 5'.

The wording of paragraph 3 is sufficiently clear, and calls for no additional examination.

5. Under the terms of paragraph 4 thereof, Article 5 applies neither to contracts of carriage (a) nor to contracts relating to the supply of services provided exclusively in a country other than that in which the consumer is resident (b). The exclusion of contracts of carriage is justified by the fact that the special protective measures for which provision is made in Article 5 are not appropriate for governing contracts of this type. Similarly, in the case of contracts relating to the supply of services (for example, accommodation in a hotel, or a language course) which are supplied exclusively outside the State in which the consumer is resident, the latter cannot reasonably expect the law of his State of origin to be applied in derogation from the general rules of Articles 3 and 4. In the cases referred to under (b) the contract is more closely connected with the State in

which the other contracting party is resident, even if the latter has performed one of the acts described in paragraph 2 (advertising, for example) in the State in which the consumer is resident.

6. The intention of paragraph 5 is to ensure that Article 5, notwithstanding the exclusions made in paragraph 4, shall apply to contracts providing for what is in English normally called a 'package tour', i.e. an ordinary tourist arrangement consisting of a combination of travel and accommodation for an inclusive price. If a package tour starts with transportation from the country in which the consumer has his habitual residence the contract would not be excluded according to paragraph 4. The importance of paragraph 5 is, therefore, that it ensures application of Article 5 also in situations where the services provided for under a package tour start with transportation from another country. However, Article 5 of course only applies to package tours where the general conditions of paragraphs 1 and 2 are fulfilled, i.e. that the contract can be regarded as a consumer contract and that it is entered into in one of the situations mentioned in paragraph 2.

When formulating paragraph 5, the Group met with difficulty in defining a 'package tour'. The Group confined itself to a definition which underlines the main elements of this type of contract well known in practice, leaving it to the courts to solve any possible doubt as to the exact delimitation. The accommodation which is a part of a package tour must normally be separate from the transportation, and so paragraph 5 would not apply to the provision of a sleeper on a train.

Article 6

Individual employment contracts

1. Re-examination of the specific conflict rule in the matter of contracts of employment led the Group to make fundamental changes to this Article, which already appeared (as Article 5) in the original preliminary draft, and to harmonize its approach with that of the present Article 5 on consumer contracts.

In both cases the question was one of finding a more appropriate arrangement for matters in which the interests of one of the contracting parties are not the same as those of the other, and at the same time to secure thereby more adequate protection for the party who from the socio-economic point of view is regarded as the weaker in the contractual relationship.

2. On this basis, Article 6 (1) sets a limit on the parties' freedom to choose the applicable law, as permitted by Article 3 of the convention, affirming that this choice in contracts of employment 'shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice'.

The purpose of this text is as follows:

if the law applicable pursuant to paragraph 2 grants employees protection which is greater than that resulting from the law chosen by the parties, the result is not that the choice of this law becomes completely without effect. On the contrary, in this case the law which was chosen continues in principle to be applicable. In so far as the provisions of the law applicable pursuant to paragraph 2 give employees better protection than the chosen law, for example by giving a longer period of notice, these provisions set the provisions of the chosen law aside and are applicable in their place.

The mandatory rules from which the parties may not derogate consist not only of the provisions relating to the contract of employment itself, but also provisions such as those concerning industrial safety and hygiene which are regarded in certain Member States as being provisions of public law.

It follows from this text that if the law of the country designated by Article 6 (2) makes the collective employment agreements binding for the employer, the employee will not be deprived of the protection afforded to him by these collective employment agreements by the choice of law of another State in the individual employment contract.

Article 6 applies to individual employment contracts and not to collective agreements. Consequently, the fact that an employment contract is governed by a foreign law cannot affect the powers which an employee's trade union might derive from collective agreements in its own country.

The present wording of Article 6 speaks of 'contract of employment' instead of 'employment relationship' as in the original preliminary draft. It should be stated, however, that the rule in Article 6 also covers

the case of void contracts and also *de facto* employment relationships in particular those characterized by failure to respect the contract imposed by law for the protection of employees.

3. According to Article 6 (2), in the absence of choice by the parties and notwithstanding the provisions of Article 4, the contract of employment is governed as follows:

(a) by the law of the country in which the employee habitually carries out his work in performance of his contract, even if he is temporarily employed in another country; or

(b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated,

unless it appears from the cirumstances as a whole that the contract of employment is more closely connected with another country, in which case the law of that other country applies.

After a thorough examination of the various problems raised by contracts of employment in private international law, in the course of which particular consideration was given both to the draft Regulation prepared in this connection by the EEC Commission and to the latest trends in the legal literature and case law of the Member States of the Community, the Group finally adopted the following solution. If the employee habitually works in one and the same country the contract of employment is governed by the law of that country even if the employee is temporarily employed in another country. This is the rule which appears in subparagraph 2 (a). On the other hand, if the employee does not habitually work in one and the same country the contract of employment is governed by the law of the country in which the place of business through which he was engaged is situated. This is the rule which appears in subparagraph 2 (b).

These solutions obviously differ substantially from those which would have resulted from the Article 4 presumption.

However, the last sentence of Article 6 (2) provides that if it appears from the cirumstances as a whole that the contract is more closely connected with another country, the law of the latter country is applied.

4. As regards work done outside the jurisdiction of any State, the Group considered that the rule adopted in Article 6 could in principle be applied. In the case of work on an oil-rig platform on the high seas, the law of the country of the undertaking which engaged the employee should be applied.

The Group did not seek a special rule for the work of members of the crew on board a ship.

Article 7

Mandatory rules

1. The wording of Article 7 of the original preliminary draft has been considerably improved in the course of the Group's re-examination of the text of the convention since 1973, in order to permit a better interpretation in the various situations in which it will have to be applied.

The Group reiterated at its last meeting that Article 7 merely embodies principles which already exist in the laws of the Member States of the Community.

The principle that national courts can give effect under certain conditions to mandatory provisions other than those applicable to the contract by virtue of the choice of the parties or by virtue of a subsidiary connecting factor, has been recognized for several years both in legal writings and in practice in certain of our countries and elsewhere.

For example, the principle was recognized in the abovementioned 1966 judgment of the Netherlands Supreme Court in the *Alnati* case (cited *supra*, commentary on Article 3 (1)) in which the Court said that, although the law applicable to contracts of an international character can, as a matter of principle, only be that which the parties themselves have chosen, 'it may be that, for a foreign State, the observance of certain of its rules, even outside its own territory, is of such importance that the courts must take account of them, and hence apply them in preference to the law of another State which may have been chosen by the parties to govern their contract'.

This judgment formed the basis for the second paragraph of Article 13 of the non-entered-into-force Benelux Treaty of 1969 on uniform rules of private international law, which provides that 'where the contract is manifestly connected with a particular country, the intention of the parties shall not have the effect of excluding the provisions of the law of that country which, by reason of their special nature and subject-matter, exclude the application of any other law'.

The same attitude, at any event, underlies Article 16 of the Hague Convention of 14 March 1978 on the law applicable to agency, whereby, in the application of that convention, effect may be given to the mandatory rules of any State with which the situation has a significant connection, if and to the extent that, by the law of that State, those rules are applicable irrespective of the law indicated by its confluct rules.

On the other hand, despite the opinion of some jurists, it must be frankly recognized that no clear indication in favour of the principle in question seems discernible in the English cases (*Ralli Bros v. Sota y Aznar; Regazzoni v. Sethia*; *Rossano v. Manufacturers Life Insurance Co.*) (40).

2. The wording of Article 7 (1) specifically provides that in the application of the convention 'effect may be given to the mandatory rules of the law of another country with which the situation has a close connection if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract'.

The former text did not specify the nature of the 'connection' which must exist between the contract and a country other than that whose law is applicable. Several experts have observed that this omission might oblige the court in certain cases to take a large number of different and even contradictory laws into account. This lack of precision could make the court's task difficult, prolong the proceedings, and lend itself to delaying tactics. Accepting the force of these observations, the Group decided that it is essential that there be a genuine connection with the other country, and that a merely vague connection is not adequate. For example, there would be a genuine connection when the contract is to be performed in that other country or when one party is resident or has his main place of business in that other country. Among the suggested versions, the Group finally adopted the word 'close' which seemed the most suitable to define the situation which it wished to cover.

The connection in question must exist between the contract as a whole and the law of a country other than that to which the contract is submitted. The Group rejected the proposal by one delegation designed to establish a connection between the point in dispute and a specific law. In fact this proposal would have given rise to a regrettable dismemberment of the contract and would have led to the application of mandatory laws not foreseeable by the parties. Nevertheless the Group preferred to replace the word 'the contracts' by 'the situation'.

Since the former text seemed to some delegations to be lacking in clarity, the Group decided to improve the wording. In the new text it has therefore stated that the legal system of the country of which these mandatory provisions are an integral part must be examined to find out whether these provisions apply in the particular case whatever the law applicable to the contract. Furthermore, in the French text the word 'loi' has been replaced by the word 'droit' in order to avoid any doubts as to the scope of the rule, which is to cover both 'legislative' provisions of any other country and also common law rules. Finally, after a long discussion, the majority of the Group, in view of the concern expressed by certain delegations in relation to constitutional difficulties, decided that it was preferable to allow the courts a discretion in the application of this Article.

3. Article 7 (1) adds in relation to the mandatory rules that their nature and purpose, and the consequences of their application or non-application, must be taken into account in order to decide whether effect should be given to them.

Thus the application of the mandatory provisions of any other country must be justified by their nature and by their purpose. One delegation had suggested that this should be defined by saying that the nature and purpose of the provisions in question should be established according to internationally recognized criteria (for example, similar laws existing in other countries or which serve a generally recognized interest). However, other experts pointed out that these international criteria did not exist and that consequently difficulties would be created for the court. Moreover this formula would touch upon the delicate matter of the credit to be given to foreign legal systems. For these reasons the Group, while not disapproving this idea, did not adopt this drafting proposal.

Additionally, in considering whether to give effect to these mandatory rules, regard must be had to 'the consequences of their application or non-application'.

Far from weakening the rule this subsequent element — which did not appear in the original preliminary draft — defines, clarifies and strengthens it. In fact, the judge must be given a power of discretion, in particular in the case where contradictory mandatory rules of two different countries both purport simultaneously to be applicable to one and the same situation, and where a choice must necessarily be made between them.

To complete the comments on Article 7 (1) it only remains to emphasize that the words 'effect may be

given' impose on the court the extremely delicate task of combining the mandatory provisions with the law normally applicable to the contract in the particular situation in question. The novelty of this provision, and the fear of the uncertainty to which it could give rise, have led some delegations to ask that a reservation may be entered on Article 7 (1) (see Article 22 (1) (a)).

4. Article 7 (2) states that 'nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract'.

The origin of this paragraph is found in the concern of certain delegations to safeguard the rules of the law of the forum (notably rules on cartels, competition and restrictive practices, consumer protection and certain rules concerning carriage) which are mandatory in the situation whatever the law applicable to the contract may be.

Thus the paragraph merely deals with the application of mandatory rules (lois d'application immédiate; leggi di applicazione necessaria, etc) in a different way from paragraph 1 ([40a]).

Article 8

Material validity

1. Article 8 (1) provides that the existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Convention if the contract or term were valid.

The paragraph is intended to cover all aspects of formation of the contract other than general validity. As we have emphasized previously in paragraph 9 of the comments on Article 3, this provision is also applicable with regard to the existence and validity of the parties' consent as to choice of the law applicable.

The word 'term' has been adopted to cover cases in which there is a dispute as to the validity of a term of the contract, such as a choice of law clause.

2. Notwithstanding the general rule in paragraph 1, paragraph 2 provides a special rule which relates only to the existence and not to the validity of consent.

According to this special rule a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

The solution adopted by the Group in this respect is designed *inter alia* to solve the problem of the implications of silence by one party as to the formation of the contract.

The word 'conduct' must be taken to cover both action and failure to act by the party in question; it does not, therefore, relate solely to silence.

The words 'if it appears from the circumstances' mean that the court must have regard to all the circumstances of the case, not solely to those in which the party claiming that he has not consented to the contract has acted. The Court will give particular consideration to the practices followed by the parties *inter se* as well as their previous business relationships.

According to the circumstances, the words 'a party' can relate either to the offeror or to the offeree.

The application of paragraph 2 can result in a decision releasing a party who would have been bound under the terms of paragraph 1, but it can never produce the opposite effect of holding that a contract exists which is non-existent by its proper law.

Article 9 (4) contains a special rule relating to acts intended to have legal effect, such as, in accordance with the law of many countries, an offer. Such acts have not been mentioned in Article 8. Nonetheless, the rules in Article 8 apply to such acts by way of analogy.

Article 9

Formal validity

Article 9 deals with the formal validity of contracts and acts intended to have legal effect. The first four paragraphs lay down rules governing all contracts and acts intended to have legal effect. The last two paragraphs lay down special rules peculiar to certain types of contract.

I. **General rules** (paragraphs 1 to 4 inclusive)

The scope of these general rules needs to be specified before indicating the various laws which they declare to be applicable.

A. The scope of the general rules

1. Acts to which they apply

Article 9 applies to contracts and unilateral acts intended to have legal effect. The preliminary draft of 1972 used only the term 'act intended to have legal effect' (acte juridique) which, in the terminology originating from Roman law, includes both categories. The inclusion in Article 9 of both contracts and acts intended to have legal effect, mentioned successively, is due merely to a wish to ensure clarity, since the rules to be applied are based on the same principles in both cases.

Unilateral acts intended to have legal effect which fall within the scope of the Article are those which are related to an existing or contemplated contract. Acts relating to a concluded contract can be extremely varied: notice of termination, remission of a debt, declaration of rescission or repudiation, etc.

But the act must be connected with a contract. A unilateral undertaking, unconnected with a contract, as for example, in some legal systems, a recognition of a debt not arising under a contract, or a unilateral act creating, transferring or extinguishing a right *in rem*, would not fall within the scope of Article 9 or of any other provision in the Convention since the latter is concerned only with contractual obligations.

Such an act must also, quite clearly, relate to a contract falling within the scope of the convention. Article 9 does not apply to the formal validity of acts relating to contracts excluded from the convention under Article 1 (2) and (3).

There is no provision expressly referring to 'public acts'. This omission is intentional. First, the concept of a public act is not recognized in all the legal systems and could raise awkward problems of definition. Moreover, it seems wrong for there to be special provisions governing the formal validity of private law acts concluded before public officials. Indeed, as has recently been pointed out ([41]), it is because a public official can draw up an instrument only in accordance with the law from which he derives his authority that the formal validity for the act concluded before him is necessarily subject to that law. If, for example, a notary has not observed the law from which he derives his authority, the contract he has drawn up will not of course be a valid notarial act. But it will not be entirely void if the law which governs its substance (and which may also determine its formal validity by virtue of Article 9) does not require a special form for that type of contract.

The general rules accordingly apply to 'public acts'. This has the advantage of validating acts drawn up by a public official who has thought it appropriate, as happens in the Netherlands, to follow the forms laid down by the foreign law which governs the substance of the contract.

2. Article 9 does not define what is to be understood by the 'formal validity' of acts. It seemed realistic to leave open this difficult problem of definition, especially as its importance has been slightly reduced in consequence of the solutions found for the problem of the connecting factor which to some extent equate formal and material validity.

It is nevertheless permissible to consider 'form', for the purposes of Article 9, as including every external manifestation required on the part of a person expressing the will to be legally bound, and in the absence of which such expression of will would not be regarded as fully effective([42]). This definition does not include the special requirements which have to be fulfilled where there are persons under a disability to be protected, such as the need in French law for the consent of a family council to an act for the benefit of a minor, or where an act is to be valid against third parties, for example the need in English law for a notice of a statutory assignment of a chose in action.

B. Laws to be applied

1. The principle of applying in the alternative the *lex causae* or the *lex loci actus*.

The system contained in Article 9 is a compromise between *favor negotii*, which tends to take a liberal attitude regarding the formalities required for acts, and the due observance of formalities which, most often, is merely giving effect to requirements of substance.

In supporting the former attitude, it did not seem possible to follow the example of the Hague Convention of 5 October 1961 concerning conflict of laws with regard to testamentary dispositions. *Favor testamenti* is justified by the fact that a will is an act of final disposition which by definition cannot be reenacted if its validity is challenged after the testator's death. This consideration does not affect other acts intended to have legal effect in the case of which excessive freedom with regard to formalities would result in

robbing of all effect the requirements in this field which are specified by the various legal systems, very often with a legitimate aim in view. Moreover, the connection between questions of form and questions of evidence (Article 14) makes it desirable to limit the number of laws applicable to formal validity.

On the other hand, in order to avoid parties being caught unawares by the annulment of their act on the ground of an unexpected formal defect, Article 9 has, nonetheless, laid down a fairly flexible system based on applying in the alternative either the law of the place where the contract was entered into (or in the case of a unilateral act the law of the country where the act was done) or else the law which governs its substance.

This choice of applicable laws appears to be sufficient and this is why the possibility of applying the law of the common nationality or habitual residence of the parties was rejected (43). On the other hand no priority has been accorded either to the *lex causae* or to the *lex loci actus*. If the act is valid to one of these two laws, that is enough to prevent defects of form under the other from affording grounds for nullity (44).

The Group did not examine the question of which of the two laws would apply to an action brought to annul the contract for formal defect in a case where the contract would be null and void according to both these laws. If, for example, the limitation period for bringing an action for annulment on the ground of a formal defect is not the same in the two legal systems, it may seem to be in keeping with the spirit of this Article to apply the law which provides for the shorter period and, in this respect, is more favourable than the other to the validity of the act.

Renvoi must be rejected as regards formal validity as in all other matters governed by the Convention (cf. Article 15).

2. Problems raised by applying the law governing the substance of the contract to the question of formal validity

The *lex causae* is already recognized as applicable, either as the principal law or as a subsidiary option, to the question of formal validity by the law of the Contracting States and its application is fully justified by the logical connection between substance and form (45).

The law governing the substance of the contract must be determined by reference to Articles 3, 4 and 6 of the Convention (for contracts provided for under Article 5, see II below, Special rules peculiar to certain contracts). Article 3 (2) specifically governs the formal consequences of a voluntary change by the parties in the law governing the substance of the contract. This text means that, on this assumption of changes in the connecting facts, it is enough for the contract to be formally valid in accordance with one or other of the laws successively called upon to govern the substance of the contract.

A difficulty will arise when a contract is subject to several laws, either because the parties have selected the law applicable to a part only of their contract (Article 3 (1)), or because the court itself, by way of exception, has proceeded to sever the contract (Article 4 (1)). Which of the laws governing the substance of the contract is to determine its formal validity? In such a case it would seem reasonable to apply the law applicable to the part of the contract most closely connected with the disputed condition on which its formal validity depends.

Article 8 (1), dealing with material validity, says that the existence and validity of a contract or of any term of a contract shall be determined by the law which would govern it under the Convention if the contract or term were valid. This is to avoid the circular argument that where there is a choice of the applicable law no law can be said to be applicable until the contract is found to be valid. A similar point arises in relation to formal validity under Article 9, and although the text does not expressly say so it is intended that 'the law which governs it under this Convention' should be the law which would govern the contract if it were formally valid.

3. Problems raised by applying the *locus regit actum* rule to the question of formal validity

The application of the law of the country in which a contract was entered into or in which a unilateral act was done, in order to determine the formal validity of the contract or act, results from the age-old maxim *locus regit actum*, recognized alike, usually as a principal rule, by the law of the Contracting States (46).

However a classic difficulty arises in determining the country in which the contract was entered into when the contract has been made between persons in different countries.

To resolve this difficulty it is first necessary to describe exactly what is meant by persons being or not being in the same country. Where the contract is concluded through the offices of one or more agents, Article 9 (3) indicates clearly that the place to be taken into consideration is where the agents are acting at the time when the contract is concluded. If the parties' agents (or one party and the agent of the other) meet in a given country and conclude the contract there, this contract is considered, within the meaning of paragraph 1, to be concluded between persons in

that country, even if the party or parties respresented were in another country at the time. Similarly, if the parties' agents (or one party and the agent of the other) are in different countries at the time when they conclude the contract, this contract is considered, within the meaning of paragraph 2, to be concluded between persons in different countries even if both the parties represented were in fact in the same country at the time.

The question of finding which law is the law of the place where the contract was entered into and therefore determines the formal validity of a contract made between persons in different countries, in the sense just indicated, has been very widely debated. Solutions consisting in fixing the conclusion of the contract either in the place where the offer was made or in the place where the acceptance was made have been rejected as rather artificial([47]). The solution consisting in applying to offer and acceptance separately the law of the country in which each was made, directly based on the Frankenstein draft for a European code of private international law and retained in the preliminary draft of 1972, and by the 1978 Swiss draft of Federal law on private international law, Article 125 (2), was also rejected. It is clear that there are numerous requirements as to formal validity which are laid down with regard to the contract itself, taken as a whole and not stage by stage. This is the case where, for example, two signatures are required or where the contract has to be made in duplicate. Accordingly, rather than split the law determining the formal validity of a contract, it seemed preferable to look for a law which would be applicable to the formal validity of the contract as a whole.

The choice was therefore between a liberal solution, retaining the application in the alternative of the law of one or other of the countries which the persons concluding the contract were at the time it was entered into, and a strict solution, requiring the cumulative application of these various laws. The liberal solution was adopted by Article 9 (2). When a contract is concluded between persons in different countries, it is formally valid if it satisfies the requirements as to form laid down by the law of one of those countries or of the law governing the substance of the contract.

4. Reservation regarding mandatory rules

Article 7 of the Convention, which contains a reservation in favour of the application of mandatory rules, may lead to the rejection of the liberal system based on the application in the alternative of either the law governing the substance of the contract or the law of the place where it was entered into. It may happen that certain formal requirements laid down by the law of the country with which a contract or act has a close connection have a mandatory character so marked that they could be applied even though the law of that country is not one of those which would normally determine formal validity under Article 9.

In this connection mention was made of the rules regarding form laid down by the law of the country where an employment contract is to be carried out, especially the requirement that a non-competition clause should be in writing, even though the oral form is permitted by the law of the place where the contract was entered into or under the law chosen by the parties.

Of course, under the system established by Article 7, it will be for the court hearing the case to decide whether it is appropriate to give effect to these mandatory provisions and consequently to disregard the rules laid down in Article 9.

II. **Special rules peculiar to certain contracts** (paragraphs 5 and 6)

Paragraphs 5 and 6 provide special rules for the formal validity of certain contracts made by consumers and of contracts the subject matter of which is a right in immovable property or a right to use immovable property. It would have been conceivable with regard to such contracts merely to apply Article 7 quite simply and, as an exception to Article 9, to allow, for example, the application of certain formal provisions for consumer protection laid down by the law of the consumer's habitual place of residence, or of certain mandatory requirements as to form imposed by the law of the country where the immovable property is situated.

This solution, however, was not thought adequate to ensure the effective application of these laws because of the discretionary power which Article 7 gives to the court hearing the case. It was accordingly decided to exclude the first four paragraphs of Article 9 completely in the case of contracts of these kinds.

The fifth paragraph of Article 9 deals with the contracts mentioned in Article 5 (1), entered into in the circumstances described in Article 5 (2), taking into account Article 5 (4) and (5).

Just as Article 5 protects the consumer, despite any choice of law specified in the contract, by imposing, as regards substance, the mandatory rules of the law of the country in which he has his habitual residence

(Article 5 (3)), Article 9 (5) imposes the rules of that same country with regard to formal validity. This is justified by the very close connection, in the context of consumer protection, between mandatory rules of form and rules of substance.

For the same reasons, it might have been expected that the formal validity of employment contracts would also have been made subject to mandatory attachment to the rules of a particular national law.

This idea, though at first contemplated, was finally rejected. Indeed, contrary to Article 5 which provides explicitly that consumer contracts, in the absence of any choice by the parties, shall be subject as regards formal validity to the law of the country where the consumer has his habitual residence, for the purpose of determining the connecting factors applying to employment contracts Article 6 of the Convention only introduces rebuttable presumptions which must be disregarded in cases where it appears from the circumstances that the employment contract is more closely connected with a country other than that indicated by these presumptions. Consequently, if it had been decided that the law governing the substance of the contract should be mandatory for determining the formal validity of employment contracts, it would have been impossible, at the time a contract was entered into, to determine the law governing its formal validity because of the uncertainty caused by Article 6. Therefore no special rule was laid down regarding the formal validity of employment contracts, but thanks to Article 7, it is to be expected that the mandatory rules regarding formal validity laid down by the law of the country where the work is to be carried out will frequently be found to apply.

The sixth paragraph of Article 9 deals with contracts the subject matter of which is a right in immovable property or a right to use immovable property. Such contracts are not subject to a mandatory connecting factor as regards substance, Article 4 (3) merely raising a presumption in favour of the law of the country where the immovable property is situated. It is clear, however, that if the law of the country where the immovable property is situated lays down mandatory rules determining formal validity, these must be applied to the contract, but only in the probably rather rare cases where, according to that law, these formal rules must be applied even when the contract has been entered into abroad and is governed by a foreign law.

The scope of this provision is the same as that of Article 4 (3).

Article 10

Scope of the applicable law

1. Article 10 defines the scope of the law applicable to the contract under the terms of this Convention [48].

The original preliminary draft contained no specific rule on this point. It confined itself to the provision in Article 15 that the law which governs an obligation also governs the conditions for its performance, the various ways in which it can be discharged, and the consequences of non-performance. However, since Article 11 of the preliminary draft defined in detail the scope of the law applicable to non-contractual obligations, the principal subject of Article 15 was the scope of the law of the contract.

2. Article 10 (1) lists the matters which fall within the scope of the law applicable to the contract. However, this list is not exhaustive, as is indicated by the words 'in particular'.

The law applicable to the contract under the terms of his Convention governs firstly its interpretation (subparagraph (a)).

Secondly the law applicable to the contract governs the performance of the obligations arising from the contract (subparagraph (b)).

This appears to embrace the totality of the conditions, resulting from the law or from the contract, in accordance with which the act is essential for the fulfilment of an obligation must be performed, but not the manner of its performance (in so far as this is referred to in the second paragraph of Article 10 or the conditions relating to the capacity of the persons who are to perform it (capacity being a matter excluded from the scope of the uniform rules, subject to the provisions of Article 11) or the conditions relating to the form of the act which is to be done in performance of the obligation.

The following therefore fall within the provisions of the first paragraph of Article 10: the diligence with which the obligation must be performed; conditions relating to the place and time of performance; the extent to which the obligation can be performed by a person other than the party liable; the conditions as to performance of the obligation both in general and in relation to certain categories of obligation (joint and several obligations, alternative obligations, divisible and indivisible obligations, pecuniary obligations); where performance consists of the payment of a sum of money, the conditions relating to the discharge of the debtor who has made the

payment, the appropriation of the payment, the receipt, etc.

Within the limits of the powers conferred upon the court by its procedural law, the law applicable to the contract also governs the consequences of total or partial failure to perform these obligations, including the assessment of damages insofar as this is governed by rules of law.

The assessment of damages has given rise to some difficulties. According to some delegations the assessment of the amount of damages is a question of fact and should not be covered by the Convention. To determine the amount of damages the court is obliged to take account of economic and social conditions in its country; there are some cases in which the amount of damages is fixed by a jury; some countries use methods of calculation which might not be accepted in others.

Other delegations countered these arguments, however, by pointing out that in several legal systems there are rules for determining the amount of damages; some international conventions fix limits as to the amount of compensation (for example, conventions relating to carriage); the amount of damages in case of non-performance is often prescribed in the contract and grave difficulties would be created for the parties if these amounts had to be determined later by the court hearing the action.

By way of compromise the Group finally decided to refer in subparagraph (c) solely to rules of law in matters of assessment of damages, given that questions of fact will always be a matter for the court hearing the action.

The expression 'consequences of breach' refers to the consequences which the law or the contract attaches to the breach of a contractual obligation, whether it is a matter of the liability of the party to whom the breach is attributable or of a claim to terminate the contract for breach. Any requirement of service of notice on the party to assume his liability also comes within this context.

According to subparagraph 1 (d), the law applicable to the contract governs the various ways of extinguishing obligations, and prescription and limitation of actions. This Article must be applied with due regard to the limited admission of severability (dépeçage) in Articles 3 and 4.

Subparagraph (e) also makes the consequences of nullity subject to the applicable law. The working party's principal objective in introducing this provision was to make the refunds which the parties have to pay each other subsequent to a finding of nullity of the contract subject to the applicable law.

Some delegations have indicated their opposition to this approach on the grounds that, under their legal systems, the consequences of nullity of the contract are non-contractual in nature. The majority of delegations have nevertheless said they are in favour of including such consequences within the scope of the law of contracts, but in order to take account of the opposition expressed provision had been made for any Contracting State to enter a reservation on this matter (Article 22 (1) (b)).

3. Article 10 (2) states that in relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

This is a restriction which is often imposed in the national law of many countries as well as in several international conventions. Many jurists have supported and continue to support this restriction on the scope of the law applicable to the contract even when the contractual obligation is performed in a country other than that whose law is applicable.

What is meant, however, by 'manner of performance' of an obligation? It does not seem that any precise and uniform meaning is given to this concept in the various laws and in the differing views of learned writers. The Group did not for its part wish to give a strict definition of this concept. It will consequently be for the *lex fori* to determine what is meant by 'manner of performance'. Among the matters normally falling within the description of 'manner of performance', it would seem that one might in any event mention the rules governing public holidays, the manner in which goods are to be examined, and the steps to be taken if they are refused(49).

Article 10 (2) says that a court may have regard to the law of the place of performance. This means that the court may consider whether such law has any relevance to the manner in which the contract should be performed and has a discretion whether to apply it in whole or in part so as to do justice between the parties.

Article 11

Incapacity

The legal capacity of natural persons or of bodies corporate or unincorporate is in principle excluded from the scope of the Convention (Article 1 (2) (a)

and (e)). This exclusion means that each Contracting State will continue to apply its own system of private international law to contractual capacity.

However, in the case of natural persons, the question of capacity is not entirely excluded. Article 11 is intended to protect a party who in good faith believed himself to be contracting with a person of full capacity and who, after the contract has been entered into, is confronted by the incapacity of the other contracting party. This anxiety to protect a party in good faith against the risk of a contract being held voidable or void on the ground of the other party's incapacity on account of the application of a law other than that of the place where the contract was concluded is clearly present in the countries which subject capacity to the law of the nationality ([50]).

A rule of the same kind is also thought necessary in the countries which make capacity subject to the law of the country of domicile. The only countries which could dispense with it are those wich subject capacity to the law of the place where the contract was entered into or to the law governing the substance of the contract.

Article 11 subjects the protection of the other party to the contract to very stringent conditions. First, the contract must be concluded between persons who are in the same country. The Convention does not wish to prejudice the protection of a party under a disability where the contract is concluded at a distance, between persons who are in different countries, even if, under the law governing the contract, the latter is deemed to have been concluded in the country where the party with full capacity is.

Secondly, Article 11 is only to be applied where there is a conflict of laws. The law which, according to the private international law of the court hearing the case, governs the capacity of the person claiming to be under a disability must be different from the law of the country where the contract was condcluded.

Thirdly, the person claiming to be under a disability must be deemed to have full capacity by the law of the country where the contract was concluded. This is because it is only in this case that the other party may rely on apparent capacity.

In principle these three conditions are sufficient to prevent the incapacitated person from pleading his incapacity against the other contracting party. This will not however be so 'if the other party to the contract was aware of his incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence'. This wording implies that the burden of proof lies on the incapacitated party. It is he who must establish that the other party knew of his incapacity or should have known of it.

Article 12

Voluntary assignment

1. The subject of Article 12 is the voluntary assignment of rights.

Article 12 (1) provides that the mutual obligations of assignor and assignee under a voluntary assignment of a right against another person (the debtor) shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.

Interpretation of this provision gives rise to no difficulty. It is obvious that according to this paragraph the relationship between the assignor and assignee of a right is governed by the law applicable to the agreement to assign.

Although the purpose and meaning of the provision leave hardly any room for doubt, one wonders why the Group did not draft it more simply and probably more elegantly. For example, why not say that the assignment of a right by agreement shall be governed in relations between assignor and assignee by the law applicable to that agreement.

Such a form of words had in fact been approved initially by most of the delegations, but it was subsquently abandoned because of the difficulties of interpretation which might have arisen in German law, where the expression 'assignment' of a right by agreement includes the effects of it upon the debtor: this was expressly excluded by Article 12 (2).

The present wording was in fact finally adopted precisely to avoid a form which might lead to the idea that the law applicable to the agreement for assignment in a legal system in which it is understood as 'Kausalgeschäft' also determines the conditions of validity of the assignment with respect to the debtor.

2. On the contrary, under the terms of Article 12 (2) it is the law governing the right to which the assignment relates which determines its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

The words 'conditions under which the assignment can be invoked' cover the conditions of

transferability of the assignment as well as the procedures required to give effect to the assignment in relation to the debtor.

Notwithstanding the provisions of paragraph 2, the matters which it covers, with the sole exception of assignability, are governed, as regards relations between assignor and debtor if a contract exists between them, by the law which governs their contract in so far as the said matters are dealt with in that contract.

Subrogation

1. The substitution of one creditor for another may result both from the voluntary assignment of a right (or assignment properly so called) referred to in Article 12 and from the assignment of a right by operation of law following a payment made by a person other than the debtor.

According to the legislation in various Member States of the Community, 'subrogration' involves the vesting of the creditor's rights in the person who, being obliged to pay the debt with or on behalf of others, had an interest in satisfying it: this is so under Article 1251—3 of the French Civil Code and Article 1203—3 of the Italian Civil Code. For example, in a contract of guarantee the guarantor who pays instead of the debtor succeeds to the rights of the creditor. The same occurs when a payment is made by one of a number of debtors who are jointly and severally liable or when an indivisible obligation is discharged.

Article 13 of the Convention embodies the conflict rule in matters of subrogation of a third party to the rights of a creditor. Having regard to the fact that the Convention applies only to contractual obligations, the Group thought it proper to limit the application of the rule adopted in Article 13 to assignments of rights which are contractual in nature. Therefore this rule does not apply to subrogation by operation of law when the debt to be paid has its origin in tort (for example, where the insurer succeeds to the rights of the insured against the person causing damage).

2. According to the wording of Article 13 (1), where a person (the creditor) has a contractual claim upon another (the debtor), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.

The law which governs the third person's duty to satisfy the creditor (for example, the law applicable to the contract of guarantee, where the guarantor has paid instead of the debtor) will therefore determine whether and to what extent the third person is entitled to exercise the rights of the creditor against the debtor according to the law governing their contractual relations.

In formulating the rule under analysis the Group made a point of considering situations in which a person has paid without being obliged so to do by contract or by law but having an economic interest recognized by law as anticipated by Article 1251—3 of the French Civil Code and Article 1203—3 of the Italian Civil Code. In principle the same rule applies to these situations, but the court has a discretion in this respect.

As regards the possibility of a partial subrogation such as that provided for by Article 1252 of the French Civil Code and by Article 1205 of the Italian Civil Code, it seems right that this should be subject to the law applicable to the subrogation.

In addition, when formulating Article 13 the Group envisaged the possibility that the legal relationship between the third party and the debtor was governed by a contract. This contract will obviously be governed by the law which is applicable to it by the terms of this Convention. Article 13 in no way affects this aspect of the relationship between the third party and the debtor.

3. Article 13 (2) extends the same rule in paragraph 1 to cases in which several person are liable for the same contractual obligation (co-debtors) and the creditor's interest has been discharged by one of them.

4. As well as the problem of voluntary assignment of rights and the problem of assignment of rights by operation of law (Articles 12 and 13), there exists the problem of assignment of duties. However, the Group did not wish to resolve this problem, because it is new and because there are still many uncertainties as to the solution to be given.

Article 14

Burden of proof, etc.

Article 14 deals with the law to be applied to certain questions of evidence.

There is no rule of principle dealing with evidence in general. In the legal systems of the Contracting States, except as regards the burden of proof,

questions of evidence (both as regards facts and acts intended to have legal effect and as regards foreign law) are in principle subject to the law of the forum. This principle is, however, subject to a certain number of exceptions which are not the same in all these legal systems. Since it was decided that only certain questions of evidence should be covered in Article 14, it was thought better not to bind the interpretation thereof by a general provision making the rules of evidence subject to the law of the forum on questions not decided by the Convention, such as, for example, the taking of evidence abroad or the evidential value of legal acts. In order that there should be no doubt as to the freedom retained by the States regarding questions of evidence not decided by the Convention, Article 1 (2) (h) excludes evidence and procedure from the scope of the Convention, expressly without prejudice to Article 14.

Two major questions have been covered and are each the subject of a separate paragraph. These are the burden of proof on the one hand and the recognition of modes of proving acts intended to have legal effect on the other. After considerable hesitation the Group decided not to deal with the problem of evidential value.

A. Burden of proof

The first paragraph of Article 14 provides for the application of the law of the contract 'to the extent that it contains, in the law of contract, rules which raise presumptions of law or determine the burden of proof'. Presumptions of law, relieving the party in whose favour they operate from the necessity of producing any evidence, are really rules of substance which in the law of contract contribute to making clear the obligations of the parties and therefore cannot be separated from the law which governs the contract. By way of example, where Article 1731 of the French Civil Code provides that 'where no inventory of the state of the premises has been taken, the lessee shall be deemed to have received them in good tenantable repair and must, in the absence of proof to the contrary, restore them in such condition', the Article is in reality determining the obligation of the lessee to restore the let premises. It is therefore logical that the law of the contract should apply here.

The same observation applies to rules determining the burden of proof. By way of example, Article 1147 of the French Civil Code provides that a debtor who has failed to fulfil his obligation shall be liable for damages 'unless he shows that this failure is due to an extraneous cause outside his control'. This text determines the burden of proof between the parties. The creditor must prove that the obligation has not been fulfilled, the debtor must prove that the failure is due to an extraneous cause. But in dividing the burden, the text establishes the debtor's obligations on a vital point, since the debtor is liable for damages even if the failure to fulfil is not due to a proven fault on his part. The rule is accordingly a rule of substance which can only be subject to the law of the contract.

Nevertheless the text of the first paragraph of Article 14 does contain a restriction. The burden of proof is not totally subject to the law of the contract. It is only subject to it to the extent that the law of the contract determines it with regard to contractual obligations ('in the law of contract'), that is to say only to the extent to which the rules relating to the burden of proof are in effect rules of substance.

This is not always the case. Some legal systems recognize rules relating to the burden of proof, sometimes even classed as presumptions of law, which clearly are part of procedural law and which it would be wrong to subject to the law of the contract. This is the case, for example, with the rule whereby the claim of a party who appears is deemed to be substantiated if the other party fails to appear, or the rule making silence on the part of a party to an action with regard to facts alleged by the other party equivalent to an admission of those facts.

Such rules do not form part of 'the law of contract' and accordingly do not fall within the choice of law rule established by Article 14 (1).

B. Admissibility of modes of proving acts intended to have legal effect

Paragraph 2 of Article 14 deals with the admissibility of modes of proving acts intended to have legal effect (in the sense of *voluntas negotium*).

The text provides for the application in the alternative of the law of the forum or of the law which determines the formal validity of the act. This liberal solution favouring proof of the act is already recognized in France and in the Benelux countries([51]). It seems to be the only solution capable of reconciling the requirements of the law of the forum with the desire to respect the legitimate expectations of the parties at the time of concluding their act.

The law of the forum is normally employed to determine the means which may be used for proving an act intended to have legal effect, which in this context includes a contract. If, for example, that law allows a contract to be proved by witnesses, it should be followed, irrespective of any more stringent provisions on the point contained in the law

governing the substance or formal validity of the act.

On the other hand, in the opposite case, if the law governing the formal validity of the act only requires oral agreement and allows such an agreement to be proved by witnesses, the expectations of parties who had relied on that law would be disappointed if such proof were to be held inadmissible solely on the ground that the law of the trial court required written evidence of all acts intended to have legal effect. The parties must therefore be allowed to employ the modes of proof recognized by the law governing formal validity.

Nevertheless this liberalism should not lead to imposing on the trial court modes of proof which its procedural law does not enable it to administer. Article 14 does not deal with the administration of modes of proof, which the legal system of each Contracting State makes subject to the law of the trial court. Admitting the application of a law other than that of the forum to modes of proof ought not to lead to the rules of the law of the forum, as regards the administration of the modes of proof, being rendered nugatory.

This is the explanation of the proviso which in substance enables a court, without reference to public policy, to disregard modes of proof which the law of procedure cannot generally allow, such as an affidavit, the testimony of a party or common knowledge. Consideration was also given to the case of rights subject to registration in a public register, holding that the authority charged with keeping that register could, owing to that provision, only recognize the modes of proof provided for by its own law.

Such being the general system adopted, a proviso had to be added regarding the law determining formal validity applicable as an alternative to the law of the forum.

The text refers to 'any of the laws referred to in Article 9 under which that contract or act is formally valid'. This expression means that if, for example, the act is formally valid under the law governing the substance of the contract but is not formally valid under the law of the place where it was done, the parties may employ only the modes of proof provided for by the first of these two laws, even if the latter is more liberal as regards proof. The reference in Article 14 (2) to the law governing formal validity is clearly based on the assumption that the law governing formal validity has been observed. On the other hand, if the act is formally valid according to both laws (*lex causae* and *lex loci actus*) mentioned in Article 9, the parties will be able to employ the modes of proof provided for by either of those laws.

C. There is no provision dealing with the evidential value of acts intended to have legal effect. The preliminary draft of 1972 contained a provision covering two questions derived, in Roman law countries, from the concept of evidential value; the question how far a written document affords sufficient evidence of the obligations contained in it and the question of the modes of proof to add to or contradict the contents of the document — 'outside and against the content' of such a document, according to the old phraseology of the Code Napoléon (Article 1341). Despite long discussion, no agreement could be reached between the delegations and it was therefore decided to leave the question of evidential value outside the scope of the Convention.

Article 15

Exclusion of renvoi

This Article excludes renvoi.

It is clear that there is no place for renvoi in the law of contract if the parties have chosen the law to be applied to their contract. If they have made such a choice, it is clearly with the intention that the provisions of substance in the chosen law shall be applicable; their choice accordingly excludes any possibility of renvoi to another law([52]).

Renvoi is also excluded where the parties have not chosen the law to be applied. In this case the contract is governed, in accordance with Article 4 (1), by the law of the country with which it is most closely connected. Paragraph 2 introduces a presumption that that country is the country where the party who is to effect the performance which is characteristic of the contract has his habitual residence. It would not be reasonable for a court, despite this express localization, to subject the contract to the law of another country by introducing renvoi, solely because the rule of conflict of laws in the country where the contract was localized contained other connecting factors. This is equally so where the last paragraph of Article 4 applies and the court has decided the place of the contract with the aid of indications which seem to it decisive.

More generally, the exclusion of renvoi is justified in international conventions regarding conflict of laws. If the Convention attempts as far as possible to localize the legal situation and to determine the country with which it is most closely connected, the law specified by the conflicts rule in the Convention should not be allowed to question this determination of place. Such, moreover, has been the solution adopted since 1951 in the conventions concluded at The Hague.

Article 16

'Ordre public'

Article 16 contains a precise and restrictively worded reservation in favour of public policy ('ordre public').

First it is expressly stated that, in the abstract and taken as a whole, public policy is not to affect the law specified by the Convention. Public policy is only to be taken into account where a certain provision of the specified law, if applied in an actual case, would lead to consequences contrary to the public policy ('ordre public') of the forum. It may therefore happen that a foreign law, which might in the abstract be held to be contrary to the public policy of the forum, could nevertheless be applied, if the actual result of its being applied does not in itself offend the public policy of the forum.

Secondly, the result must be 'manifestly' incompatible with the public policy of the forum. This condition, which is to be found in all the Hague Conventions since 1956, requires the court to find special grounds for upholding an objection([53]).

Article 16 provides that it is the public policy of the forum which must be offended by the application of the specified law. It goes without saying that this expression includes Community public policy, which has become an integral part of the public policy ('ordre public') of the Member States of the European Community.

Article 17

No retrospective effect

Article 17 means that the Convention has no retrospective effect on contracts already in existence. It applies only to contracts concluded after it enters into force, but the entry into force must be considered separately for each State since the Convention will not enter into force simultaneously in all the contracting States (see Article 29). Of course, there is no provision preventing a court of a contracting State with respect to which the Convention has not yet entered into force from applying it in advance unter the concept of *ratio scripta*.

Article 18

Uniform interpretation

This Article is based on a formula developed by the United Nations Commission on International Trade Law.

The draft revision of the uniform law on international sales and the preliminary draft of the Convention on prescription and limitation of actions in international sales contained the following provision: 'In the interpretation and application of this Convention, regard shall be had to its international character and to the necessity of promoting uniformity'. This provision, whose wording was slightly amended, has been incorporated in the United Nations Convention on contracts for the international sale of goods (Article 7) signed in Vienna on 11 April 1980.

Article 18 operates as a reminder that in interpreting an international convention regard must be had to its international character and that, consequently, a court will not be free to assimilate the provisions of the Convention, in so far as concerns their interpretation, to provisions of law which are purely domestic. It seemed that one of the advantages of this Article might be to enable parties to rely in their actions on decisions given in other countries.

It is within the spirit of this Article that a solution must be found to the problem of classification, for which, following the example of the Benelux uniform law, the French draft and numerous conventions of The Hague, the Convention has refrained from formulating a special rule.

Article 18 will retain its importance even if a protocol subjecting the interpretation of the Convention to the Court of Justice of the European Communities is drawn up pursuant to the Joint Declaration of the Representatives of the Governments made when the Convention was opened for signature on 19 June 1980.

Article 19

States with more than one legal system

This Article is based on similar provisions contained in some of the Hague Conventions (see, for example, the Convention on the law applicable to matrimonial property regimes, Articles 17 and 18 and the Convention on the law applicable to agency, Articles 19 and 20).

According to the first paragraph, where a State has several territorial units each with its own rules of law in respect of contractual obligations, each of those units will be considered as a country for the purposes of the Convention. If, for example, in the case of Article 4, the party who is to effect the performance which is characteristic of the contract has his habitual residence in Scotland, it is with Scottish law that the contract will be deemed to be most closely connected.

Paragraph 2, which is of special concern to the United Kingdom, covers the case where the situation is connected with several territorial units in a single country but not with another State. In such a case there is a conflict of laws, but it is a purely domestic matter for the State concerned which consequently is under no obligation to resolve it by applying the rules of the Convention.

Article 20

Precedence of Community law

This Article is intended to avoid the possibility of conflict between this Convention and acts of the Community institutions, by according precedence to the latter. The text is based on that of Article 52 (2) of the Convention of 27 September 1968 as revised by the Accession Convention of 9 October 1978.

The Community provisions which will have precedence over the Convention are, as regards their object, those which, in relation to particular matters, lay down rules of private international law with regard to contractual obligations. For example, the Regulation on conflict of laws with respect to employment contracts will, when it has been finally adopted, take precedence over the Convention.

The Governments of the Member States have, nevertheless, in a joint declaration, expressed the wish that these Community instruments will be consistent with the provisions of the Convention.

As regards the form which these instruments are to take, the Community provisions contemplated by Article 20 are not only acts of the institutions of the European Communities, that is to say principally the Regulations and the Directives as well as the Conventions concluded by those Communities, but also national laws harmonized in implementation of such acts. A law or regulation adopted by a State in order to make its legislation comply with a Directive borrows, as it were, from the Directive its Community force, thus justifying the precedence accorded to it over this Convention.

Finally, the precedence which Article 20 accords to Community law applies not only to Community law in force at the date when this Convention enters into force, but also to that adopted after the Convention has entered into force.

Article 21

Relationship with other Conventions

This Article, which has its equivalent in the Hague Conventions on the law applicable to matrimonial property regimes (Article 20) and on the law applicable to agency (Article 22) means that this Convention will not prejudice the application of any other international agreement, present or future, to which a Contracting State is or becomes party, for example, to Conventions relating to carriage. This leaves open the possibility of a more far-reaching international unificatin with regard to all or part of the ground covered by this Convention.

This provision does not of course eliminate all possibility of difficulty arising from the combined application of this Convention and another concurrent Convention, especially if the latter contains a provision similar to that in Article 21. But the States which are parties to several Conventions must seek a solution to these difficulties of application without jeopardizing the observance of their international obligations.

Moreover, Article 21 must be read in conjunction with Articles 24 and 25. The former specifies the conditions under which a contracting State may become a party to a multilateral Convention after the date on which this Convention enters into force with respect thereto. The latter deals with the case where the conclusion of other Conventions would prejudice the unification achieved by this Convention.

Article 22

Reservations

This Article indicates the reservations which may be made to the Convention, the reasons for which have been set out in this report as regards Articles 7 (1) and 10 (1) (e). Following the practice generally applied, in particular in the Hague Conventions, it lays down the procedure by means of which these reservations can be made or withdrawn.

TITLE III

FINAL PROVISIONS

Article 23

Unilateral adoption by a contracting State of a new choice of law rule

Article 23 is an unusual text since it allows the contracting States to make unilateral derogations from the rules of the Convention. This weakening of its mandatory force was thought desirable because of the very wide scope of the Convention and the very general character of most of its rules. The case was envisaged where a State found it necessary for political, economic or social reasons to amend a choice of law rule and it was thought desirable to find a solution sufficiently flexible to enable States to ratify the Convention without having to denounce it as soon as they were forced to disregard its rules on a particular point.

The possibility of making unilateral derogations from the Convention is, however, subject to certain conditions and restrictions.

First, derogation is only possible if it consists in adopting a new choice of law rule in regard to a particular category of contract. For example, Article 23 would not authorize a State to abandon the general principle of the Convention. But it would enable it to adopt, under the conditions specified, a particular choice of law rule different from that of the Convention with respect, for example, to contracts made by travel agencies or to contracts for correspondence courses where the specialist nature of the contract could justify this derogation from the common rule. It is of course understood that the derogation procedure shall only be imposed on States if the contract for which they wish to adopt a new choice of law rule falls within the scope of the Convention.

Secondly, such a derogation is subject to procedural conditions. The State which wishes to derogate from the Convention must inform the other signatory States through the Secretary-General of the Council of the European Communities. The latter shall, if a State so requests, arrange for consultation between the signatory States in order to reach unanimous agreement. If, within a period of two years, no State has requested consultation or no agreement has been able to be reached, the State may then amend its law in the manner indicated.

The Group considered whether this procedure should apply to situations where the contracting States would wish to adopt a rule of the kind referred to in Article 7 of the Convention, i.e. a mandatory rule which must be applied whatever the law applicable to the contract. It was considered that the States should not be bound to submit themselves to the Article 23 procedure before adopting such a rule. But to escape the application of Article 23 the rule in question must meet the criteria of Article 7 and be explicable by the strong mandatory character of the rule of substantive law which it lays down. It is not the intention that the contracting States should be able to avoid the conditions of Article 23 by disguising under the form of a mandatory rule of the Article 7 kind a rule of conflict dealing with matters whose absolute mandatory nature is not established.

Articles 24 and 25

New Conventions

The procedure for consultation imposed under Article 23 on a State intending to derogate from the Convention by amending its national law is also imposed on a State which wishes to derogate from the Convention on becoming a party to another Convention.

This system of 'freedom under supervision' imposed on contracting States applies only to conventions whose main object or whose principal aim or one of whose principal aims is to lay down rules of private international law concerning any of the matters governed by this Convention. Consequently the States are free to accede to a Convention which consolidates the material law of such and such a contract, with regard, for example, to transport and which contains, as an ancillary provision, a rule of private international law. But, within the area thus defined, the consultation procedure applies even to

Conventions which were open for signature before the entry into force of the present Convention.

Article 24 (2) further restricts the scope of the obligation imposed on the States by specifying that the procedure in the first paragraph need not apply:

1. if the object of the new Convention is to revise a former Convention. The opposite solution would have had the unfortunate effect of obstructing the modernization of existing Conventions;

2. if one or more contracting States or the European Communities are already parties to the new Convention;

3. if the new Convention is concluded within the framework of the European Treaties particularly in the case of a multilateral Convention to which one of the Communities is already party. These rules are in harmony with the precedence of Community law provided for under Article 20.

Article 24 therefore establishes a clear distinction between Conventions to which contracting States may freely become parties and those to which they may become parties only upon condition that they submit to consultation procedure.

For Conventions of the former class, Article 25 provides for the case where the conclusion of such agreements prejudiced the unification achieved by this Convention. If a contracting State considers that such is the case, it may request the Secretary-General of the Council of the European Communities to open consultation procedure. The text of the Article implies that the Secretary-General of the Council possesses a certain discretionary power. The Joint Declaration annexed to this Convention in fact provides that, even before the entry into force of this Convention, the States will confer together if one of them wishes to become a party to such a Convention.

For Conventions of the latter class, the consultation procedure is the same as that of Article 23 except that the period of two years is here reduced to one year.

Article 26

Revision

This Article provides for a possible revision of the Convention. It is identical with Article 67 of the Convention of 27 September 1968.

Articles 27 to 33

Usual protocol clauses

Article 27 defines the territories of the Member States to which the Convention is to apply (cf. Article 60 of the revised Convention of 27 September 1968). Articles 28 and 29 deal with the opening for signature of the Convention and its ratification. Article 28 does not make any statement on the methods by which each contracting State will incorporate the provisions of the Convention into its national law. This is a matter which by international custom is left to the sovereign discretion of States. Each contracting State may therefore give effect to the Convention either by giving it force of law directly or by including its provisions into its own national legislation in a form appropriate to that legislation. The most noteworthy provision is that of Article 29 (1) which provides for entry into force after seven ratifications. It appeared that to require ratification by all nine contracting States might result in delaying entry into force for too long a period.

Article 30 lays down a duration of 10 years, automatically renewable for five-year periods. For States which ratify the Convention after its entry into force, the period of 10 years or five years to be taken into consideration is that which is running for the first States in respect of which the Convention entered into force (Article 29 (1)). Article 30 (3) makes provision for denunciation in manner similar to the Hague Conventions (see for example Article 28 Agency Convention). Such a denunciation will take effect on expiry of the period of 10 years or five years as the case may be (cf. Article 30 (3)). This Article has no equivalent in the Convention of 27 September 1968. The difference is explained by the fact that this Convention, unlike that of 1968, is not directly based on Article 220 of the Treaty of Rome. It is a Convention freely concluded between the States of the Community and not imposed by the Treaty.

Articles 31 and 33 entrust the management of the Convention (deposit of the Convention and notification to the signatory States) to the Secretary-General of the Council of the European Communities.

No provision is made for third States to accede to the Convention. The question was discussed by the Group but it was unable to reach agreement. In these circumstances, if a third State asked to accede to the Convention, there would have to be consultation among the Member States.

On the other hand a solution was found to the position, *vis-á-vis* the Convention, of States which might subsequently become members of the European Community.

The Group considered that the Convention itself could not deal with this question as it is a matter which falls within the scope of the Accession Convention with new members. Accordingly it simply drew up a joint declaration by the contracting States expressing the view that new Member States should be under an obligation also to accede to this Convention.

Protocol relating to the Danish Statute on Maritime Law — Article 169

The Danish Statute on Maritime Law is a uniform law common to the Scandinavian countries. Due to the method applied in Scandinavian legal cooperation it is not based upon a Convention but a result of the simultaneous introduction in the Parliaments of identical bills.

Article 169 of the Statute embodies a number of choice of law rules. These rules are partly based upon the bills of lading Convention 1924 as amended by the 1968 Protocol (The Hague — Visby rules). To the extent that that is the case, they are upheld as a result of Article 21 of the present Convention, even after its ratification by Denmark.

The rule in Article 169, however, provides certain additional choice of law rules with respect to the applicable law in matters of contracts of carriage by sea. These could have been retained by Denmark under Article 21 if the Scandinavian countries had cooperated by means of Conventions. It has been accepted that the fact that another method of cooperation has been followed should not prevent Denmark from retaining this result of Scandinavian cooperation in the field of uniform legislation. The rule in the Protocol permitting revision of Article 169 without following the procedure prescribed in Article 23 corresponds to the rule in Article 24 (2) of the Convention with respect to revision of other Conventions to which the States party to this Convention are also party.

NOTES

relating to the report on the Convention on the law applicable to contractual obligations

(1) Minutes of the meeting of 26 to 28 February 1969.

(2) Minutes of the meeting of 26 to 28 February 1969, pages 3, 4 and 9.

(3) Commission document 12.665/XIV/68.

(4) Minutes of the meeting of 26 to 28 February 1969.

(5) Minutes of the meeting of 20 to 22 October 1969.

(6) Minutes of the meeting of 2 and 3 February 1970.

(7) See the following Commission documents: 12.153.XIV.70 (questionnaire prepared by Professor Giuliano and replies of the rapporteurs); 6.975/XIV/70 (questionnaire prepared by Mr Van Sasse van Ysselt and replies of the rapporteurs); 15.393/XIV/70 (questionnaire prepared by Professor Lagarde and replies of the rapporteurs).

(8) The meetings were held on the following dates: 28 September to 2 October 1970; 16 to 20 November 1970; 15 to 19 February 1971; 15 to 19 March 1971; 28 June to 2 July 1971; 4 to 8 October 1971; 29 November to 3 December 1971; 31 January to 3 February 1972; 20 to 24 March 1972; 29 to 31 May 1972; 21 to 23 June 1972.

(9) Minutes of the meeting of 21 to 23 June 1972, page 29 *et seq.*

(10) The meetings were held on the following dates: 22 to 23 September 1975; 17 to 19 December 1975; 1 to 5 March 1976; 23 to 30 June 1976; 16 to 17 December 1976; 21 to 23 February 1977; 3 to 6 May 1977; 27 to 28 June 1977; 19 to 23 September 1977; 12 to 15 December 1977; 6 to 10 March 1978; 5 to 9 June 1978; 25 to 28 September 1978; 6 to 10 November 1978; 15 to 16 January 1979; 19 to 23 February 1979.

(11) The list of government experts who took part in the work of this *ad hoc* working party or in the work of the working party chaired by Mr Jenard is attached to this report.

(12) The work done on company law by the European Communities falls into three categories. The first category consists of the Directives provided for by Article 54 (3) (g) of the EEC Treaty. Four of these Directives are already in force. The first, issued on 9 March 1968 (OJ No L 65, 14. 3. 1968), concerns disclosure, the extent to which the company is bound by acts done on its behalf, and nullity, in relation to public limited companies. The second, issued on 13 December 1976 (OJ No L 26, 31. 1. 1977), concerns the formation of public limited companies and the maintenance and alteration of their capital. The third, issued on 9 October 1978 (OJ No L 295, 20. 10. 1978), deals with company mergers, and the fourth, issued on 25 July 1978 (OJ No L 222, 14. 8. 1978), relates to annual accounts. Four other proposals for Directives made by the Commission are currently before the Council. They concern the structure of 'sociétés anonymes' (OJ No C 131, 13. 12. 1972), the admission of securities to quotation (OJ No C 131, 13. 12. 1972), consolidated accounts (OJ No C 121, 2. 6. 1976) and the minimum qualifications of persons who carry out legal audits of company accounts (OJ No C 112, 13. 5. 1978). The second category comprises the Conventions provided for by Article 220 of the EEC Treaty. One of these concerns the mutual recognition of companies and legal persons. It was signed at Brussels on 29 February 1968 (the text was published in Supplement No 2 of 1969 to the Bulletin of the European Communities). The draft of a second Convention will shortly be submitted to the

Council; it concerns international mergers. Finally, work has progressed with a view to creating a Statute for European companies. This culminated in the proposal for a Regulation on the Statute for European companies, dated 30 June 1970 (OJ No C 124, 10. 10. 1970).

(13) For the text of the judgment, see: *Rev. crit.*, 1911, p. 395; Journal *dr. int. privé*, 1912, p. 1156. For comments, cf. Batiffol and Lagarde, *Droit international privé* (2 vol.), sixth edition, Paris, 1974–1976, II, No 567–573, pp. 229–241.

(14) Kegel, *Internationales Privatrecht: Ein Studienbuch*, third edition, München–Berlin, 1971, § 18, pp. 253–257; Kegel, *Das IPR im Einführungsgesetz zum BGB*, in Soergel/Siebert, *Kommentar zum BGB* (Band 7), 10th edition, 1970, Margin Notes 220–225; Reithmann, *Internationales Vertragsrecht. Das internationale Privatrecht der Schuldverträge*, third edition, Köln, 1980, margin notes 5 and 6 Drobnig, *American-German Private International Law*, second edition, New York, 1972, pp. 225–232.

(15) Morelli, *Elementi di diritto internazionale privato italiano*, 10th edition, Napoli, 1971, Nos 97–98, pp. 154–157; Vitta, Op. cit., III, pp. 229–290.

(16) *Rev. crit.*, 1938, p. 661.

(17) Frederic, *La vente en droit international privé*, in *Recueil des Cours de l'Ac. de La Haye*, Tome 93 (1958–I), pp. 30–48; Rigaux, *Droit international privé*, Bruxelles, 1968, Nos 348–349; Vander Elst, *Droit international privé. Règles générales des conflits de lois dans les différentes matières de droit privé*, Bruxelles, 1977, No 56, p. 100 *et seq.*

(18) The text of the judgement in the *Alnati* case (Nederlandse Jurisprudentie 1967, p. 3) is published in the French in *Rev. crit.*, 1967, p. 522. (Struycken note on the Alnati decision). For the views of legal writers: cf.: J.E.J. Th. Deelen, Rechtskeuze in het Nederlands internationaal contractenrecht, Amsterdam, 1965; W.L.G. Lemaire, Nederlands internationaal privaatrecht, 1968, p. 242 *et ss.;* Jessurun d'Oliveira, Kotting, Bervoets en De Boer, Partij-invloed in het Internationaal Privaatrecht, Amsterdam 1974.

(19) The principle of freedom of choice has been recognized in England since at least 1796: *Gienar v. Mieyer* (1796), 2 Hy. Bl. 603.

(20) [1939] A.C. 277, p. 290.

(20a) See, e.g., the Employment Protection (Consolidation Act 1978, s. 153 (5) and the Trade Union and Labour Relations Act 1974, s. 30 (6)).

(20b) Unfair Contract Terms Act 1977, s. 27 (2).

(20c) Anton, *Private International Law*, pp. 187–192.

(20d) This includes cases where the parties have attempted to make an express choice but have not done so with sufficient clarity.

(20e) *Compagnie d'Armement Maritime SA v. Compagnie Tunisienne de Navigation SA* [1971] A.C. 572, at pp. 584, 587 to 591, 596 to 600, 604 to 607.

(21) Lando, *Contracts*, in *International Encyclopedia of Comparative Law*, vol. III, *Private International Law* (Lipstein, Chief editor), sections 51 and 54, pp. 28 to 29; Philip, *Dansk International Privat-og Procesret*, second edition, Copenhagen, 1972, p. 291.

(22) C.P.J.I., *Publications*, Série A, Nos 20 to 21, p. 122.

(23) *International Law Reports*, vol. 27, pp. 117 to 233, p. 165; *Riv. dir. int.*, 1963, pp. 230 to 249, p. 244.

(24) For a summary of this award, including extensive quotations, see: Lalive, *Un récent arbitrage suisse entre un organisme d'Etat et une société privée étrangère*, in *Annuaire suisse de dr. int.*, 1963, pp. 273 to 302, especially pp. 284 to 288.

(25) *Int. Legal Mat.*, 1979, pp. 3 to 37, at p. 11; *Riv. dir. int.*, 1978, pp. 514 to 517, at p. 518.

(26) The first Convention, dated 1 October 1976, was in force between the following eight European countries: Belgium, Denmark, Finland, France, Italy, Norway, Sweden, Switzerland. The Republic of Niger also acceded to the convention. For the text of the second and third conventions, see: *Associazione Italiana per l'Arbitrato, Conventions multilaterales et autres instruments en matière d'arbitrage*, Roma, 1974, pp. 86 to 114. For the text of the fourth convention see: *Conf. de La Haye de droit international privé, Recueil des conventions (1951–1977)*, p. 252. For the state of ratifications and accessions to these Conventions at 1 February 1976, see: Giuliano, Pocar and Treves, *Codice delle convenzioni di diritto internazionale privato e processuale*, Milano, 1977, pp. 1404, 1466 *et seq.*, 1497 *et seq.*

(27) Kegel, *Das IPR cit.*, margin notes 269 to 273 and notes 1 and 3; Batiffol and Lagarde, *Droit international privé* cit. II, No 592, p. 243; judgment of the French Cour de Cassation of 18 November 1959 in *Soc. Deckardt* c. *Etabl. Moatti*, in *Rev. crit.*, 1960, p. 83.

(28) Cf. Trib. Rotterdam, 2 April 1963, S § S 1963, 53; Kollewijn, De rechtskeuse achteraf, *Neth. Int. Law Rev.* 1964 225; Lemaire Nederlands Internationaal Privaatrecht, 1968, 265.

(29) *Riv. dir. int. priv. proc.*, 1967, pp. 126 *et seq.*

(30) V. Treves T., *Sulla volontà delle parti di cui all'art. 25 delle preleggi e sul momento del suo sorgere*, in *Riv. dir. int. priv. proc.*, 1967, pp. 315 *et seq.*

(31) For a comparative survey cf. Rabel, *The Conflict of Laws. A comparative study*, II, second edition, Ann Arbor, 1960, Chapter 30, pp. 432 to 486.

(32) Batiffol and Lagarde. *Droit international privé*, cit., II, Nos 572 *et seq.*, pp. 236 *et seq.*, and the essay of Batiffol, *Subjectivisme et objectivisme dans le droit international privé des contrats*, reproduit dans choix d'articles rassemblés par ses amis, Paris 1976, pp. 249 to 263.

(33) *Rev. crit.*, 1955, p. 330.

(34) According to German case law, 'hypothetischer-Parteiwille' does not involve seeking the supposed intentions of the parties, but evaluating the interests involved reasonably and equitably, on an objective basis, with a view to determing the law applicable (BGH, 14 April 1953, in IPRspr., 1952–53, No 40, pp. 151 *et seq.*). According to another case, 'in making this evaluation of the interests involved, the essential question is where the centre of gravity of the contractual relationship is situated' (BGH, 14 July 1955, in IPRspr., 1954–1955, No 67, pp. 206 *et seq.*). The following may be consulted on this concept: Kegel, Internationales Privatrecht ct. § 18, pp. 257 *et seq.*; Kegel, *Das IPR* cit., Nos 240 to 268, and the numerous references to judicial decisions given in the notes; Reithmann, *Internationales Vertragsrecht*, cit., pp. 42 *et seq.*

(35) See *Bonython* v. *Commonwealth of Australia* [1951] A.C. 201 at p. 219; *Tomkinson* v. *First Pennsylvania Banking and Trust Co.* [1961] A.C. 1007 at pp. 1068, 1081 and 1082; *James Miller and Partners Ltd.* v. *Whitworth Street Estates (Manchester) Ltd* [1970] A.C. 583 at pp. 603, 605 and 606, 601 to 611; *Compagnie d'Armement Maritime SA* v. *Compagnie Tunisienne de Navigation SA* [1971] A.C. 572 at pp. 583, 587, 603; *Coast Lines Ltd* v. *Hudig and Veder Chartering NV*, [1972] 2 Q.B. 34 at pp. 44, 46, 50.

(36) *Mount Albert Borough Council* v. *Australian Temperance and General Mutual Life Assurance Society* [1938] A.C. 224 at p. 240 *per* Lord Wright; *The Assunzione* [1974] P. 150 at pp. 175 and 179 *per* Singleton L.J.

(36a) Anton, *Private International Law*, pp. 192 to 197.

(37) See to this effect: Cour de Cassation, judgment of 28 March 1953 (n. 827), *supra;* Cour de Cassation (full court), judgment of 28 June 1966 (n. 1680), *supra*; Cour de Cassation, judgment of 30 April 1969 (n. 1403), in *Officina Musso* c. *Société Sevplant (Riv. dir. int. priv. proc.*, 1970, pp. 332 *et seq.* For comments: Morelli,

Elementi di diritto internazionale privato, cit. n. 97, p. 155; Vitta. *Dir. intern. privato* (3 V) Torino 1972–1975 III, pp. 229 to 290.

(38) See especially Vischer, *Internationales Vertragsrecht*, Bern, 1962, especially pp. 89 to 144. This work also contains a table of the decisions in which this connection has been upheld. See also the judgment of 1 April 1970 of the Court of Appeal of Amsterdam, in *NAP NV* v. *Christophery*.

(39) This is the solution adopted by the Court of Limoges in its judgment of 10 November 1970, and by the Tribunal de commerce of Paris in its judgment of 4 December 1970 (*Rev. crit.*, 1971, pp. 703 *et seq.*). The same principle underlies the judgment of the Supreme Court of the Netherlands of 6 April 1973 (N.I. 1973 N. 371). See also Article 6 of the Hague Convention of 14 March 1978 on the law applicable to agency.

(40) For the judgments mentioned in the text see: *Rev. crit.* 1967 pp. 521 to 523; [1920] 2 K.B. 287; [1958] A.C. 301; [1963] 2 Q.B. 352 and more recently: R. Van Rooij, *De positie van publiekrechtelijke regels op het terrein van het internationaal privaatrecht*, 1976, 236 *et seq.*; L. Strikwerda, *Semipubliekrecht in het conflictenrecht*, 1978, 76 *et seq.*

(40a) On this Article, see the reflections of Vischer, *The antagonism between legal security and search of justice in the field of contract*, in Recueil de l'Académie de La Haye, Tome 142 (1974 II) pp. 21 to 30; Lando *op. cit.* n. 200 to 203 pp. 106 to 110; Segre (T), *Il diritto comunitario della concorrenza come legge d'applicazione necessaria*, in *Riv. dir. int. priv. et proc.* 1979 pp. 75 to 79; Drobnig, comments on Article 7 of the draft convention in *European Private International Law of obligations* edited by Lando — Von Hoffman-Siehr, Tübingen 1975, pp. 88 *et seq.*

(41) V. Delaporte, *Recherches sur la forme des actes juridiques en droit international privé*. Thesis Paris I, 1974, duplicated, No 123 *et seq.*

(42) V. Delaporte, *op. cit.*, No III.

(43) The possibility of applying a common national law is expressly provided for by Article 26 of the preliminary provisions to the Italian Civil Code. See also Article 2315 of the French draft of 1967.

(44) The solution adopted has been influenced by that approved, though in a wider setting, by the Corte di Cassazione italiana, 30 April 1969, *Riv. dir. int. priv. e pro.* 1970, 332 *et seq.* It is contrary to that given by the Cour de Cassation of France, 10 December 1974, Rev. crit. dr. inter. pr. 1975, 474, note A.P. The alternative solution also prevails in the United Kingdom, *Van Grutten v. Digby* (1862), 31 Beav. 561; cf. Cheshire and North, *P.I.L.* 10th edition, p. 220.

(45) Solution adopted in German (principal law), Article 11 E.G.B.G.B.; in Italy (subsidiary) Article 26 prel. pro. and in France (Cour de Cassation 26 May 1963, *Rev. crit. dr. int. pr.* 1964, 513, note Loussouarn; 10 December 1974 see note 44 above), and implicitly allowed by the Benelux Treaty (Article 19).

(46) Se references cited in the previous note.

(47) See, for example, Article 13 (4) of the Benelux Treaty 1969 which has not entered into force.

(48) For a comparative outline on this subject, see: Toubiana: *Le domaine de la loi du contrat en droit international privé* (contrats internationaux et dirigisme économique) Paris 1972, spec. pp. 1 to 146; Lando: *Contracts in International Encyclopedia of Comparative Law,* vol. III, *Private international law* (Lipstein, chief editor) sections 199 to 231 pp. 106 to 125.

(49) See on this subject Article 4 of the Hague Convention of 1955 on the law applicable to international sales of corporeal movables.

(50) See the Benelux Treaty 1969 (Article 2) not entered into force, the preliminary provisions of the Italian Civil Code (Article 1), the law introducing the German

Civil Code (Article 7) and French judicial decisions. Rec. 16 January 1861, Lizardi, D.P. 1861.1.193, S. 1861.1.305.

(51) See Article 20 (3) of the Benelux Treaty 1969 not entered into force and, in France, Cass. 24 February 1959 (Isaac), D. 1959 J. 485; 12 February 1963 (*Ruffini v. Sylvestre*), *Rev. crit. d.i.p.*, 1964, p. 121.

(52) Cf. Kegel, *IPR*, fourth edition, p. 173; Batiffol and Lagarde, sixth edition, p. 394; Article 2 of the Convention of 15 June 1955 on the law applicable to international sales of corporeal movables; Article 5 of the Convention of 14 March 1978 on the law applicable to agency. Dicey and Morris, ninth edition pp. 723 to 724.

(53) See *Acts and Documents of the Hague Conference*, IXth Session vol. III, *Wills* (1961) explanatory report, p. 170.

LIST OF PARTICIPANTS (1)

Work under the auspices of the Commission

Chairman

Mr P. Jenard	Director d'administration, Ministère des Affaires étrangères et du Commerce extérieur, Brussels.

Work under the auspices of the Council

Chairman

Mr A. Brancaccio	Ministero di Grazia e Giustizia, Rome.
BELGIUM	
Mr M. Hanotiau	Chef de service, Ministère de la Justice, Brussels.
Mr P. Gothot	Professeur à la Faculté de droit à l'Université de Liège.
Mr R. Vander Elst	Professeur, Université libre de Bruxelles.
DENMARK	
Mr A. Philip	Professor, Justitsministeriet, Copenhagen.
Mr P. Blok	Professor, Justitsministeriet, Copenhagen.
Mr H. C. Abildtrup	Attaché (Justitsministeriet), Danmarks faste Repræsentation, Brussels.
Mr N. Waage	Attaché (Justitsministeriet), Danmarks faste Repræsentation, Brussels.
Mr H. Wendler-Pedersen	Fuldmægtig, Justitsministeriet, Copenhagen.
GERMANY	
Prof. Dr. Arndt	OLG Präsident i. R., Sachverständiger, Bremen.
Dr. B. Klingsporn	Ministerialrat, Bundesministerium der Justiz, Bonn.
Mr E. Rebmann	Regierungsdirektor, Bundesministerium der Justiz, Bonn.
Mr W. Hantke	Regierungsrat, Bundesministerium für Wirtschaft, Bonn.
Mr H. König	Richter AG, Bundesministerium der Justiz, Bonn.
FRANCE	
Mr H. Batiffol	Doyen honoraire, Prof. à la Faculté de Droit à Paris.
Mr P. Lagarde	Professeur à l'Université de Paris I.
Mr T. Cathala	Conseiller à la Cour d'Appel, Paris.
IRELAND	
The Hon. J. B. Walsh	Senior Ordinary Judge of the Supreme Court of Ireland Law Reform Commission.

(1) Other specialist experts who do not appear on this list, have been consulted on the examination of certain specific questions, and in particular concerning insurance, labour law, interpretation of the Convention by the Court of Justice of the European Communities.

Mr E. Hanley	Legal Adviser, EEC Division, Department of Justice, Dublin.
Mr J. Brennan	Assistant Legal Adviser, EEC Division, Department of Justice, Dublin.
Mr M. G. Gleeson	Administrative Officer, Department of Justice, EEC Division, Dublin.
Mr L. Cahill	Administrative Officer, Department of Justice, EEC Division, Dublin.
Mrs M. Gleeson	Assistant Principal Officer, Department of Tourism and Transport, Dublin.
ITALY	
Mr M. Giuliano	Esperto, Professore all'Università di Milano.
Mr L. Battaglini	Magistrato di cassazione Ministero degli Affari Esteri — Rome.
Mr L. Giampaolino	Vice-Capo di Gabinetto, Ministero del Lavoro, Rome.
Mr F. Di Filippis	Magistrato administrativo, Ministero dell'Industria, del Commercio e del'Artigianato, Rome.
Mr L. Rovelli	Magistrato Tribunale, Ministero di Grazia e Giustizia, Rome.
Mr De Renzis	Magistrato, Ministero dell'industria.
Mr G. Fienga	Ministero Industria.
LUXEMBOURG	
Mr A. Huss	Procureur Général d'État Honoraire, Ministère de la Justice, Luxembourg.
Mr A. Weitzel	Conseiller à la Cour Supérieure de Justice, Ministère de la Justice, Luxembourg.
Mr R. Heiderscheid	Président Honoraire de Tribunal, Luxembourg.
Mr C. Wampach	Conseiller à la Cour Supérieure de Justice, Ministère de la Justice, Luxembourg.
NETHERLANDS	
Mr J. van Rijn van Alkemade	Raadadviseur, Ministerie von Justitie, 's Gravenhage.
Mr R. van Rooy	Administrateur, Ministerie van Justitie, 's Gravenhage.
Mr J. C. Schultsz	Hoogleraar, Ministerie van Justitie, 's Gravenhage.
Mr J. G. Sauverplanne	Hoogleraar, Fakulteit van Rechtsgeleerdheid, Utrecht.
Mr A. J. van Duyne-Strobosch	Administrateur, Ministerie van Justitie, 's Gravenhage.
UNITED KINGDOM	
The Hon. Lord P. Maxwell	Judge, Court of Session, Edinburgh.
Mr A. L. Diamond	Director, Institute of Advanced Legal Studies, London.

Mr K. M. Newmann	Under-Secretary, Lord Chancellor's Office, London.
Mr P. M. North	Law Commissioner, Law Commission, London.
Mr A. Akbar	Senior Legal Assistant, Law Commission, London.

HAGUE CONFERENCE

Mr M. H. van Hoogstraaten	Secretary-General of the Hague Conference on Private International law, 's Gravenhagen.

BENELUX COMMISSION

Mrs M. Weser	Professeur, Membre de la Commission Benelux pur l'unification du droit, Brussels.

COMMISSION OF THE EUROPEAN COMMUNITIES

Directorate-General of Internal Market and Industrial affairs (DG III)

Mr W. Hauschild	Head of division.
Mr G. Di Marco	Principal administrator.
Mr O. Czerny	Principal administrative assistant.

Legal Service

Mr P. Leleux	Legal adviser.
Mr A. McClellan	Legal adviser.
Mr J. Seche	Legal adviser.

Directorate General of Employment and Social affairs (DG V)

Mr H. Ollenhauer	Head of division.
Mr K. M. Schilz	Principal administrator.

Directorate General of Financial Institutions and Taxation (DG XV)

Mr G. Imbert	Director.
Mr H. Schlude	Administrator.

COMMISSION EXPERTS

Transport

Mr F. Berlingieri	Professor at the University of Genoa.
Mr E. Selvig	Professor of the Univerity of Oslo.

Employment contracts

Mr G. Schnorr	Professor at the University of Innsbruck.

GENERAL SECRETARIAT OF THE COUNCIL OF THE EUROPEAN COMMUNITIES

Mr R. Fornasier	Director, Legal Service.
Mr V. Scordamaglia	Head of division, DG Internal Market.
Mr O. Petersen	Administrator, DG Internal Market.
Mr J.-F. Faure	Administrator, DG Internal Market.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 December 2012

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

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 67(4) and points (a), (c) and (e) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) On 21 April 2009, the Commission adopted a report on the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [3]. The report concluded that, in general, the operation of that Regulation is satisfactory, but that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments and to further enhance access to justice. Since a number of amendments are to be made to that Regulation it should, in the interests of clarity, be recast.

(2) At its meeting in Brussels on 10 and 11 December 2009, the European Council adopted a new multiannual programme entitled 'The Stockholm Programme – an open and secure Europe serving and protecting citizens' [4]. In the Stockholm Programme the European Council considered that the process of abolishing all intermediate measures (the exequatur) should be continued during the period covered by that Programme. At the same time the abolition of the exequatur should also be accompanied by a series of safeguards.

(3) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(4) 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 ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.

(5) Such provisions fall within the area of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU).

[1] OJ C 218, 23.7.2011, p. 78.

[2] Position of the European Parliament of 20 November 2012 (not yet published in the Official Journal) and decision of the Council of 6 December 2012.

[3] OJ L 12, 16.1.2001, p. 1.

[4] OJ C 115, 4.5.2010, p. 1.

(6) In order to attain the objective of free circulation 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 legal instrument of the Union which is binding and directly applicable.

(7) On 27 September 1968, the then Member States of the European Communities, acting under Article 220, fourth indent, of the Treaty establishing the European Economic Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, subsequently amended by conventions on the accession to that Convention of new Member States ([1]) ('the 1968 Brussels Convention'). On 16 September 1988, the then Member States of the European Communities and certain EFTA States concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ([2]) ('the 1988 Lugano Convention'), which is a parallel convention to the 1968 Brussels Convention. The 1988 Lugano Convention became applicable to Poland on 1 February 2000.

(8) On 22 December 2000, the Council adopted Regulation (EC) No 44/2001, which replaces the 1968 Brussels Convention with regard to the territories of the Member States covered by the TFEU, as between the Member States except Denmark. By Council Decision 2006/325/EC ([3]), the Community concluded an agreement with Denmark ensuring the application of the provisions of Regulation (EC) No 44/2001 in Denmark. The 1988 Lugano Convention was revised by the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ([4]), signed at Lugano on 30 October 2007 by the Community, Denmark, Iceland, Norway and Switzerland ('the 2007 Lugano Convention').

(9) The 1968 Brussels Convention 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 355 of the TFEU.

(10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, in particular maintenance obligations, which should be excluded from the scope of this Regulation following the adoption of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ([5]).

(11) For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice when it exercises jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.

(12) This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ('the 1958 New York Convention'), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

([1]) 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.
([2]) OJ L 319, 25.11.1988, p. 9.
([3]) OJ L 120, 5.5.2006, p. 22.
([4]) OJ L 147, 10.6.2009, p. 5.
([5]) OJ L 7, 10.1.2009, p. 1.

(13) There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.

(14) A defendant not domiciled in a Member State should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised.

However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting 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.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.

(17) The owner of a cultural object as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State [1] should be able under this Regulation to initiate proceedings as regards a civil claim for the recovery, based on ownership, of such a cultural object in the courts for the place where the cultural object is situated at the time the court is seised. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.

(18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.

(19) 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, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.

(20) Where a question arises as to whether a choice-of-court agreement in favour of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement, including the conflict-of-laws rules of that Member State.

(21) 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 different Member States. There should 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.

(22) However, in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general *lis pendens* rule in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings.

[1] OJ L 74, 27.3.1993, p. 74.

This exception should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised first. In such cases, the general *lis pendens* rule of this Regulation should apply.

(23) This Regulation should provide for a flexible mechanism allowing the courts of the Member States to take into account proceedings pending before the courts of third States, considering in particular whether a judgment of a third State will be capable of recognition and enforcement in the Member State concerned under the law of that Member State and the proper administration of justice.

(24) When taking into account the proper administration of justice, the court of the Member State concerned should assess all the circumstances of the case before it. Such circumstances may include connections between the facts of the case and the parties and the third State concerned, the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.

That assessment may also include consideration of the question whether the court of the third State has exclusive jurisdiction in the particular case in circumstances where a court of a Member State would have exclusive jurisdiction.

(25) The notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights [1]. It should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters [2].

(26) Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.

(27) For the purposes of the free circulation of judgments, a judgment given in a Member State should be recognised and enforced in another Member State even if it is given against a person not domiciled in a Member State.

(28) Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.

(29) The direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition or enforcement of a judgment if he considers one of the grounds for refusal of recognition to be present. This should include the ground that he had not had the opportunity to arrange for his defence where the judgment was given in default of appearance in a civil action linked to criminal proceedings. It should also include the grounds which could be invoked on the basis of an agreement between the Member State addressed and a third State concluded pursuant to Article 59 of the 1968 Brussels Convention.

(30) A party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law.

The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present.

[1] OJ L 157, 30.4.2004, p. 45.
[2] OJ L 174, 27.6.2001, p. 1.

(31) Pending a challenge to the enforcement of a judgment, it should be possible for the courts in the Member State addressed, during the entire proceedings relating to such a challenge, including any appeal, to allow the enforcement to proceed subject to a limitation of the enforcement or to the provision of security.

(32) In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service.

(33) Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

(34) Continuity between the 1968 Brussels Convention, Regulation (EC) No 44/2001 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 by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.

(35) 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.

(36) Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

(37) In order to ensure that the certificates to be used in connection with the recognition or enforcement of judgments, authentic instruments and court settlements under this Regulation are kept up-to-date, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amendments to Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(38) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial guaranteed in Article 47 of the Charter.

(39) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(40) 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 TEU and to the then Treaty establishing the European Community, took part in the adoption and application of Regulation (EC) No 44/2001. In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(41) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1],

[1] OJ L 299, 16.11.2005, p. 62.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

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 or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

2. This Regulation shall not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;

(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;

(e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(f) wills and succession, including maintenance obligations arising by reason of death.

Article 2

For the purposes of this Regulation:

(a) '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 a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, 'judgment' includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

(b) 'court settlement' means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;

(c) 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose;

(d) 'Member State of origin' means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been formally drawn up or registered;

(e) 'Member State addressed' means the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;

(f) 'court of origin' means the court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Article 3

For the purposes of this Regulation, 'court' includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

(a) in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző);

(b) in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (Kronofogdemyndigheten).

CHAPTER II

JURISDICTION

SECTION 1

General provisions

Article 4

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 Member State.

Article 5

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 of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

Article 6

1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, 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 Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

SECTION 2

Special jurisdiction

Article 7

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

(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 point (b) does not apply then point (a) applies;

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

(3) 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;

(4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

(6) as regards a dispute brought against a 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 8

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 9

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 10

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11

1. An insurer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled;

(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 claimant is domiciled; or

(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 12

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 13

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 10, 11 and 12 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.

Article 14

1. Without prejudice to Article 13(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 15

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

(1) which is entered into after the dispute has arisen;

(2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;

(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 Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;

(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 16.

Article 16

The following are the risks referred to in point 5 of Article 15:

(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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]).

([1]) OJ L 335, 17.12.2009, p. 1.

SECTION 4

Jurisdiction over consumer contracts

Article 17

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 6 and point 5 of Article 7, if:

(a) it is a contract for the sale of goods on instalment credit terms;

(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 a 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 Member State.

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 18

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, regardless of the domicile of the other party, 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 19

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

(1) which is entered into after the dispute has arisen;

(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 20

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

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 21

1. An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; or

(b) in another Member State:

(i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

(ii) 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.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

Article 22

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 23

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

SECTION 6

Exclusive jurisdiction

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(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;

(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 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, irrespective of whether the issue is raised by way of an action or as a defence, 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 an instrument of the Union 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 in proceedings concerned with the registration or validity of any European patent granted for that Member 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 25

1. If the parties, regardless of their domicile, 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, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing;

(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. 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 those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.

5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.

Article 26

1. 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 24.

2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

SECTION 8

Examination as to jurisdiction and admissibility

Article 27

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 24, it shall declare of its own motion that it has no jurisdiction.

Article 28

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.

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 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) [1] shall apply instead of paragraph 2 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

4. Where Regulation (EC) No 1393/2007 is 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 abroad pursuant to that Convention.

SECTION 9

Lis pendens — related actions

Article 29

1. Without prejudice to Article 31(2), 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. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.

3. 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 30

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 the action in the court first seised is pending at first instance, any other court 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 31

1. 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.

2. Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.

3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.

4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.

Article 32

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

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

(b) 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 claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

[1] OJ L 324, 10.12.2007, p. 79.

2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.

Article 33

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:

(a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and

(b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

(a) the proceedings in the court of the third State are themselves stayed or discontinued;

(b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or

(c) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Article 34

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if:

(a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and

(c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.

2. The court of the Member State may continue the proceedings at any time if:

(a) it appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;

(b) the proceedings in the court of the third State are themselves stayed or discontinued;

(c) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or

(d) the continuation of the proceedings is required for the proper administration of justice.

3. The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.

4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

SECTION 10

Provisional, including protective, measures

Article 35

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 Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

RECOGNITION AND ENFORCEMENT

SECTION 1

Recognition

Article 36

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 may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

Article 37

1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53.

2. The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.

Article 38

The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if:

(a) the judgment is challenged in the Member State of origin; or

(b) an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 45 or for a decision that the recognition is to be refused on the basis of one of those grounds.

SECTION 2

Enforcement

Article 39

A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Article 40

An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

Article 41

1. Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed.

2. Notwithstanding paragraph 1, the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in Article 45.

3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 42

1. For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.

2. For the purposes of enforcement in a Member State of a judgment given in another Member State ordering a provisional, including a protective, measure, the applicant shall provide the competent enforcement authority with:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

(b) the certificate issued pursuant to Article 53, containing a description of the measure and certifying that:

(i) the court has jurisdiction as to the substance of the matter;

(ii) the judgment is enforceable in the Member State of origin; and

(c) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment.

3. The competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate.

4. The competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

Article 43

1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

2. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages:

(a) a language which he understands; or

(b) the official language of the Member State in which he is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he is domiciled.

Where a translation of the judgment is requested under the first subparagraph, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought. This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages referred to in the first subparagraph or is accompanied by a translation into one of those languages.

3. This Article shall not apply to the enforcement of a protective measure in a judgment or where the person seeking enforcement proceeds to protective measures in accordance with Article 40.

Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:

(a) limit the enforcement proceedings to protective measures;

(b) make enforcement conditional on the provision of such security as it shall determine; or

(c) suspend, either wholly or in part, the enforcement proceedings.

2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

SECTION 3

Refusal of recognition and enforcement

Subsection 1

Refusal of recognition

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment 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;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment 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; or

(e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

Subsection 2

Refusal of enforcement

Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Article 47

1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.

2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.

3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.

The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 48

The court shall decide on the application for refusal of enforcement without delay.

Article 49

1. The decision on the application for refusal of enforcement may be appealed against by either party.

2. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged.

Article 50

The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

Article 51

1. The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may 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, Cyprus 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.

SECTION 4

Common provisions

Article 52

Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed.

Article 53

The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.

Article 54

1. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests.

Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.

2. Any party may challenge the adaptation of the measure or order before a court.

3. If necessary, the party invoking the judgment or seeking its enforcement may be required to provide a translation or a transliteration of the judgment.

Article 55

A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Article 56

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the 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 Member State addressed.

Article 57

1. When a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a judgment given in another Member State is invoked or an application is made, in accordance with the law of that Member State.

2. For the purposes of the forms referred to in Articles 53 and 60, translations or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.

3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

CHAPTER IV

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

Article 58

1. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed.

The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to authentic instruments.

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

Article 59

A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments.

Article 60

The competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement.

CHAPTER V

GENERAL PROVISIONS

Article 61

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

Article 62

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 63

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;

(b) central administration; or

(c) principal place of business.

2. For the purposes of Ireland, Cyprus and the United Kingdom, '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 64

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 65

1. The jurisdiction specified in point 2 of Article 8 and Article 13 in actions on a warranty or guarantee or in any other third-party proceedings may be resorted to in the Member States included in the list established by the Commission pursuant to point (b) of Article 76(1) and Article 76(2) only in so far as permitted under national law. A person domiciled in another Member State may be invited to join the proceedings before the courts of those Member States pursuant to the rules on third-party notice referred to in that list.

2. Judgments given in a Member State by virtue of point 2 of Article 8 or Article 13 shall be recognised and enforced in accordance with Chapter III in any other Member State. Any effects which judgments given in the Member States included in the list referred to in paragraph 1 may have, in accordance with the law of those Member States, on third parties by application of paragraph 1 shall be recognised in all Member States.

3. The Member States included in the list referred to in paragraph 1 shall, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC [1] ('the European Judicial Network') provide information on how to determine, in accordance with their national law, the effects of the judgments referred to in the second sentence of paragraph 2.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 66

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

CHAPTER VII

RELATIONSHIP 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 instruments of the Union or in national legislation harmonised pursuant to such instruments.

[1] OJ L 174, 27.6.2001, p. 25.

Article 68

1. This Regulation shall, as between the Member States, supersede the 1968 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 355 of the TFEU.

2. In so far as this Regulation replaces the provisions of the 1968 Brussels Convention between the Member States, any reference to that Convention shall be understood as a reference to this Regulation.

Article 69

Subject to Articles 70 and 71, this Regulation shall, as between the Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions included in the list established by the Commission pursuant to point (c) of Article 76(1) and Article 76(2) shall be superseded.

Article 70

1. 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, authentic instruments formally drawn up or registered and court settlements approved or concluded before the date of entry into force of Regulation (EC) No 44/2001.

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 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 party to that convention. The court hearing the action shall, in any event, apply Article 28 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 on recognition and enforcement of judgments may be applied.

Article 72

This Regulation shall not affect agreements by which Member States, prior to the entry into force of Regulation (EC) No 44/2001, undertook pursuant to Article 59 of the 1968 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 State 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.

Article 73

1. This Regulation shall not affect the application of the 2007 Lugano Convention.

2. This Regulation shall not affect the application of the 1958 New York Convention.

3. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

CHAPTER VIII

FINAL PROVISIONS

Article 74

The Member States shall provide, within the framework of the European Judicial Network and with a view to making the information available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, and information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

The Member States shall keep this information permanently updated.

Article 75

By 10 January 2014, the Member States shall communicate to the Commission:

(a) the courts to which the application for refusal of enforcement is to be submitted pursuant to Article 47(1);

(b) the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to Article 49(2);

(c) the courts with which any further appeal is to be lodged pursuant to Article 50; and

(d) the languages accepted for translations of the forms as referred to in Article 57(2).

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network.

Article 76

1. The Member States shall notify the Commission of:

(a) the rules of jurisdiction referred to in Articles 5(2) and 6(2);

(b) the rules on third-party notice referred to in Article 65; and

(c) the conventions referred to in Article 69.

2. The Commission shall, on the basis of the notifications by the Member States referred to in paragraph 1, establish the corresponding lists.

3. The Member States shall notify the Commission of any subsequent amendments required to be made to those lists. The Commission shall amend those lists accordingly.

4. The Commission shall publish the lists and any subsequent amendments made to them in the *Official Journal of the European Union*.

5. The Commission shall make all information notified pursuant to paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network.

Article 77

The Commission shall be empowered to adopt delegated acts in accordance with Article 78 concerning the amendment of Annexes I and II.

Article 78

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 77 shall be conferred on the Commission for an indeterminate period of time from 9 January 2013.

3. The delegation of power referred to in Article 77 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 77 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 79

By 11 January 2022 the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation. That report shall include an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State, taking into account the operation of this Regulation and possible developments at international level. Where appropriate, the report shall be accompanied by a proposal for amendment of this Regulation.

Article 80

This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex III.

Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 December 2012.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. D. MAVROYIANNIS

ANNEX I

CERTIFICATE CONCERNING A JUDGMENT IN CIVIL AND COMMERCIAL MATTERS

Article 53 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

1. COURT OF ORIGIN

1.1. Name:

1.2. Address:

1.2.1. Street and number/PO box:

1.2.2. Place and postal code:

1.2.3. Member State:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐LU ☐ LV ☐ MT ☐ NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐

1.3. Telephone:

1.4. Fax

1.5. E-mail (if available):

2. CLAIMANT(S) ([1])

2.1. Surname and given name(s)/name of company or organisation:

2.2. Identification number (if applicable and if available):

2.3. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

2.4. Address:

2.4.1. Street and number/PO box:

2.4.2. Place and postal code:

2.4.3. Country:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU ☐ LV ☐ MT ☐ NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐ Other (please specify (ISO-code)) ☐

2.5. E-mail (if available):

3. DEFENDANT(S) ([2])

3.1. Surname and given name(s)/name of company or organisation:

3.2. Identification number (if applicable and if available):

3.3. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

3.4. Address:

3.4.1. Street and number/PO box:

3.4.2. Place and postal code:

3.4.3. Country:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU ☐ LV ☐ MT ☐ NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐ Other (please specify (ISO-code)) ☐

3.5. E-mail (if available):

4. THE JUDGMENT

4.1. Date (dd/mm/yyyy) of the judgment:

4.2. Reference number of the judgment:

4.3. The judgment was given in default of appearance:

4.3.1. ☐ No

4.3.2. ☐ Yes (please indicate the date (dd/mm/yyyy) on which the document instituting the proceedings or an equivalent document was served on the defendant):

4.4. The judgment is enforceable in the Member State of origin without any further conditions having to be met:

4.4.1. ☐ Yes (please indicate the date (dd/mm/yyyy) on which the judgment was declared enforceable, if applicable):

4.4.2. ☐ Yes, but only against the following person(s) (please specify):

4.4.3. ☐ Yes, but limited to part(s) of the judgment (please specify):

4.4.4. ☐ The judgment does not contain an enforceable obligation

4.5. As of the date of issue of the certificate, the judgment has been served on the defendant(s):

4.5.1. ☐ Yes (please indicate the date of service (dd/mm/yyyy) if known):

4.5.1.1. The judgment was served in the following language(s):

BG ☐ ES ☐ CS ☐ DE ☐ ET ☐ EL ☐ EN ☐ FR ☐ GA ☐ IT ☐ LV ☐ LT ☐ HU ☐ MT ☐ NL ☐ PL ☐ PT ☐ RO ☐ SK ☐ SL ☐ FI ☐ SV ☐ Other (please specify (ISO-code)) ☐

4.5.2. ☐ Not to the knowledge of the court

4.6. Terms of the judgment and interest:

4.6.1. Judgment on a monetary claim ([3])

4.6.1.1. Short description of the subject-matter of the case:

4.6.1.2. The court has ordered

..... (surname and given name(s)/name of company or organisation) ([4])

to make a payment to:

..... (surname and given name(s)/name of company or organisation)

4.6.1.2.1. If more than one person has been held liable for one and the same claim, the whole amount may be collected from any one of them:

4.6.1.2.1.1. ☐ Yes

4.6.1.2.1.2. ☐ No

4.6.1.3. Currency:

☐ euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN) ☐ Pound Sterling (GBP) ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify (ISO code)):

4.6.1.4. Principal amount:

4.6.1.4.1. ☐ Amount to be paid in one sum

4.6.1.4.2. ☐ Amount to be paid in instalments ([5])

Due date (dd/mm/yyyy)	Amount

4.6.1.4.3. ☐ Amount to be paid regularly

4.6.1.4.3.1. ☐ per day

4.6.1.4.3.2. ☐ per week

4.6.1.4.3.3. ☐ other (state frequency):

4.6.1.4.3.4. From date (dd/mm/yyyy) or event:

4.6.1.4.3.5. If applicable, until (date (dd/mm/yyyy) or event):

4.6.1.5. Interest, if applicable:

4.6.1.5.1. Interest:

4.6.1.5.1.1. ☐ Not specified in the judgment

4.6.1.5.1.2. ☐ Yes, specified in the judgment as follows:

4.6.1.5.1.2.1. Amount:

or:

4.6.1.5.1.2.2. Rate … %

4.6.1.5.1.2.3. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event) ([6])

4.6.1.5.2. ☐ Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):

4.6.1.5.2.1. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event) ([6])

4.6.1.5.3. ☐ Capitalisation of interest (if applicable, please specify):

4.6.2. Judgment ordering a provisional, including a protective, measure:

4.6.2.1. Short description of the subject-matter of the case and the measure ordered:

4.6.2.2. The measure was ordered by a court having jurisdiction as to the substance of the matter

4.6.2.2.1. ☐ Yes

4.6.3. Other type of judgment:

4.6.3.1. Short description of the subject-matter of the case and the ruling by the court:

4.7. Costs ([7]):

4.7.1. Currency:

☐ euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN) ☐ Pound Sterling (GBP) ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify (ISO code)):

4.7.2. The following person(s) against whom enforcement is sought has/have been ordered to bear the costs:

4.7.2.1. Surname and given name(s)/name of company or organisation: ([8])

4.7.2.2. If more than one person has been ordered to bear the costs, the whole amount may be collected from any one of them:

4.7.2.2.1. ☐ Yes

4.7.2.2.2. ☐ No

4.7.3. The costs of which recovery is sought are as follows: ([9])

4.7.3.1. ☐ The costs have been fixed in the judgment by way of a total amount (please specify amount):

4.7.3.2. ☐ The costs have been fixed in the judgment by way of a percentage of total costs (please specify percentage of total):

4.7.3.3. ☐ Liability for the costs has been determined in the judgment and the exact amounts are as follows:

4.7.3.3.1. ☐ Court fees:

4.7.3.3.2. ☐ Lawyers' fees:

4.7.3.3.3. ☐ Cost of service of documents:

4.7.3.3.4. ☐ Other:

4.7.3.4. ☐ Other (please specify):

4.7.4. Interest on costs:

4.7.4.1. ☐ Not applicable

4.7.4.2. ☐ Interest specified in the judgment

4.7.4.2.1. ☐ Amount:

or

4.7.4.2.2. ☐ Rate … %

4.7.4.2.2.1. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event) ([6])

4.7.4.3. ☐ Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):

4.7.4.3.1. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event) ([6])

4.7.4.4. ☐ Capitalisation of interest (if applicable, please specify):

Done at: …

Signature and/or stamp of the court of origin:

([1]) Insert information for all claimants if the judgment concerns more than one.
([2]) Insert information for all defendants if the judgment concerns more than one.
([3]) If the judgment only concerns costs relating to a claim which has been decided in an earlier judgment, leave point 4.6.1 blank and go to point 4.7.
([4]) If more than one person has been ordered to make a payment, insert information for all persons.
([5]) Insert information for each instalment.
([6]) Insert information for all periods if more than one.
([7]) This point also covers situations where the costs are awarded in a separate judgment.
([8]) Insert information for all persons if more than one.
([9]) In the event that the costs may be recovered from several persons, insert the breakdown for each person separately.

ANNEX II

CERTIFICATE CONCERNING AN AUTHENTIC INSTRUMENT/COURT SETTLEMENT ([1]) IN CIVIL AND COMMERCIAL MATTERS

Article 60 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

1. COURT OR COMPETENT AUTHORITY ISSUING THE CERTIFICATE

1.1. Name:

1.2. Address:

1.2.1. Street and number/PO box:

1.2.2. Place and postal code:

1.2.3. Member State:

AT ☐ BE ☐ BG ☐ CY ☐ CZ ☐ DE ☐ EE ☐ EL ☐ ES ☐ FI ☐ FR ☐ HU ☐ IE ☐ IT ☐ LT ☐ LU ☐ LV ☐ MT ☐ NL ☐ PL ☐ PT ☐ RO ☐ SE ☐ SI ☐ SK ☐ UK ☐

1.3. Telephone:

1.4. Fax

1.5. E-mail (if available):

2. AUTHENTIC INSTRUMENT

2.1. Authority which has drawn up the authentic instrument (if different from the authority issuing the certificate)

2.1.1. Name and designation of authority:

2.1.2. Address:

2.2. Date (dd/mm/yyyy) on which the authentic instrument was drawn up by the authority referred to in point 2.1:

2.3. Reference number of the authentic instrument (if applicable):

2.4. Date (dd/mm/yyyy) on which the authentic instrument was registered in the Member State of origin (to be filled in only if the date of registration determines the legal effect of the instrument and this date is different from the date indicated in point 2.2):

2.4.1. Reference number in the register (if applicable):

3. COURT SETTLEMENT

3.1. Court which approved the court settlement or before which the court settlement was concluded (if different from the court issuing the certificate)

3.1.1. Name of court:

3.1.2. Address:

3.2. Date (dd/mm/yyyy) of the court settlement:

3.3. Reference number of the court settlement:

4. PARTIES TO THE AUTHENTIC INSTRUMENT/COURT SETTLEMENT:

4.1. Name(s) of creditor(s) (surname and given name(s)/name of company or organisation) ([2]):

4.1.1. Identification number (if applicable and if available):

4.1.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

4.2. Name(s) of debtor(s) (surname and given name(s)/name of company or organisation) ([3]):

4.2.1. Identification number (if applicable and if available):

4.2.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

4.3. Name of other parties, if any (surname and given name(s)/name of company or organisation) ([4])

4.3.1. Identification number (if applicable and if available):

4.3.2. Date (dd/mm/yyyy) and place of birth or, if legal person, of incorporation/formation/registration (if relevant and if available):

5. ENFORCEABILITY OF THE AUTHENTIC INSTRUMENT/COURT SETTLEMENT IN THE MEMBER STATE OF ORIGIN

5.1. The authentic instrument/court settlement is enforceable in the Member State of origin

5.1.1. ☐ Yes

5.2. Terms of the authentic instrument/court settlement and interest

5.2.1 Authentic instrument/court settlement relating to a monetary claim

5.2.1.1. Short description of the subject matter:

5.2.1.2. Under the authentic instrument/court settlement

..... (surname and given name(s)/name of company or organisation) ([5])

has to make a payment to:

..... (surname and given name(s)/name of company or organisation)

5.2.1.2.1. If more than one person has been held liable for one and the same claim, the whole amount may be collected from any one of them:

5.2.1.2.1.1. ☐ Yes

5.2.1.2.1.2. ☐ No

5.2.1.3. Currency:

☐ euro (EUR) ☐ Bulgarian lev (BGN) ☐ Czech koruna (CZK) ☐ Hungarian forint (HUF) ☐ Lithuanian litas (LTL) ☐ Latvian lats (LVL) ☐ Polish zloty (PLN) ☐ Pound Sterling (GBP) ☐ Romanian leu (RON) ☐ Swedish krona (SEK) ☐ Other (please specify (ISO code)):

5.2.1.4. Principal amount:

5.2.1.4.1. ☐ Amount to be paid in one sum

5.2.1.4.2. ☐ Amount to be paid in instalments ([6])

Due date (dd/mm/yyyy)	Amount

5.2.1.4.3. ☐ Amount to be paid regularly

5.2.1.4.3.1. ☐ per day

5.2.1.4.3.2. ☐ per week

5.2.1.4.3.3. ☐ other (state frequency):

5.2.1.4.3.4. From date (dd/mm/yyyy) or event:

5.2.1.4.3.5. If applicable, until ..... (date (dd/mm/yyyy) or event)

5.2.1.5. Interest, if applicable

5.2.1.5.1. Interest:

5.2.1.5.1.1. ☐ Not specified in the authentic instrument/court settlement

5.2.1.5.1.2. ☐ Yes, specified in the authentic instrument/court settlement as follows:

5.2.1.5.1.2.1. Amount:

or

5.2.1.5.1.2.2. Rate … %

5.2.1.5.1.2.3. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event) ([7])

5.2.1.5.2. ☐ Statutory interest (if applicable) to be calculated in accordance with (please specify relevant statute):

5.2.1.5.2.1. Interest due from ..... (date (dd/mm/yyyy) or event) to ..... (date (dd/mm/yyyy) or event) ([7])

5.2.1.5.3. ☐ Capitalisation of interest (if applicable, please specify):

5.2.2. Authentic instrument/court settlement relating to a non-monetary enforceable obligation:

5.2.2.1. Short description of the enforceable obligation

5.2.2.2. The obligation referred to in point 5.2.2.1 is enforceable against the following person(s) ([8]) (surname and given name(s)/name of company or organisation):

Done at: …

Signature and/or stamp of the court or competent authority issuing the certificate:

([1]) Delete as appropriate throughout the certificate.
([2]) Insert information for all creditors if more than one.
([3]) Insert information for all debtors if more than one.
([4]) Insert information for other parties (if any).
([5]) If more than one person has been ordered to make a payment, insert information for all persons.
([6]) Insert information for each instalment.
([7]) Insert information for all periods if more than one.
([8]) Insert information for all persons if more than one.

ANNEX III

CORRELATION TABLE

Regulation (EC) No 44/2001	This Regulation
Article 1(1)	Article 1(1)
Article 1(2), introductory words	Article 1(2), introductory words
Article 1(2) point (a)	Article 1(2), points (a) and (f)
Article 1(2), points (b) to (d)	Article 1(2), points (b) to (d)
—	Article 1(2), point (e)
Article 1(3)	—
—	Article 2
Article 2	Article 4
Article 3	Article 5
Article 4	Article 6
Article 5, introductory words	Article 7, introductory words
Article 5, point (1)	Article 7, point (1)
Article 5, point (2)	—
Article 5, points (3) and (4)	Article 7, points (2) and (3)
—	Article 7, point (4)
Article 5, points (5) to (7)	Article 7, points (5) to (7)
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16
Article 15	Article 17
Article 16	Article 18
Article 17	Article 19
Article 18	Article 20
Article 19, points (1) and (2)	Article 21(1)
—	Article 21(2)
Article 20	Article 22
Article 21	Article 23
Article 22	Article 24
Article 23(1) and (2)	Article 25(1) and (2)

Regulation (EC) No 44/2001	This Regulation
Article 23(3)	—
Article 23(4) and (5)	Article 25(3) and (4)
—	Article 25(5)
Article 24	Article 26(1)
—	Article 26(2)
Article 25	Article 27
Article 26	Article 28
Article 27(1)	Article 29(1)
—	Article 29(2)
Article 27(2)	Article 29(3)
Article 28	Article 30
Article 29	Article 31(1)
—	Article 31(2)
—	Article 31(3)
—	Article 31(4)
Article 30	Article 32(1), points (a) and (b)
—	Article 32(1), second subparagraph
—	Article 32(2)
—	Article 33
—	Article 34
Article 31	Article 35
Article 32	Article 2, point (a)
Article 33	Article 36
—	Article 37
—	Article 39
—	Article 40
—	Article 41
—	Article 42
—	Article 43
—	Article 44
Article 34	Article 45(1), points (a) to (d)
Article 35(1)	Article 45(1), point (e)
Article 35(2)	Article 45(2)
Article 35(3)	Article 45(3)
—	Article 45(4)
Article 36	Article 52
Article 37(1)	Article 38, point (a)
Article 38	—

Regulation (EC) No 44/2001	This Regulation
Article 39	—
Article 40	—
Article 41	—
Article 42	—
Article 43	—
Article 44	—
Article 45	—
Article 46	—
Article 47	—
Article 48	—
—	Article 46
—	Article 47
—	Article 48
—	Article 49
—	Article 50
—	Article 51
—	Article 54
Article 49	Article 55
Article 50	—
Article 51	Article 56
Article 52	—
Article 53	—
Article 54	Article 53
Article 55(1)	—
Article 55(2)	Article 37(2), Article 47(3) and Article 57
Article 56	Article 61
Article 57(1)	Article 58(1)
Article 57(2)	—
Article 57(3)	Article 58(2)
Article 57(4)	Article 60
Article 58	Article 59 and Article 60
Article 59	Article 62
Article 60	Article 63
Article 61	Article 64
Article 62	Article 3
Article 63	—
Article 64	—
Article 65	Article 65(1) and (2)

Regulation (EC) No 44/2001	This Regulation
—	Article 65(3)
Article 66	Article 66
Article 67	Article 67
Article 68	Article 68
Article 69	Article 69
Article 70	Article 70
Article 71	Article 71
Article 72	Article 72
—	Article 73
Article 73	Article 79
Article 74(1)	Article 75, first paragraph, points (a), (b) and (c), and Article 76(1), point (a)
Article 74(2)	Article 77
—	Article 78
—	Article 80
Article 75	—
Article 76	Article 81
Annex I	Article 76(1), point (a)
Annex II	Article 75, point (a)
Annex III	Article 75, point (b)
Annex IV	Article 75, point (c)
Annex V	Annex I and Annex II
Annex VI	Annex II
—	Annex III

REGULATION (EU) 2015/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2015

on insolvency proceedings

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) On 12 December 2012, the Commission adopted a report on the application of Council Regulation (EC) No 1346/2000 ([3]). The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.

(2) The Union has set the objective of establishing an area of freedom, security and justice.

(3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. This Regulation needs to be adopted in order to achieve that objective, which falls within the scope of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty.

(4) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Union law. The insolvency of such undertakings also affects the proper functioning of the internal market, and there is a need for a Union act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

(5) It is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).

(6) This Regulation should include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. This Regulation should also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings. In addition, this Regulation should lay down rules on the coordination of insolvency proceedings which relate to the same debtor or to several members of the same group of companies.

(7) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ([4]). Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012.

([1]) OJ C 271, 19.9.2013, p. 55.

([2]) Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and position of the Council at first reading of 12 March 2015 (not yet published in the Official Journal). Position of the European Parliament of 20 May 2015 (not yet published in the Official Journal).

([3]) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

([4]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

(8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.

(9) This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A. In respect of the national procedures contained in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.

(10) The scope of this Regulation should extend to proceedings which promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs. It should, in particular, extend to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. It should also extend to proceedings providing for a debt discharge or a debt adjustment in relation to consumers and self-employed persons, for example by reducing the amount to be paid by the debtor or by extending the payment period granted to the debtor. Since such proceedings do not necessarily entail the appointment of an insolvency practitioner, they should be covered by this Regulation if they take place under the control or supervision of a court. In this context, the term 'control' should include situations where the court only intervenes on appeal by a creditor or other interested parties.

(11) This Regulation should also apply to procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. Such procedures should not be detrimental to the general body of creditors and, if no agreement on a restructuring plan can be reached, should be preliminary to other procedures covered by this Regulation.

(12) This Regulation should apply to proceedings the opening of which is subject to publicity in order to allow creditors to become aware of the proceedings and to lodge their claims, thereby ensuring the collective nature of the proceedings, and in order to give creditors the opportunity to challenge the jurisdiction of the court which has opened the proceedings.

(13) Accordingly, insolvency proceedings which are confidential should be excluded from the scope of this Regulation. While such proceedings may play an important role in some Member States, their confidential nature makes it impossible for a creditor or a court located in another Member State to know that such proceedings have been opened, thereby making it difficult to provide for the recognition of their effects throughout the Union.

(14) The collective proceedings which are covered by this Regulation should include all or a significant part of the creditors to whom a debtor owes all or a substantial proportion of the debtor's outstanding debts provided that the claims of those creditors who are not involved in such proceedings remain unaffected. Proceedings which involve only the financial creditors of a debtor should also be covered. Proceedings which do not include all the creditors of a debtor should be proceedings aimed at rescuing the debtor. Proceedings that lead to a definitive cessation of the debtor's activities or the liquidation of the debtor's assets should include all the debtor's creditors. Moreover, the fact that some insolvency proceedings for natural persons exclude specific categories of claims, such as maintenance claims, from the possibility of a debt-discharge should not mean that such proceedings are not collective.

(15) This Regulation should also apply to proceedings that, under the law of some Member States, are opened and conducted for a certain period of time on an interim or provisional basis before a court issues an order confirming the continuation of the proceedings on a non-interim basis. Although labelled as 'interim', such proceedings should meet all other requirements of this Regulation.

(16) This Regulation should apply to proceedings which are based on laws relating to insolvency. However, proceedings that are based on general company law not designed exclusively for insolvency situations should not be considered to be based on laws relating to insolvency. Similarly, the purpose of adjustment of debt should not include specific proceedings in which debts of a natural person of very low income and very low asset value are written off, provided that this type of proceedings never makes provision for payment to creditors.

(17) This Regulation's scope should extend to proceedings which are triggered by situations in which the debtor faces non-financial difficulties, provided that such difficulties give rise to a real and serious threat to the debtor's actual or future ability to pay its debts as they fall due. The time frame relevant for the determination of such threat may extend to a period of several months or even longer in order to account for cases in which the debtor is faced with non-financial difficulties threatening the status of its business as a going concern and, in the medium term, its liquidity. This may be the case, for example, where the debtor has lost a contract which is of key importance to it.

(18) This Regulation should be without prejudice to the rules on the recovery of State aid from insolvent companies as interpreted by the case-law of the Court of Justice of the European Union.

(19) Insolvency proceedings concerning insurance undertakings, credit institutions, investment firms and other firms, institutions or undertakings covered by Directive 2001/24/EC of the European Parliament and of the Council ([1]) and collective investment undertakings should be excluded from the scope of this Regulation, as they are all subject to special arrangements and the national supervisory authorities have wide-ranging powers of intervention.

(20) Insolvency proceedings do not necessarily involve the intervention of a judicial authority. Therefore, the term 'court' in this Regulation should, in certain provisions, be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened.

(21) Insolvency practitioners are defined in this Regulation and listed in Annex B. Insolvency practitioners who are appointed without the involvement of a judicial body should, under national law, be appropriately regulated and authorised to act in insolvency proceedings. The national regulatory framework should provide for proper arrangements to deal with potential conflicts of interest.

(22) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope throughout the Union. The application without exception of the law of the State of the opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing national laws on security interests to be found in the Member States. Furthermore, the preferential rights enjoyed by some creditors in insolvency proceedings are, in some cases, completely different. At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level. This Regulation should take account of such differing national laws in two different ways. On the one hand, provision should be made for special rules on the applicable law in the case of particularly significant rights and legal relationships (e.g. rights *in rem* and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of the opening of proceedings should also be allowed alongside main insolvency proceedings with universal scope.

(23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.

(24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.

(25) This Regulation applies only to proceedings in respect of a debtor whose centre of main interests is located in the Union.

([1]) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions (OJ L 125, 5.5.2001, p. 15).

(26) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State should be established by the national law of the Member State concerned.

(27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.

(28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.

(29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

(30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.

(31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.

(32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.

(33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.

(34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.

(35) The courts of the Member State within the territory of which insolvency proceedings have been opened should also have jurisdiction for actions which derive directly from the insolvency proceedings and are closely linked with them. Such actions should include avoidance actions against defendants in other Member States and actions concerning obligations that arise in the course of the insolvency proceedings, such as advance payment for costs of the proceedings. In contrast, actions for the performance of the obligations under a contract concluded by the debtor prior to the opening of proceedings do not derive directly from the proceedings. Where such an action is related to another action based on general civil and commercial law, the insolvency practitioner should be able to

bring both actions in the courts of the defendant's domicile if he considers it more efficient to bring the action in that forum. This could, for example, be the case where the insolvency practitioner wishes to combine an action for director's liability on the basis of insolvency law with an action based on company law or general tort law.

(36) The court having jurisdiction to open the main insolvency proceedings should be able to order provisional and protective measures as from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are important to guarantee the effectiveness of the insolvency proceedings. In that connection, this Regulation should provide for various possibilities. On the one hand, the court competent for the main insolvency proceedings should also be able to order provisional and protective measures covering assets situated in the territory of other Member States. On the other hand, an insolvency practitioner temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those Member States.

(37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.

(38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.

(39) This Regulation should provide for rules to determine the location of the debtor's assets, which should apply when determining which assets belong to the main or secondary insolvency proceedings, or to situations involving third parties' rights *in rem*. In particular, this Regulation should provide that European patents with unitary effect, a Community trade mark or any other similar rights, such as Community plant variety rights or Community designs, should only be included in the main insolvency proceedings.

(40) Secondary insolvency proceedings can serve different purposes, besides the protection of local interests. Cases may arise in which the insolvency estate of the debtor is too complex to administer as a unit, or the differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening of proceedings to the other Member States where the assets are located. For that reason, the insolvency practitioner in the main insolvency proceedings may request the opening of secondary insolvency proceedings where the efficient administration of the insolvency estate so requires.

(41) Secondary insolvency proceedings may also hamper the efficient administration of the insolvency estate. Therefore, this Regulation sets out two specific situations in which the court seised of a request to open secondary insolvency proceedings should be able, at the request of the insolvency practitioner in the main insolvency proceedings, to postpone or refuse the opening of such proceedings.

(42) First, this Regulation confers on the insolvency practitioner in main insolvency proceedings the possibility of giving an undertaking to local creditors that they will be treated as if secondary insolvency proceedings had been opened. That undertaking has to meet a number of conditions set out in this Regulation, in particular that it be approved by a qualified majority of local creditors. Where such an undertaking has been given, the court seised of a request to open secondary insolvency proceedings should be able to refuse that request if it is satisfied that the undertaking adequately protects the general interests of local creditors. When assessing those interests, the court should take into account the fact that the undertaking has been approved by a qualified majority of local creditors.

(43) For the purposes of giving an undertaking to local creditors, the assets and rights located in the Member State where the debtor has an establishment should form a sub-category of the insolvency estate, and, when distributing them or the proceeds resulting from their realisation, the insolvency practitioner in the main insolvency proceedings should respect the priority rights that creditors would have had if secondary insolvency proceedings had been opened in that Member State.

(44) National law should be applicable, as appropriate, in relation to the approval of an undertaking. In particular, where under national law the voting rules for adopting a restructuring plan require the prior approval of creditors' claims, those claims should be deemed to be approved for the purpose of voting on the undertaking. Where there are different procedures for the adoption of restructuring plans under national law, Member States should designate the specific procedure which should be relevant in this context.

(45) Second, this Regulation should provide for the possibility that the court temporarily stays the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings, in order to preserve the efficiency of the stay granted in the main insolvency proceedings. The court should be able to grant the temporary stay if it is satisfied that suitable measures are in place to protect the general interest of local creditors. In such a case, all creditors that could be affected by the outcome of the negotiations on a restructuring plan should be informed of the negotiations and be allowed to participate in them.

(46) In order to ensure effective protection of local interests, the insolvency practitioner in the main insolvency proceedings should not be able to realise or re-locate, in an abusive manner, assets situated in the Member State where an establishment is located, in particular, with the purpose of frustrating the possibility that such interests can be effectively satisfied if secondary insolvency proceedings are opened subsequently.

(47) This Regulation should not prevent the courts of a Member State in which secondary insolvency proceedings have been opened from sanctioning a debtor's directors for violation of their duties, provided that those courts have jurisdiction to address such disputes under their national law.

(48) Main insolvency proceedings and secondary insolvency proceedings can contribute to the efficient administration of the debtor's insolvency estate or to the effective realisation of the total assets if there is proper cooperation between the actors involved in all the concurrent proceedings. Proper cooperation implies the various insolvency practitioners and the courts involved cooperating closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the insolvency practitioner in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. In particular, the insolvency practitioner should be able to propose a restructuring plan or composition or apply for a suspension of the realisation of the assets in the secondary insolvency proceedings. When cooperating, insolvency practitioners and courts should take into account best practices for cooperation in cross-border insolvency cases, as set out in principles and guidelines on communication and cooperation adopted by European and international organisations active in the area of insolvency law, and in particular the relevant guidelines prepared by the United Nations Commission on International Trade Law (Uncitral).

(49) In light of such cooperation, insolvency practitioners and courts should be able to enter into agreements and protocols for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies, where this is compatible with the rules applicable to each of the proceedings. Such agreements and protocols may vary in form, in that they may be written or oral, and in scope, in that they may range from generic to specific, and may be entered into by different parties. Simple generic agreements may emphasise the need for close cooperation between the parties, without addressing specific issues, while more detailed, specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires. They may reflect an agreement between the parties to take, or to refrain from taking, certain steps or actions.

(50) Similarly, the courts of different Member States may cooperate by coordinating the appointment of insolvency practitioners. In that context, they may appoint a single insolvency practitioner for several insolvency proceedings concerning the same debtor or for different members of a group of companies, provided that this is compatible with the rules applicable to each of the proceedings, in particular with any requirements concerning the qualification and licensing of the insolvency practitioner.

(51) This Regulation should ensure the efficient administration of insolvency proceedings relating to different companies forming part of a group of companies.

(52) Where insolvency proceedings have been opened for several companies of the same group, there should be proper cooperation between the actors involved in those proceedings. The various insolvency practitioners and the courts involved should therefore be under a similar obligation to cooperate and communicate with each other as those involved in main and secondary insolvency proceedings relating to the same debtor. Cooperation between the insolvency practitioners should not run counter to the interests of the creditors in each of the proceedings, and such cooperation should be aimed at finding a solution that would leverage synergies across the group.

(53) The introduction of rules on the insolvency proceedings of groups of companies should not limit the possibility for a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State. In such cases, the court should also be able to appoint, if appropriate, the same insolvency practitioner in all proceedings concerned, provided that this is not incompatible with the rules applicable to them.

(54) With a view to further improving the coordination of the insolvency proceedings of members of a group of companies, and to allow for a coordinated restructuring of the group, this Regulation should introduce procedural rules on the coordination of the insolvency proceedings of members of a group of companies. Such coordination should strive to ensure the efficiency of the coordination, whilst at the same time respecting each group member's separate legal personality.

(55) An insolvency practitioner appointed in insolvency proceedings opened in relation to a member of a group of companies should be able to request the opening of group coordination proceedings. However, where the law applicable to the insolvency so requires, that insolvency practitioner should obtain the necessary authorisation before making such a request. The request should specify the essential elements of the coordination, in particular an outline of the coordination plan, a proposal as to whom should be appointed as coordinator and an outline of the estimated costs of the coordination.

(56) In order to ensure the voluntary nature of group coordination proceedings, the insolvency practitioners involved should be able to object to their participation in the proceedings within a specified time period. In order to allow the insolvency practitioners involved to take an informed decision on participation in the group coordination proceedings, they should be informed at an early stage of the essential elements of the coordination. However, any insolvency practitioner who initially objects to inclusion in the group coordination proceedings should be able to subsequently request to participate in them. In such a case, the coordinator should take a decision on the admissibility of the request. All insolvency practitioners, including the requesting insolvency practitioner, should be informed of the coordinator's decision and should have the opportunity of challenging that decision before the court which has opened the group coordination proceedings.

(57) Group coordination proceedings should always strive to facilitate the effective administration of the insolvency proceedings of the group members, and to have a generally positive impact for the creditors. This Regulation should therefore ensure that the court with which a request for group coordination proceedings has been filed makes an assessment of those criteria prior to opening group coordination proceedings.

(58) The advantages of group coordination proceedings should not be outweighed by the costs of those proceedings. Therefore, it is necessary to ensure that the costs of the coordination, and the share of those costs that each group member will bear, are adequate, proportionate and reasonable, and are determined in accordance with the national law of the Member State in which group coordination proceedings have been opened. The insolvency practitioners involved should also have the possibility of controlling those costs from an early stage of the proceedings. Where the national law so requires, controlling costs from an early stage of proceedings could involve the insolvency practitioner seeking the approval of a court or creditors' committee.

(59) Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in costs compared to the initially estimated costs and, in any case, where the costs exceed 10 % of the estimated costs, the coordinator should be authorised by the court which has opened the group coordination proceedings to exceed such costs. Before taking its decision, the court which has opened the group coordination proceedings should give the possibility to the participating insolvency practitioners to be heard before it in order to allow them to communicate their observations on the appropriateness of the coordinator's request.

(60) For members of a group of companies which are not participating in group coordination proceedings, this Regulation should also provide for an alternative mechanism to achieve a coordinated restructuring of the group. An insolvency practitioner appointed in proceedings relating to a member of a group of companies should have standing to request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to other members of the group which are not subject to group coordination proceedings. It should only be possible to request such a stay if a restructuring plan is presented for the members of the group concerned, if the plan is to the benefit of the creditors in the proceedings in respect of which the stay is requested, and if the stay is necessary to ensure that the plan can be properly implemented.

(61) This Regulation should not prevent Member States from establishing national rules which would supplement the rules on cooperation, communication and coordination with regard to the insolvency of members of groups of companies set out in this Regulation, provided that the scope of application of those national rules is limited to the national jurisdiction and that their application would not impair the efficiency of the rules laid down by this Regulation.

(62) The rules on cooperation, communication and coordination in the framework of the insolvency of members of a group of companies provided for in this Regulation should only apply to the extent that proceedings relating to different members of the same group of companies have been opened in more than one Member State.

(63) Any creditor which has its habitual residence, domicile or registered office in the Union should have the right to lodge its claims in each of the insolvency proceedings pending in the Union relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. This Regulation should not prevent the insolvency practitioner from lodging claims on behalf of certain groups of creditors, for example employees, where the national law so provides. However, in order to ensure the equal treatment of creditors, the distribution of proceeds should be coordinated. Every creditor should be able to keep what it has received in the course of insolvency proceedings, but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.

(64) It is essential that creditors which have their habitual residence, domicile or registered office in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council [1] should not apply where this Regulation refers to the obligation to inform creditors. The use of standard forms available in all official languages of the institutions of the Union should facilitate the task of creditors when lodging claims in proceedings opened in another Member State. The consequences of the incomplete filing of the standard forms should be a matter for national law.

(65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.

(66) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main insolvency proceedings and for local proceedings. The *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.

(67) Automatic recognition of insolvency proceedings to which the law of the State of the opening of proceedings normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provision should be made for a number of exceptions to the general rule.

[1] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

(68) There is a particular need for a special reference diverging from the law of the opening State in the case of rights *in rem*, since such rights are of considerable importance for the granting of credit. The basis, validity and extent of rights *in rem* should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of a right *in rem* should therefore be able to continue to assert its right to segregation or separate settlement of the collateral security. Where assets are subject to rights *in rem* under the *lex situs* in one Member State but the main insolvency proceedings are being carried out in another Member State, the insolvency practitioner in the main insolvency proceedings should be able to request the opening of secondary insolvency proceedings in the jurisdiction where the rights *in rem* arise if the debtor has an establishment there. If secondary insolvency proceedings are not opened, any surplus on the sale of an asset covered by rights *in rem* should be paid to the insolvency practitioner in the main insolvency proceedings.

(69) This Regulation lays down several provisions for a court to order a stay of opening proceedings or a stay of enforcement proceedings. Any such stay should not affect the rights *in rem* of creditors or third parties.

(70) If a set-off of claims is not permitted under the law of the State of the opening of proceedings, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off would acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.

(71) There is also a need for special protection in the case of payment systems and financial markets, for example in relation to the position-closing agreements and netting agreements to be found in such systems, as well as the sale of securities and the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council [1]. For such transactions, the only law which is relevant should be that applicable to the system or market concerned. That law is intended to prevent the possibility of mechanisms for the payment and settlement of transactions, and provided for in payment and set-off systems or on the regulated financial markets of the Member States, being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules laid down in this Regulation.

(72) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment should be determined by the law applicable to the relevant employment agreement, in accordance with the general rules on conflict of laws. Moreover, in cases where the termination of employment contracts requires approval by a court or administrative authority, the Member State in which an establishment of the debtor is located should retain jurisdiction to grant such approval even if no insolvency proceedings have been opened in that Member State. Any other questions relating to the law of insolvency, such as whether the employees' claims are protected by preferential rights and the status such preferential rights may have, should be determined by the law of the Member State in which the insolvency proceedings (main or secondary) have been opened, except in cases where an undertaking to avoid secondary insolvency proceedings has been given in accordance with this Regulation.

(73) The law applicable to the effects of insolvency proceedings on any pending lawsuit or pending arbitral proceedings concerning an asset or right which forms part of the debtor's insolvency estate should be the law of the Member State where the lawsuit is pending or where the arbitration has its seat. However, this rule should not affect national rules on recognition and enforcement of arbitral awards.

(74) In order to take account of the specific procedural rules of court systems in certain Member States flexibility should be provided with regard to certain rules of this Regulation. Accordingly, references in this Regulation to notice being given by a judicial body of a Member State should include, where a Member State's procedural rules so require, an order by that judicial body directing that notice be given.

(75) For business considerations, the main content of the decision opening the proceedings should be published, at the request of the insolvency practitioner, in a Member State other than that of the court which delivered that decision. If there is an establishment in the Member State concerned, such publication should be mandatory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.

[1] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

(76) In order to improve the provision of information to relevant creditors and courts and to prevent the opening of parallel insolvency proceedings, Member States should be required to publish relevant information in cross-border insolvency cases in a publicly accessible electronic register. In order to facilitate access to that information for creditors and courts domiciled or located in other Member States, this Regulation should provide for the interconnection of such insolvency registers via the European e-Justice Portal. Member States should be free to publish relevant information in several registers and it should be possible to interconnect more than one register per Member State.

(77) This Regulation should determine the minimum amount of information to be published in the insolvency registers. Member States should not be precluded from including additional information. Where the debtor is an individual, the insolvency registers should only have to indicate a registration number if the debtor is exercising an independent business or professional activity. That registration number should be understood to be the unique registration number of the debtor's independent business or professional activity published in the trade register, if any.

(78) Information on certain aspects of insolvency proceedings is essential for creditors, such as time limits for lodging claims or for challenging decisions. This Regulation should, however, not require Member States to calculate those time-limits on a case-by-case basis. Member States should be able to fulfil their obligations by adding hyperlinks to the European e-Justice Portal, where self-explanatory information on the criteria for calculating those time-limits is to be provided.

(79) In order to grant sufficient protection to information relating to individuals not exercising an independent business or professional activity, Member States should be able to make access to that information subject to supplementary search criteria such as the debtor's personal identification number, address, date of birth or the district of the competent court, or to make access conditional upon a request to a competent authority or upon the verification of a legitimate interest.

(80) Member States should also be able not to include in their insolvency registers information on individuals not exercising an independent business or professional activity. In such cases, Member States should ensure that the relevant information is given to the creditors by individual notice, and that claims of creditors who have not received the information are not affected by the proceedings.

(81) It may be the case that some of the persons concerned are not aware that insolvency proceedings have been opened, and act in good faith in a way that conflicts with the new circumstances. In order to protect such persons who, unaware that foreign proceedings have been opened, make a payment to the debtor instead of to the foreign insolvency practitioner, provision should be made for such a payment to have a debt-discharging effect.

(82) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([1]).

(83) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.

(84) Directive 95/46/EC of the European Parliament and of the Council ([2]) and Regulation (EC) No 45/2001 of the European Parliament and of the Council ([3]) apply to the processing of personal data within the framework of this Regulation.

(85) This Regulation is without prejudice to Regulation (EEC, Euratom) No 1182/71 of the Council ([4]).

([1]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([3]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

([4]) Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

(86) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a legal framework for the proper administration of cross-border insolvency proceedings, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(87) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.

(88) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(89) The European Data Protection Supervisor was consulted and delivered an opinion on 27 March 2013 [1],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply to public collective proceedings, including interim proceedings, which are based on laws relating to insolvency and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

(a) a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;

(b) the assets and affairs of a debtor are subject to control or supervision by a court; or

(c) a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).

Where the proceedings referred to in this paragraph may be commenced in situations where there is only a likelihood of insolvency, their purpose shall be to avoid the debtor's insolvency or the cessation of the debtor's business activities.

The proceedings referred to in this paragraph are listed in Annex A.

2. This Regulation shall not apply to proceedings referred to in paragraph 1 that concern:

(a) insurance undertakings;

(b) credit institutions;

(c) investment firms and other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC; or

(d) collective investment undertakings.

Article 2

Definitions

For the purposes of this Regulation:

(1) 'collective proceedings' means proceedings which include all or a significant part of a debtor's creditors, provided that, in the latter case, the proceedings do not affect the claims of creditors which are not involved in them;

[1] OJ C 358, 7.12.2013, p. 15.

(2) 'collective investment undertakings' means undertakings for collective investment in transferable securities (UCITS) as defined in Directive 2009/65/EC of the European Parliament and of the Council ([1]) and alternative investment funds (AIFs) as defined in Directive 2011/61/EU of the European Parliament and of the Council ([2]);

(3) 'debtor in possession' means a debtor in respect of which insolvency proceedings have been opened which do not necessarily involve the appointment of an insolvency practitioner or the complete transfer of the rights and duties to administer the debtor's assets to an insolvency practitioner and where, therefore, the debtor remains totally or at least partially in control of its assets and affairs;

(4) 'insolvency proceedings' means the proceedings listed in Annex A;

(5) 'insolvency practitioner' means any person or body whose function, including on an interim basis, is to:

(i) verify and admit claims submitted in insolvency proceedings;

(ii) represent the collective interest of the creditors;

(iii) administer, either in full or in part, assets of which the debtor has been divested;

(iv) liquidate the assets referred to in point (iii); or

(v) supervise the administration of the debtor's affairs.

The persons and bodies referred to in the first subparagraph are listed in Annex B;

(6) 'court' means:

(i) in points (b) and (c) of Article 1(1), Article 4(2), Articles 5 and 6, Article 21(3), point (j) of Article 24(2), Articles 36 and 39, and Articles 61 to 77, the judicial body of a Member State;

(ii) in all other articles, the judicial body or any other competent body of a Member State empowered to open insolvency proceedings, to confirm such opening or to take decisions in the course of such proceedings;

(7) 'judgment opening insolvency proceedings' includes:

(i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and

(ii) the decision of a court to appoint an insolvency practitioner;

(8) 'the time of the opening of proceedings' means the time at which the judgment opening insolvency proceedings becomes effective, regardless of whether the judgment is final or not;

(9) 'the Member State in which assets are situated' means, in the case of:

(i) registered shares in companies other than those referred to in point (ii), the Member State within the territory of which the company having issued the shares has its registered office;

(ii) financial instruments, the title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ('book entry securities'), the Member State in which the register or account in which the entries are made is maintained;

(iii) cash held in accounts with a credit institution, the Member State indicated in the account's IBAN, or, for cash held in accounts with a credit institution which does not have an IBAN, the Member State in which the credit institution holding the account has its central administration or, where the account is held with a branch, agency or other establishment, the Member State in which the branch, agency or other establishment is located;

(iv) property and rights, ownership of or entitlement to which is entered in a public register other than those referred to in point (i), the Member State under the authority of which the register is kept;

(v) European patents, the Member State for which the European patent is granted;

([1]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([2]) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

(vi) copyright and related rights, the Member State within the territory of which the owner of such rights has its habitual residence or registered office;

(vii) tangible property, other than that referred to in points (i) to (iv), the Member State within the territory of which the property is situated;

(viii) claims against third parties, other than those relating to assets referred to in point (iii), the Member State within the territory of which the third party required to meet the claims has the centre of its main interests, as determined in accordance with Article 3(1);

(10) 'establishment' means any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets;

(11) 'local creditor' means a creditor whose claims against a debtor arose from or in connection with the operation of an establishment situated in a Member State other than the Member State in which the centre of the debtor's main interests is located;

(12) 'foreign creditor' means a creditor which has its habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States;

(13) 'group of companies' means a parent undertaking and all its subsidiary undertakings;

(14) 'parent undertaking' means an undertaking which controls, either directly or indirectly, one or more subsidiary undertakings. An undertaking which prepares consolidated financial statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council [1] shall be deemed to be a parent undertaking.

Article 3

International jurisdiction

1. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ('main insolvency proceedings'). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertaking, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

4. The territorial insolvency proceedings referred to in paragraph 2 may only be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 where

(a) insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

(b) the opening of territorial insolvency proceedings is requested by:

(i) a creditor whose claim arises from or is in connection with the operation of an establishment situated within the territory of the Member State where the opening of territorial proceedings is requested; or

(ii) a public authority which, under the law of the Member State within the territory of which the establishment is situated, has the right to request the opening of insolvency proceedings.

When main insolvency proceedings are opened, the territorial insolvency proceedings shall become secondary insolvency proceedings.

Article 4

Examination as to jurisdiction

1. A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).

2. Notwithstanding paragraph 1, where insolvency proceedings are opened in accordance with national law without a decision by a court, Member States may entrust the insolvency practitioner appointed in such proceedings to examine whether the Member State in which a request for the opening of proceedings is pending has jurisdiction pursuant to Article 3. Where this is the case, the insolvency practitioner shall specify in the decision opening the proceedings the grounds on which jurisdiction is based and, in particular, whether jurisdiction is based on Article 3(1) or (2).

Article 5

Judicial review of the decision to open main insolvency proceedings

1. The debtor or any creditor may challenge before a court the decision opening main insolvency proceedings on grounds of international jurisdiction.

2. The decision opening main insolvency proceedings may be challenged by parties other than those referred to in paragraph 1 or on grounds other than a lack of international jurisdiction where national law so provides.

Article 6

Jurisdiction for actions deriving directly from insolvency proceedings and closely linked with them

1. The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for any action which derives directly from the insolvency proceedings and is closely linked with them, such as avoidance actions.

2. Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the insolvency practitioner may bring both actions before the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, before the courts of the Member State within the territory of which any of them is domiciled, provided that those courts have jurisdiction pursuant to Regulation (EU) No 1215/2012.

The first subparagraph shall apply to the debtor in possession, provided that national law allows the debtor in possession to bring actions on behalf of the insolvency estate.

3. For the purpose of paragraph 2, 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 7

Applicable law

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (the 'State of the opening of proceedings').

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. In particular, it shall determine the following:

(a) the debtors against which insolvency proceedings may be brought on account of their capacity;

(b) the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;

(c) the respective powers of the debtor and the insolvency practitioner;

(d) the conditions under which set-offs may be invoked;

(e) the effects of insolvency proceedings on current contracts to which the debtor is party;

(f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of pending lawsuits;

(g) the claims which are to be lodged against the debtor's insolvency estate and the treatment of claims arising after the opening of insolvency proceedings;

(h) the rules governing the lodging, verification and admission of claims;

(i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right *in rem* or through a set-off;

(j) the conditions for, and the effects of closure of, insolvency proceedings, in particular by composition;

(k) creditors' rights after the closure of insolvency proceedings;

(l) who is to bear the costs and expenses incurred in the insolvency proceedings;

(m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

Article 8

Third parties' rights *in rem*

1. The opening of insolvency proceedings shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall, in particular, mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right *in rem* to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, based on which a right *in rem* within the meaning of paragraph 1 may be obtained shall be considered to be a right *in rem*.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 9

Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 10

Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect sellers' rights that are based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of the opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in point (m) of Article 7(2).

Article 11

Contracts relating to immoveable property

1. The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immoveable property shall be governed solely by the law of the Member State within the territory of which the immoveable property is situated.

2. The court which opened main insolvency proceedings shall have jurisdiction to approve the termination or modification of the contracts referred to in this Article where:

(a) the law of the Member State applicable to those contracts requires that such a contract may only be terminated or modified with the approval of the court opening insolvency proceedings; and

(b) no insolvency proceedings have been opened in that Member State.

Article 12

Payment systems and financial markets

1. Without prejudice to Article 8, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

Article 13

Contracts of employment

1. The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

2. The courts of the Member State in which secondary insolvency proceedings may be opened shall retain jurisdiction to approve the termination or modification of the contracts referred to in this Article even if no insolvency proceedings have been opened in that Member State.

The first subparagraph shall also apply to an authority competent under national law to approve the termination or modification of the contracts referred to in this Article.

Article 14

Effects on rights subject to registration

The effects of insolvency proceedings on the rights of a debtor in immoveable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

Article 15

European patents with unitary effect and Community trade marks

For the purposes of this Regulation, a European patent with unitary effect, a Community trade mark or any other similar right established by Union law may be included only in the proceedings referred to in Article 3(1).

Article 16

Detrimental acts

Point (m) of Article 7(2) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

(a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and

(b) the law of that Member State does not allow any means of challenging that act in the relevant case.

Article 17

Protection of third-party purchasers

Where, by an act concluded after the opening of insolvency proceedings, a debtor disposes, for consideration, of:

(a) an immoveable asset;

(b) a ship or an aircraft subject to registration in a public register; or

(c) securities the existence of which requires registration in a register laid down by law;

the validity of that act shall be governed by the law of the State within the territory of which the immoveable asset is situated or under the authority of which the register is kept.

Article 18

Effects of insolvency proceedings on pending lawsuits or arbitral proceedings

The effects of insolvency proceedings on a pending lawsuit or pending arbitral proceedings concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which the arbitral tribunal has its seat.

CHAPTER II

RECOGNITION OF INSOLVENCY PROCEEDINGS

Article 19

Principle

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all other Member States from the moment that it becomes effective in the State of the opening of proceedings.

The rule laid down in the first subparagraph shall also apply where, on account of a debtor's capacity, insolvency proceedings cannot be brought against that debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

Article 20

Effects of recognition

1. The judgment opening insolvency proceedings as referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under the law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

Article 21

Powers of the insolvency practitioner

1. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on it, by the law of the State of the opening of proceedings, in another Member State, as long as no other insolvency proceedings have been opened there and no preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. Subject to Articles 8 and 10, the insolvency practitioner may, in particular, remove the debtor's assets from the territory of the Member State in which they are situated.

2. The insolvency practitioner appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. The insolvency practitioner may also bring any action to set aside which is in the interests of the creditors.

3. In exercising its powers, the insolvency practitioner shall comply with the law of the Member State within the territory of which it intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures, unless ordered by a court of that Member State, or the right to rule on legal proceedings or disputes.

Article 22

Proof of the insolvency practitioner's appointment

The insolvency practitioner's appointment shall be evidenced by a certified copy of the original decision appointing it or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which it intends to act may be required. No legalisation or other similar formality shall be required.

Article 23

Return and imputation

1. A creditor which, after the opening of the proceedings referred to in Article 3(1), obtains by any means, in particular through enforcement, total or partial satisfaction of its claim on the assets belonging to a debtor situated within the territory of another Member State, shall return what it has obtained to the insolvency practitioner, subject to Articles 8 and 10.

2. In order to ensure the equal treatment of creditors, a creditor which has, in the course of insolvency proceedings, obtained a dividend on its claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

Article 24

Establishment of insolvency registers

1. Member States shall establish and maintain in their territory one or several registers in which information concerning insolvency proceedings is published ('insolvency registers'). That information shall be published as soon as possible after the opening of such proceedings.

2. The information referred to in paragraph 1 shall be made publicly available, subject to the conditions laid down in Article 27, and shall include the following ('mandatory information'):

(a) the date of the opening of insolvency proceedings;

(b) the court opening insolvency proceedings and the case reference number, if any;

(c) the type of insolvency proceedings referred to in Annex A that were opened and, where applicable, any relevant subtype of such proceedings opened in accordance with national law;

(d) whether jurisdiction for opening proceedings is based on Article 3(1), 3(2) or 3(4);

(e) if the debtor is a company or a legal person, the debtor's name, registration number, registered office or, if different, postal address;

(f) if the debtor is an individual whether or not exercising an independent business or professional activity, the debtor's name, registration number, if any, and postal address or, where the address is protected, the debtor's place and date of birth;

(g) the name, postal address or e-mail address of the insolvency practitioner, if any, appointed in the proceedings;

(h) the time limit for lodging claims, if any, or a reference to the criteria for calculating that time limit;

(i) the date of closing main insolvency proceedings, if any;

(j) the court before which and, where applicable, the time limit within which a challenge of the decision opening insolvency proceedings is to be lodged in accordance with Article 5, or a reference to the criteria for calculating that time limit.

3. Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency.

4. Member States shall not be obliged to include in the insolvency registers the information referred to in paragraph 1 of this Article in relation to individuals not exercising an independent business or professional activity, or to make such information publicly available through the system of interconnection of those registers, provided that known foreign creditors are informed, pursuant to Article 54, of the elements referred to under point (j) of paragraph 2 of this Article.

Where a Member State makes use of the possibility referred to in the first subparagraph, the insolvency proceedings shall not affect the claims of foreign creditors who have not received the information referred to in the first subparagraph.

5. The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 55(6).

Article 25

Interconnection of insolvency registers

1. The Commission shall establish a decentralised system for the interconnection of insolvency registers by means of implementing acts. That system shall be composed of the insolvency registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the insolvency registers which the Member States choose to make available through the European e-Justice Portal.

2. By means of implementing acts in accordance with the procedure referred to in Article 87, the Commission shall adopt the following by 26 June 2019:

(a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;

(b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;

(c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 24;

(d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 24;

(e) the means and the technical conditions of availability of services provided by the system of interconnection; and

(f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

Article 26

Costs of establishing and interconnecting insolvency registers

1. The establishment, maintenance and future development of the system of interconnection of insolvency registers shall be financed from the general budget of the Union.

2. Each Member State shall bear the costs of establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programmes.

Article 27

Conditions of access to information via the system of interconnection

1. Member States shall ensure that the mandatory information referred to in points (a) to (j) of Article 24(2) is available free of charge via the system of interconnection of insolvency registers.

2. This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 24(3) via the system of interconnection of insolvency registers.

3. Member States may make access to mandatory information concerning individuals who are not exercising an independent business or professional activity, and concerning individuals exercising an independent business or professional activity when the insolvency proceedings are not related to that activity, subject to supplementary search criteria relating to the debtor in addition to the minimum criteria referred to in point (c) of Article 25(2).

4. Member States may require that access to the information referred to in paragraph 3 be made conditional upon a request to the competent authority. Member States may make access conditional upon the verification of the existence of a legitimate interest for accessing such information. The requesting person shall be able to submit the request for information electronically by means of a standard form via the European e-Justice Portal. Where a legitimate interest is required, it shall be permissible for the requesting person to justify his request by electronic copies of relevant documents. The requesting person shall be provided with an answer by the competent authority within 3 working days.

The requesting person shall not be obliged to provide translations of the documents justifying his request, or to bear any costs of translation which the competent authority may incur.

Article 28

Publication in another Member State

1. The insolvency practitioner or the debtor in possession shall request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing the insolvency practitioner be published in any other Member State where an establishment of the debtor is located in accordance with the publication procedures provided for in that Member State. Such publication shall specify, where appropriate, the insolvency practitioner appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or (2).

2. The insolvency practitioner or the debtor in possession may request that the information referred to in paragraph 1 be published in any other Member State where the insolvency practitioner or the debtor in possession deems it necessary in accordance with the publication procedures provided for in that Member State.

Article 29

Registration in public registers of another Member State

1. Where the law of a Member State in which an establishment of the debtor is located and this establishment has been entered into a public register of that Member State, or the law of a Member State in which immovable property belonging to the debtor is located, requires information on the opening of insolvency proceedings referred to in Article 28 to be published in the land register, company register or any other public register, the insolvency practitioner or the debtor in possession shall take all the necessary measures to ensure such a registration.

2. The insolvency practitioner or the debtor in possession may request such registration in any other Member State, provided that the law of the Member State where the register is kept allows such registration.

Article 30

Costs

The costs of the publication and registration provided for in Articles 28 and 29 shall be regarded as costs and expenses incurred in the proceedings.

Article 31

Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the insolvency practitioner in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of the proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 28 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings. Where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 32

Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Article 19 and which concern the course and closure of insolvency proceedings, and compositions approved by that court, shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 39 to 44 and 47 to 57 of Regulation (EU) No 1215/2012.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings or in connection with it.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 of this Article shall be governed by Regulation (EU) No 1215/2012 provided that that Regulation is applicable.

Article 33

Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

CHAPTER III

SECONDARY INSOLVENCY PROCEEDINGS

Article 34

Opening of proceedings

Where main insolvency proceedings have been opened by a court of a Member State and recognised in another Member State, a court of that other Member State which has jurisdiction pursuant to Article 3(2) may open secondary insolvency proceedings in accordance with the provisions set out in this Chapter. Where the main insolvency proceedings required that the debtor be insolvent, the debtor's insolvency shall not be re-examined in the Member State in which secondary insolvency proceedings may be opened. The effects of secondary insolvency proceedings shall be restricted to the assets of the debtor situated within the territory of the Member State in which those proceedings have been opened.

Article 35

Applicable law

Save as otherwise provided for in this Regulation, the law applicable to secondary insolvency proceedings shall be that of the Member State within the territory of which the secondary insolvency proceedings are opened.

Article 36

Right to give an undertaking in order to avoid secondary insolvency proceedings

1. In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking (the 'undertaking') in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, it will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State. The undertaking shall specify the factual assumptions on which it is based, in particular in respect of the value of the assets located in the Member State concerned and the options available to realise such assets.

2. Where an undertaking has been given in accordance with this Article, the law applicable to the distribution of proceeds from the realisation of assets referred to in paragraph 1, to the ranking of creditors' claims, and to the rights of creditors in relation to the assets referred to in paragraph 1 shall be the law of the Member State in which secondary insolvency proceedings could have been opened. The relevant point in time for determining the assets referred to in paragraph 1 shall be the moment at which the undertaking is given.

3. The undertaking shall be made in the official language or one of the official languages of the Member State where secondary insolvency proceedings could have been opened, or, where there are several official languages in that Member State, the official language or one of the official languages of the place in which secondary insolvency proceedings could have been opened.

4. The undertaking shall be made in writing. It shall be subject to any other requirements relating to form and approval requirements as to distributions, if any, of the State of the opening of the main insolvency proceedings.

5. The undertaking shall be approved by the known local creditors. The rules on qualified majority and voting that apply to the adoption of restructuring plans under the law of the Member State where secondary insolvency proceedings could have been opened shall also apply to the approval of the undertaking. Creditors shall be able to participate in the vote by distance means of communication, where national law so permits. The insolvency practitioner shall inform the known local creditors of the undertaking, of the rules and procedures for its approval, and of the approval or rejection of the undertaking.

6. An undertaking given and approved in accordance with this Article shall be binding on the estate. If secondary insolvency proceedings are opened in accordance with Articles 37 and 38, the insolvency practitioner in the main insolvency proceedings shall transfer any assets which it removed from the territory of that Member State after the undertaking was given or, where those assets have already been realised, their proceeds, to the insolvency practitioner in the secondary insolvency proceedings.

7. Where the insolvency practitioner has given an undertaking, it shall inform local creditors about the intended distributions prior to distributing the assets and proceeds referred to in paragraph 1. If that information does not comply with the terms of the undertaking or the applicable law, any local creditor may challenge such distribution before the courts of the Member State in which main insolvency proceedings have been opened in order to obtain a distribution in accordance with the terms of the undertaking and the applicable law. In such cases, no distribution shall take place until the court has taken a decision on the challenge.

8. Local creditors may apply to the courts of the Member State in which main insolvency proceedings have been opened, in order to require the insolvency practitioner in the main insolvency proceedings to take any suitable measures necessary to ensure compliance with the terms of the undertaking available under the law of the State of the opening of main insolvency proceedings.

9. Local creditors may also apply to the courts of the Member State in which secondary insolvency proceedings could have been opened in order to require the court to take provisional or protective measures to ensure compliance by the insolvency practitioner with the terms of the undertaking.

10. The insolvency practitioner shall be liable for any damage caused to local creditors as a result of its non-compliance with the obligations and requirements set out in this Article.

11. For the purpose of this Article, an authority which is established in the Member State where secondary insolvency proceedings could have been opened and which is obliged under Directive 2008/94/EC of the European Parliament and of the Council ([1]) to guarantee the payment of employees' outstanding claims resulting from contracts of employment or employment relationships shall be considered to be a local creditor, where the national law so provides.

([1]) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ L 283, 28.10.2008, p. 36).

Article 37

Right to request the opening of secondary insolvency proceedings

1. The opening of secondary insolvency proceedings may be requested by:

(a) the insolvency practitioner in the main insolvency proceedings;

(b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested.

2. Where an undertaking has become binding in accordance with Article 36, the request for opening secondary insolvency proceedings shall be lodged within 30 days of having received notice of the approval of the undertaking.

Article 38

Decision to open secondary insolvency proceedings

1. A court seised of a request to open secondary insolvency proceedings shall immediately give notice to the insolvency practitioner or the debtor in possession in the main insolvency proceedings and give it an opportunity to be heard on the request.

2. Where the insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court referred to in paragraph 1 of this Article shall, at the request of the insolvency practitioner, not open secondary insolvency proceedings if it is satisfied that the undertaking adequately protects the general interests of local creditors.

3. Where a temporary stay of individual enforcement proceedings has been granted in order to allow for negotiations between the debtor and its creditors, the court, at the request of the insolvency practitioner or the debtor in possession, may stay the opening of secondary insolvency proceedings for a period not exceeding 3 months, provided that suitable measures are in place to protect the interests of local creditors.

The court referred to in paragraph 1 may order protective measures to protect the interests of local creditors by requiring the insolvency practitioner or the debtor in possession not to remove or dispose of any assets which are located in the Member State where its establishment is located unless this is done in the ordinary course of business. The court may also order other measures to protect the interest of local creditors during a stay, unless this is incompatible with the national rules on civil procedure.

The stay of the opening of secondary insolvency proceedings shall be lifted by the court of its own motion or at the request of any creditor if, during the stay, an agreement in the negotiations referred to in the first subparagraph has been concluded.

The stay may be lifted by the court of its own motion or at the request of any creditor if the continuation of the stay is detrimental to the creditor's rights, in particular if the negotiations have been disrupted or it has become evident that they are unlikely to be concluded, or if the insolvency practitioner or the debtor in possession has infringed the prohibition on disposal of its assets or on removal of them from the territory of the Member State where the establishment is located.

4. At the request of the insolvency practitioner in the main insolvency proceedings, the court referred to in paragraph 1 may open a type of insolvency proceedings as listed in Annex A other than the type initially requested, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings. The second sentence of Article 34 shall apply.

Article 39

Judicial review of the decision to open secondary insolvency proceedings

The insolvency practitioner in the main insolvency proceedings may challenge the decision to open secondary insolvency proceedings before the courts of the Member State in which secondary insolvency proceedings have been opened on the ground that the court did not comply with the conditions and requirements of Article 38.

Article 40

Advance payment of costs and expenses

Where the law of the Member State in which the opening of secondary insolvency proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

Article 41

Cooperation and communication between insolvency practitioners

1. The insolvency practitioner in the main insolvency proceedings and the insolvency practitioner or practitioners in secondary insolvency proceedings concerning the same debtor shall cooperate with each other to the extent such cooperation is not incompatible with the rules applicable to the respective proceedings. Such cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, the insolvency practitioners shall:

(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, in particular any progress made in lodging and verifying claims and all measures aimed at rescuing or restructuring the debtor, or at terminating the proceedings, provided appropriate arrangements are made to protect confidential information;

(b) explore the possibility of restructuring the debtor and, where such a possibility exists, coordinate the elaboration and implementation of a restructuring plan;

(c) coordinate the administration of the realisation or use of the debtor's assets and affairs; the insolvency practitioner in the secondary insolvency proceedings shall give the insolvency practitioner in the main insolvency proceedings an early opportunity to submit proposals on the realisation or use of the assets in the secondary insolvency proceedings.

3. Paragraphs 1 and 2 shall apply mutatis mutandis to situations where, in the main or in the secondary insolvency proceedings or in any territorial insolvency proceedings concerning the same debtor and open at the same time, the debtor remains in possession of its assets.

Article 42

Cooperation and communication between courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings concerning the same debtor, a court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, shall cooperate with any other court before which a request to open insolvency proceedings is pending, or which has opened such proceedings, to the extent that such cooperation is not incompatible with the rules applicable to each of the proceedings. For that purpose, the courts may, where appropriate, appoint an independent person or body acting on its instructions, provided that it is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, the courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with, or request information or assistance directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

(a) coordination in the appointment of the insolvency practitioners;

(b) communication of information by any means considered appropriate by the court;

(c) coordination of the administration and supervision of the debtor's assets and affairs;

(d) coordination of the conduct of hearings;

(e) coordination in the approval of protocols, where necessary.

Article 43

Cooperation and communication between insolvency practitioners and courts

1. In order to facilitate the coordination of main, territorial and secondary insolvency proceedings opened in respect of the same debtor:

(a) an insolvency practitioner in main insolvency proceedings shall cooperate and communicate with any court before which a request to open secondary insolvency proceedings is pending or which has opened such proceedings;

(b) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open main insolvency proceedings is pending or which has opened such proceedings; and

(c) an insolvency practitioner in territorial or secondary insolvency proceedings shall cooperate and communicate with the court before which a request to open other territorial or secondary insolvency proceedings is pending or which has opened such proceedings;

to the extent that such cooperation and communication are not incompatible with the rules applicable to each of the proceedings and do not entail any conflict of interest.

2. The cooperation referred to in paragraph 1 may be implemented by any appropriate means, such as those set out in Article 42(3).

Article 44

Costs of cooperation and communication

The requirements laid down in Articles 42 and 43 shall not result in courts charging costs to each other for cooperation and communication.

Article 45

Exercise of creditors' rights

1. Any creditor may lodge its claim in the main insolvency proceedings and in any secondary insolvency proceedings.

2. The insolvency practitioners in the main and any secondary insolvency proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served by doing so, subject to the right of creditors to oppose such lodgement or to withdraw the lodgement of their claims where the law applicable so provides.

3. The insolvency practitioner in the main or secondary insolvency proceedings shall be entitled to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

Article 46

Stay of the process of realisation of assets

1. The court which opened the secondary insolvency proceedings shall stay the process of realisation of assets in whole or in part on receipt of a request from the insolvency practitioner in the main insolvency proceedings. In such a case, it may require the insolvency practitioner in the main insolvency proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary insolvency proceedings and of individual classes of creditors. Such a request from the insolvency practitioner may be rejected only if it is manifestly of no interest to the creditors in the main insolvency proceedings. Such a stay of the process of realisation of assets may be ordered for up to 3 months. It may be continued or renewed for similar periods.

2. The court referred to in paragraph 1 shall terminate the stay of the process of realisation of assets:

(a) at the request of the insolvency practitioner in the main insolvency proceedings;

(b) of its own motion, at the request of a creditor or at the request of the insolvency practitioner in the secondary insolvency proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main insolvency proceedings or in the secondary insolvency proceedings.

Article 47

Power of the insolvency practitioner to propose restructuring plans

1. Where the law of the Member State where secondary insolvency proceedings have been opened allows for such proceedings to be closed without liquidation by a restructuring plan, a composition or a comparable measure, the insolvency practitioner in the main insolvency proceedings shall be empowered to propose such a measure in accordance with the procedure of that Member State.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary insolvency proceedings, such as a stay of payment or discharge of debt, shall have no effect in respect of assets of a debtor that are not covered by those proceedings, without the consent of all the creditors having an interest.

Article 48

Impact of closure of insolvency proceedings

1. Without prejudice to Article 49, the closure of insolvency proceedings shall not prevent the continuation of other insolvency proceedings concerning the same debtor which are still open at that point in time.

2. Where insolvency proceedings concerning a legal person or a company in the Member State of that person's or company's registered office would entail the dissolution of the legal person or of the company, that legal person or company shall not cease to exist until any other insolvency proceedings concerning the same debtor have been closed, or the insolvency practitioner or practitioners in such proceedings have given consent to the dissolution.

Article 49

Assets remaining in the secondary insolvency proceedings

If, by the liquidation of assets in the secondary insolvency proceedings, it is possible to meet all claims allowed under those proceedings, the insolvency practitioner appointed in those proceedings shall immediately transfer any assets remaining to the insolvency practitioner in the main insolvency proceedings.

Article 50

Subsequent opening of the main insolvency proceedings

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 41, 45, 46, 47 and 49 shall apply to those opened first, in so far as the progress of those proceedings so permits.

Article 51

Conversion of secondary insolvency proceedings

1. At the request of the insolvency practitioner in the main insolvency proceedings, the court of the Member State in which secondary insolvency proceedings have been opened may order the conversion of the secondary insolvency proceedings into another type of insolvency proceedings listed in Annex A, provided that the conditions for opening that type of proceedings under national law are fulfilled and that that type of proceedings is the most appropriate as regards the interests of the local creditors and coherence between the main and secondary insolvency proceedings.

2. When considering the request referred to in paragraph 1, the court may seek information from the insolvency practitioners involved in both proceedings.

Article 52

Preservation measures

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of a debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that Member State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

CHAPTER IV

PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

Article 53

Right to lodge claims

Any foreign creditor may lodge claims in insolvency proceedings by any means of communication, which are accepted by the law of the State of the opening of proceedings. Representation by a lawyer or another legal professional shall not be mandatory for the sole purpose of lodging of claims.

Article 54

Duty to inform creditors

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the insolvency practitioner appointed by that court shall immediately inform the known foreign creditors.

2. The information referred to in paragraph 1, provided by an individual notice, shall in particular include time limits, the penalties laid down with regard to those time limits, the body or authority empowered to accept the lodgement of claims and any other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need to lodge their claims. The notice shall also include a copy of the standard form for lodging of claims referred to in Article 55 or information on where that form is available.

3. The information referred to in paragraphs 1 and 2 of this Article shall be provided using the standard notice form to be established in accordance with Article 88. The form shall be published in the European e-Justice Portal and shall bear the heading 'Notice of insolvency proceedings' in all the official languages of the institutions of the Union. It shall be transmitted in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that State has indicated it can accept, in accordance with Article 55(5), if it can be assumed that that language is easier to understand for the foreign creditors.

4. In insolvency proceedings relating to an individual not exercising a business or professional activity, the use of the standard form referred to in this Article shall not be obligatory if creditors are not required to lodge their claims in order to have their claims taken into account in the proceedings.

Article 55

Procedure for lodging claims

1. Any foreign creditor may lodge its claim using the standard claims form to be established in accordance with Article 88. The form shall bear the heading 'Lodgement of claims' in all the official languages of the institutions of the Union.

2. The standard claims form referred to in paragraph 1 shall include the following information:

(a) the name, postal address, e-mail address, if any, personal identification number, if any, and bank details of the foreign creditor referred to in paragraph 1;

(b) the amount of the claim, specifying the principal and, where applicable, interest and the date on which it arose and the date on which it became due, if different;

(c) if interest is claimed, the interest rate, whether the interest is of a legal or contractual nature, the period of time for which the interest is claimed and the capitalised amount of interest;

(d) if costs incurred in asserting the claim prior to the opening of proceedings are claimed, the amount and the details of those costs;

(e) the nature of the claim;

(f) whether any preferential creditor status is claimed and the basis of such a claim;

(g) whether security *in rem* or a reservation of title is alleged in respect of the claim and if so, what assets are covered by the security interest being invoked, the date on which the security was granted and, where the security has been registered, the registration number; and

(h) whether any set-off is claimed and, if so, the amounts of the mutual claims existing on the date when insolvency proceedings were opened, the date on which they arose and the amount net of set-off claimed.

The standard claims form shall be accompanied by copies of any supporting documents.

3. The standard claims form shall indicate that the provision of information concerning the bank details and the personal identification number of the creditor referred to in point (a) of paragraph 2 is not compulsory.

4. When a creditor lodges its claim by means other than the standard form referred to in paragraph 1, the claim shall contain the information referred to in paragraph 2.

5. Claims may be lodged in any official language of the institutions of the Union. The court, the insolvency practitioner or the debtor in possession may require the creditor to provide a translation in the official language of the State of the opening of proceedings or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where insolvency proceedings have been opened, or in another language which that Member State has indicated it can accept. Each Member State shall indicate whether it accepts any official language of the institutions of the Union other than its own for the purpose of the lodging of claims.

6. Claims shall be lodged within the period stipulated by the law of the State of the opening of proceedings. In the case of a foreign creditor, that period shall not be less than 30 days following the publication of the opening of insolvency proceedings in the insolvency register of the State of the opening of proceedings. Where a Member State relies on Article 24(4), that period shall not be less than 30 days following a creditor having been informed pursuant to Article 54.

7. Where the court, the insolvency practitioner or the debtor in possession has doubts in relation to a claim lodged in accordance with this Article, it shall give the creditor the opportunity to provide additional evidence on the existence and the amount of the claim.

CHAPTER V

INSOLVENCY PROCEEDINGS OF MEMBERS OF A GROUP OF COMPANIES

SECTION 1

Cooperation and communication

Article 56

Cooperation and communication between insolvency practitioners

1. Where insolvency proceedings relate to two or more members of a group of companies, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation is appropriate to

facilitate the effective administration of those proceedings, is not incompatible with the rules applicable to such proceedings and does not entail any conflict of interest. That cooperation may take any form, including the conclusion of agreements or protocols.

2. In implementing the cooperation set out in paragraph 1, insolvency practitioners shall:

(a) as soon as possible communicate to each other any information which may be relevant to the other proceedings, provided appropriate arrangements are made to protect confidential information;

(b) consider whether possibilities exist for coordinating the administration and supervision of the affairs of the group members which are subject to insolvency proceedings, and if so, coordinate such administration and supervision;

(c) consider whether possibilities exist for restructuring group members which are subject to insolvency proceedings and, if so, coordinate with regard to the proposal and negotiation of a coordinated restructuring plan.

For the purposes of points (b) and (c), all or some of the insolvency practitioners referred to in paragraph 1 may agree to grant additional powers to an insolvency practitioner appointed in one of the proceedings where such an agreement is permitted by the rules applicable to each of the proceedings. They may also agree on the allocation of certain tasks amongst them, where such allocation of tasks is permitted by the rules applicable to each of the proceedings.

Article 57

Cooperation and communication between courts

1. Where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court before which a request to open proceedings concerning another member of the same group is pending or which has opened such proceedings to the extent that such cooperation is appropriate to facilitate the effective administration of the proceedings, is not incompatible with the rules applicable to them and does not entail any conflict of interest. For that purpose, the courts may, where appropriate, appoint an independent person or body to act on its instructions, provided that this is not incompatible with the rules applicable to them.

2. In implementing the cooperation set out in paragraph 1, courts, or any appointed person or body acting on their behalf, as referred to in paragraph 1, may communicate directly with each other, or request information or assistance directly from each other, provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.

3. The cooperation referred to in paragraph 1 may be implemented by any means that the court considers appropriate. It may, in particular, concern:

(a) coordination in the appointment of insolvency practitioners;

(b) communication of information by any means considered appropriate by the court;

(c) coordination of the administration and supervision of the assets and affairs of the members of the group;

(d) coordination of the conduct of hearings;

(e) coordination in the approval of protocols where necessary.

Article 58

Cooperation and communication between insolvency practitioners and courts

An insolvency practitioner appointed in insolvency proceedings concerning a member of a group of companies:

(a) shall cooperate and communicate with any court before which a request for the opening of proceedings in respect of another member of the same group of companies is pending or which has opened such proceedings; and

(b) may request information from that court concerning the proceedings regarding the other member of the group or request assistance concerning the proceedings in which he has been appointed;

to the extent that such cooperation and communication are appropriate to facilitate the effective administration of the proceedings, do not entail any conflict of interest and are not incompatible with the rules applicable to them.

Article 59

Costs of cooperation and communication in proceedings concerning members of a group of companies

The costs of the cooperation and communication provided for in Articles 56 to 60 incurred by an insolvency practitioner or a court shall be regarded as costs and expenses incurred in the respective proceedings.

Article 60

Powers of the insolvency practitioner in proceedings concerning members of a group of companies

1. An insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:

(a) be heard in any of the proceedings opened in respect of any other member of the same group;

(b) request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, provided that:

  (i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;

  (ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;

  (iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and

  (iv) neither the insolvency proceedings in which the insolvency practitioner referred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter;

(c) apply for the opening of group coordination proceedings in accordance with Article 61.

2. The court having opened proceedings referred to in point (b) of paragraph 1 shall stay any measure related to the realisation of the assets in the proceedings in whole or in part if it is satisfied that the conditions referred to in point (b) of paragraph 1 are fulfilled.

Before ordering the stay, the court shall hear the insolvency practitioner appointed in the proceedings for which the stay is requested. Such a stay may be ordered for any period, not exceeding 3 months, which the court considers appropriate and which is compatible with the rules applicable to the proceedings.

The court ordering the stay may require the insolvency practitioner referred to in paragraph 1 to take any suitable measure available under national law to guarantee the interests of the creditors in the proceedings.

The court may extend the duration of the stay by such further period or periods as it considers appropriate and which are compatible with the rules applicable to the proceedings, provided that the conditions referred to in points (b)(ii) to (iv) of paragraph 1 continue to be fulfilled and that the total duration of the stay (the initial period together with any such extensions) does not exceed 6 months.

SECTION 2

Coordination

Subsection 1

Procedure

Article 61

Request to open group coordination proceedings

1. Group coordination proceedings may be requested before any court having jurisdiction over the insolvency proceedings of a member of the group, by an insolvency practitioner appointed in insolvency proceedings opened in relation to a member of the group.

2. The request referred to in paragraph 1 shall be made in accordance with the conditions provided for by the law applicable to the proceedings in which the insolvency practitioner has been appointed.

3. The request referred to in paragraph 1 shall be accompanied by:

(a) a proposal as to the person to be nominated as the group coordinator ('the coordinator'), details of his or her eligibility pursuant to Article 71, details of his or her qualifications and his or her written agreement to act as coordinator;

(b) an outline of the proposed group coordination, and in particular the reasons why the conditions set out in Article 63(1) are fulfilled;

(c) a list of the insolvency practitioners appointed in relation to the members of the group and, where relevant, the courts and competent authorities involved in the insolvency proceedings of the members of the group;

(d) an outline of the estimated costs of the proposed group coordination and the estimation of the share of those costs to be paid by each member of the group.

Article 62

Priority rule

Without prejudice to Article 66, where the opening of group coordination proceedings is requested before courts of different Member States, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 63

Notice by the court seised

1. The court seised of a request to open group coordination proceedings shall give notice as soon as possible of the request for the opening of group coordination proceedings and of the proposed coordinator to the insolvency practitioners appointed in relation to the members of the group as indicated in the request referred to in point (c) of Article 61(3), if it is satisfied that:

(a) the opening of such proceedings is appropriate to facilitate the effective administration of the insolvency proceedings relating to the different group members;

(b) no creditor of any group member expected to participate in the proceedings is likely to be financially disadvantaged by the inclusion of that member in such proceedings; and

(c) the proposed coordinator fulfils the requirements laid down in Article 71.

2. The notice referred to in paragraph 1 of this Article shall list the elements referred to in points (a) to (d) of Article 61(3).

3. The notice referred to in paragraph 1 shall be sent by registered letter, attested by an acknowledgment of receipt.

4. The court seised shall give the insolvency practitioners involved the opportunity to be heard.

Article 64

Objections by insolvency practitioners

1. An insolvency practitioner appointed in respect of any group member may object to:

(a) the inclusion within group coordination proceedings of the insolvency proceedings in respect of which it has been appointed; or

(b) the person proposed as a coordinator.

2. Objections pursuant to paragraph 1 of this Article shall be lodged with the court referred to in Article 63 within 30 days of receipt of notice of the request for the opening of group coordination proceedings by the insolvency practitioner referred to in paragraph 1 of this Article.

The objection may be made by means of the standard form established in accordance with Article 88.

3. Prior to taking the decision to participate or not to participate in the coordination in accordance with point (a) of paragraph 1, an insolvency practitioner shall obtain any approval which may be required under the law of the State of the opening of proceedings for which it has been appointed.

Article 65

Consequences of objection to the inclusion in group coordination

1. Where an insolvency practitioner has objected to the inclusion of the proceedings in respect of which it has been appointed in group coordination proceedings, those proceedings shall not be included in the group coordination proceedings.

2. The powers of the court referred to in Article 68 or of the coordinator arising from those proceedings shall have no effect as regards that member, and shall entail no costs for that member.

Article 66

Choice of court for group coordination proceedings

1. Where at least two-thirds of all insolvency practitioners appointed in insolvency proceedings of the members of the group have agreed that a court of another Member State having jurisdiction is the most appropriate court for the opening of group coordination proceedings, that court shall have exclusive jurisdiction.

2. The choice of court shall be made by joint agreement in writing or evidenced in writing. It may be made until such time as group coordination proceedings have been opened in accordance with Article 68.

3. Any court other than the court seised under paragraph 1 shall decline jurisdiction in favour of that court.

4. The request for the opening of group coordination proceedings shall be submitted to the court agreed in accordance with Article 61.

Article 67

Consequences of objections to the proposed coordinator

Where objections to the person proposed as coordinator have been received from an insolvency practitioner which does not also object to the inclusion in the group coordination proceedings of the member in respect of which it has been appointed, the court may refrain from appointing that person and invite the objecting insolvency practitioner to submit a new request in accordance with Article 61(3).

Article 68

Decision to open group coordination proceedings

1. After the period referred to in Article 64(2) has elapsed, the court may open group coordination proceedings where it is satisfied that the conditions of Article 63(1) are met. In such a case, the court shall:

(a) appoint a coordinator;

(b) decide on the outline of the coordination; and

(c) decide on the estimation of costs and the share to be paid by the group members.

2. The decision opening group coordination proceedings shall be brought to the notice of the participating insolvency practitioners and of the coordinator.

Article 69

Subsequent opt-in by insolvency practitioners

1. In accordance with its national law, any insolvency practitioner may request, after the court decision referred to in Article 68, the inclusion of the proceedings in respect of which it has been appointed, where:

(a) there has been an objection to the inclusion of the insolvency proceedings within the group coordination proceedings; or

(b) insolvency proceedings with respect to a member of the group have been opened after the court has opened group coordination proceedings.

2. Without prejudice to paragraph 4, the coordinator may accede to such a request, after consulting the insolvency practitioners involved, where

(a) he or she is satisfied that, taking into account the stage that the group coordination proceedings has reached at the time of the request, the criteria set out in points (a) and (b) of Article 63(1) are met; or

(b) all insolvency practitioners involved agree, subject to the conditions in their national law.

3. The coordinator shall inform the court and the participating insolvency practitioners of his or her decision pursuant to paragraph 2 and of the reasons on which it is based.

4. Any participating insolvency practitioner or any insolvency practitioner whose request for inclusion in the group coordination proceedings has been rejected may challenge the decision referred to in paragraph 2 in accordance with the procedure set out under the law of the Member State in which the group coordination proceedings have been opened.

Article 70

Recommendations and group coordination plan

1. When conducting their insolvency proceedings, insolvency practitioners shall consider the recommendations of the coordinator and the content of the group coordination plan referred to in Article 72(1).

2. An insolvency practitioner shall not be obliged to follow in whole or in part the coordinator's recommendations or the group coordination plan.

If it does not follow the coordinator's recommendations or the group coordination plan, it shall give reasons for not doing so to the persons or bodies that it is to report to under its national law, and to the coordinator.

Subsection 2

General provisions

Article 71

The coordinator

1. The coordinator shall be a person eligible under the law of a Member State to act as an insolvency practitioner.

2. The coordinator shall not be one of the insolvency practitioners appointed to act in respect of any of the group members, and shall have no conflict of interest in respect of the group members, their creditors and the insolvency practitioners appointed in respect of any of the group members.

Article 72

Tasks and rights of the coordinator

1. The coordinator shall:

(a) identify and outline recommendations for the coordinated conduct of the insolvency proceedings;

(b) propose a group coordination plan that identifies, describes and recommends a comprehensive set of measures appropriate to an integrated approach to the resolution of the group members' insolvencies. In particular, the plan may contain proposals for:

(i) the measures to be taken in order to re-establish the economic performance and the financial soundness of the group or any part of it;

(ii) the settlement of intra-group disputes as regards intra-group transactions and avoidance actions;

(iii) agreements between the insolvency practitioners of the insolvent group members.

2. The coordinator may also:

(a) be heard and participate, in particular by attending creditors' meetings, in any of the proceedings opened in respect of any member of the group;

(b) mediate any dispute arising between two or more insolvency practitioners of group members;

(c) present and explain his or her group coordination plan to the persons or bodies that he or she is to report to under his or her national law;

(d) request information from any insolvency practitioner in respect of any member of the group where that information is or might be of use when identifying and outlining strategies and measures in order to coordinate the proceedings; and

(e) request a stay for a period of up to 6 months of the proceedings opened in respect of any member of the group, provided that such a stay is necessary in order to ensure the proper implementation of the plan and would be to the benefit of the creditors in the proceedings for which the stay is requested; or request the lifting of any existing stay. Such a request shall be made to the court that opened the proceedings for which a stay is requested.

3. The plan referred to in point (b) of paragraph 1 shall not include recommendations as to any consolidation of proceedings or insolvency estates.

4. The coordinator's tasks and rights as defined under this Article shall not extend to any member of the group not participating in group coordination proceedings.

5. The coordinator shall perform his or her duties impartially and with due care.

6. Where the coordinator considers that the fulfilment of his or her tasks requires a significant increase in the costs compared to the cost estimate referred to in point (d) of Article 61(3), and in any case, where the costs exceed 10 % of the estimated costs, the coordinator shall:

(a) inform without delay the participating insolvency practitioners; and

(b) seek the prior approval of the court opening group coordination proceedings.

Article 73

Languages

1. The coordinator shall communicate with the insolvency practitioner of a participating group member in the language agreed with the insolvency practitioner or, in the absence of an agreement, in the official language or one of the official languages of the institutions of the Union, and of the court which opened the proceedings in respect of that group member.

2. The coordinator shall communicate with a court in the official language applicable to that court.

Article 74

Cooperation between insolvency practitioners and the coordinator

1. Insolvency practitioners appointed in relation to members of a group and the coordinator shall cooperate with each other to the extent that such cooperation is not incompatible with the rules applicable to the respective proceedings.

2. In particular, insolvency practitioners shall communicate any information that is relevant for the coordinator to perform his or her tasks.

Article 75

Revocation of the appointment of the coordinator

The court shall revoke the appointment of the coordinator of its own motion or at the request of the insolvency practitioner of a participating group member where:

(a) the coordinator acts to the detriment of the creditors of a participating group member; or

(b) the coordinator fails to comply with his or her obligations under this Chapter.

Article 76

Debtor in possession

The provisions applicable, under this Chapter, to the insolvency practitioner shall also apply, where appropriate, to the debtor in possession.

Article 77

Costs and distribution

1. The remuneration for the coordinator shall be adequate, proportionate to the tasks fulfilled and reflect reasonable expenses.

2. On having completed his or her tasks, the coordinator shall establish the final statement of costs and the share to be paid by each member, and submit this statement to each participating insolvency practitioner and to the court opening coordination proceedings.

3. In the absence of objections by the insolvency practitioners within 30 days of receipt of the statement referred to in paragraph 2, the costs and the share to be paid by each member shall be deemed to be agreed. The statement shall be submitted to the court opening coordination proceedings for confirmation.

4. In the event of an objection, the court that opened the group coordination proceedings shall, upon the application of the coordinator or any participating insolvency practitioner, decide on the costs and the share to be paid by each member in accordance with the criteria set out in paragraph 1 of this Article, and taking into account the estimation of costs referred to in Article 68(1) and, where applicable, Article 72(6).

5. Any participating insolvency practitioner may challenge the decision referred to in paragraph 4 in accordance with the procedure set out under the law of the Member State where group coordination proceedings have been opened.

CHAPTER VI

DATA PROTECTION

Article 78

Data protection

1. National rules implementing Directive 95/46/EC shall apply to the processing of personal data carried out in the Member States pursuant to this Regulation, provided that processing operations referred to in Article 3(2) of Directive 95/46/EC are not concerned.

2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by the Commission pursuant to this Regulation.

Article 79

Responsibilities of Member States regarding the processing of personal data in national insolvency registers

1. Each Member State shall communicate to the Commission the name of the natural or legal person, public authority, agency or any other body designated by national law to exercise the functions of controller in accordance with point (d) of Article 2 of Directive 95/46/EC, with a view to its publication on the European e-Justice Portal.

2. Member States shall ensure that the technical measures for ensuring the security of personal data processed in their national insolvency registers referred to in Article 24 are implemented.

3. Member States shall be responsible for verifying that the controller, designated by national law in accordance with point (d) of Article 2 of Directive 95/46/EC, ensures compliance with the principles of data quality, in particular the accuracy and the updating of data stored in national insolvency registers.

4. Member States shall be responsible, in accordance with Directive 95/46/EC, for the collection and storage of data in national databases and for decisions taken to make such data available in the interconnected register that can be consulted via the European e-Justice Portal.

5. As part of the information that should be provided to data subjects to enable them to exercise their rights, and in particular the right to the erasure of data, Member States shall inform data subjects of the accessibility period set for personal data stored in insolvency registers.

Article 80

Responsibilities of the Commission in connection with the processing of personal data

1. The Commission shall exercise the responsibilities of controller pursuant to Article 2(d) of Regulation (EC) No 45/2001 in accordance with its respective responsibilities defined in this Article.

2. The Commission shall define the necessary policies and apply the necessary technical solutions to fulfil its responsibilities within the scope of the function of controller.

3. The Commission shall implement the technical measures required to ensure the security of personal data while in transit, in particular the confidentiality and integrity of any transmission to and from the European e-Justice Portal.

4. The obligations of the Commission shall not affect the responsibilities of the Member States and other bodies for the content and operation of the interconnected national databases run by them.

Article 81

Information obligations

Without prejudice to the information to be given to data subjects in accordance with Articles 11 and 12 of Regulation (EC) No 45/2001, the Commission shall inform data subjects, by means of publication through the European e-Justice Portal, about its role in the processing of data and the purposes for which those data will be processed.

Article 82

Storage of personal data

As regards information from interconnected national databases, no personal data relating to data subjects shall be stored in the European e-Justice Portal. All such data shall be stored in the national databases operated by the Member States or other bodies.

Article 83

Access to personal data via the European e-Justice Portal

Personal data stored in the national insolvency registers referred to in Article 24 shall be accessible via the European e-Justice Portal for as long as they remain accessible under national law.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 84

Applicability in time

1. The provisions of this Regulation shall apply only to insolvency proceedings opened after 26 June 2017. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.

2. Notwithstanding Article 91 of this Regulation, Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017.

Article 85

Relationship to Conventions

1. This Regulation replaces, in respect of the matters referred to therein, and as regards relations between Member States, the Conventions concluded between two or more Member States, in particular:

(a) 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;

(b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;

(c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;

(d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;

(e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;

(f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;

(g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;

(h) 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;

(i) 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;

(j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;

(k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990;

(l) the Convention between the Federative People's Republic of Yugoslavia and the Kingdom of Greece on the Mutual Recognition and Enforcement of Judgments, signed at Athens on 18 June 1959;

(m) the Agreement between the Federative People's Republic of Yugoslavia and the Republic of Austria on the Mutual Recognition and Enforcement of Arbitral Awards and Arbitral Settlements in Commercial Matters, signed at Belgrade on 18 March 1960;

(n) the Convention between the Federative People's Republic of Yugoslavia and the Italian Republic on Mutual Judicial Cooperation in Civil and Administrative Matters, signed at Rome on 3 December 1960;

(o) the Agreement between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium on Judicial Cooperation in Civil and Commercial Matters, signed at Belgrade on 24 September 1971;

(p) the Convention between the Governments of Yugoslavia and France on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Paris on 18 May 1971;

(q) the Agreement between the Czechoslovak Socialist Republic and the Hellenic Republic on Legal Aid in Civil and Criminal Matters, signed at Athens on 22 October 1980, still in force between the Czech Republic and Greece;

(r) the Agreement between the Czechoslovak Socialist Republic and the Republic of Cyprus on Legal Aid in Civil and Criminal Matters, signed at Nicosia on 23 April 1982, still in force between the Czech Republic and Cyprus;

(s) the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the Republic of France on Legal Aid and the Recognition and Enforcement of Judgments in Civil, Family and Commercial Matters, signed at Paris on 10 May 1984, still in force between the Czech Republic and France;

(t) the Treaty between the Czechoslovak Socialist Republic and the Italian Republic on Legal Aid in Civil and Criminal Matters, signed at Prague on 6 December 1985, still in force between the Czech Republic and Italy;

(u) the Agreement between the Republic of Latvia, the Republic of Estonia and the Republic of Lithuania on Legal Assistance and Legal Relationships, signed at Tallinn on 11 November 1992;

(v) the Agreement between Estonia and Poland on Granting Legal Aid and Legal Relations on Civil, Labour and Criminal Matters, signed at Tallinn on 27 November 1998;

(w) the Agreement between the Republic of Lithuania and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, signed at Warsaw on 26 January 1993;

(x) the Convention between the Socialist Republic of Romania and the Hellenic Republic on legal assistance in civil and criminal matters and its Protocol, signed at Bucharest on 19 October 1972;

(y) the Convention between the Socialist Republic of Romania and the French Republic on legal assistance in civil and commercial matters, signed at Paris on 5 November 1974;

(z) the Agreement between the People's Republic of Bulgaria and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters, signed at Athens on 10 April 1976;

(aa) the Agreement between the People's Republic of Bulgaria and the Republic of Cyprus on Legal Assistance in Civil and Criminal Matters, signed at Nicosia on 29 April 1983;

(ab) the Agreement between the Government of the People's Republic of Bulgaria and the Government of the French Republic on Mutual Legal Assistance in Civil Matters, signed at Sofia on 18 January 1989;

(ac) the Treaty between Romania and the Czech Republic on judicial assistance in civil matters, signed at Bucharest on 11 July 1994;

(ad) the Treaty between Romania and the Republic of Poland on legal assistance and legal relations in civil cases, signed at Bucharest on 15 May 1999.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of Regulation (EC) No 1346/2000.

3. This Regulation shall not apply:

(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that Member State with one or more third countries before the entry into force of Regulation (EC) No 1346/2000;

(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time Regulation (EC) No 1346/2000 entered into force.

Article 86

Information on national and Union insolvency law

1. The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC [1], and with a view to making the information available to the public, a short description of their national legislation and procedures relating to insolvency, in particular relating to the matters listed in Article 7(2).

2. The Member States shall update the information referred to in paragraph 1 regularly.

3. The Commission shall make information concerning this Regulation available to the public.

Article 87

Establishment of the interconnection of registers

The Commission shall adopt implementing acts establishing the interconnection of insolvency registers as referred to in Article 25. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 89(3).

Article 88

Establishment and subsequent amendment of standard forms

The Commission shall adopt implementing acts establishing and, where necessary, amending the forms referred to in Article 27(4), Articles 54 and 55 and Article 64(2). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2).

Article 89

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 90

Review clause

1. No later than 27 June 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.

2. No later than 27 June 2022, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the group coordination proceedings. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation.

3. No later than 1 January 2016, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the cross-border issues in the area of directors' liability and disqualifications.

4. No later than 27 June 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the issue of abusive forum shopping.

---

[1] Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25).

Article 91

Repeal

Regulation (EC) No 1346/2000 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex D to this Regulation.

Article 92

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 26 June 2017, with the exception of:

(a) Article 86, which shall apply from 26 June 2016;

(b) Article 24(1), which shall apply from 26 June 2018; and

(c) Article 25, which shall apply from 26 June 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 May 2015.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	Z. KALNIŅA-LUKAŠEVICA

ANNEX A

Insolvency proceedings referred to in point (4) of Article 2

BELGIQUE/BELGIË

— Het faillissement/La faillite,

— De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,

— De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,

— De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,

— De collectieve schuldenregeling/Le règlement collectif de dettes,

— De vrijwillige vereffening/La liquidation volontaire,

— De gerechtelijke vereffening/La liquidation judiciaire,

— De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites,

БЪЛГАРИЯ

— Производство по несъстоятелност,

ČESKÁ REPUBLIKA

— Konkurs,

— Reorganizace,

— Oddlužení,

DEUTSCHLAND

— Das Konkursverfahren,

— Das gerichtliche Vergleichsverfahren,

— Das Gesamtvollstreckungsverfahren,

— Das Insolvenzverfahren,

EESTI

— Pankrotimenetlus,

— Võlgade ümberkujundamise menetlus,

ÉIRE/IRELAND

— Compulsory winding-up by the court,

— Bankruptcy,

— The administration in bankruptcy of the estate of persons dying insolvent,

— Winding-up in bankruptcy of partnerships,

— Creditors' voluntary winding-up (with confirmation of a court),

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,

— Examinership,

— Debt Relief Notice,

— Debt Settlement Arrangement,

— Personal Insolvency Arrangement,

ΕΛΛΑΔΑ

— Η πτώχευση,

— Η ειδική εκκαθάριση εν λειτουργία,

— Σχέδιο αναδιοργάνωσης,

— Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,

— Διαδικασία Εξυγίανσης,

ESPAÑA

— Concurso,

— Procedimiento de homologación de acuerdos de refinanciación,

— Procedimiento de acuerdos extrajudiciales de pago,

— Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

FRANCE

— Sauvegarde,

— Sauvegarde accélérée,

— Sauvegarde financière accélérée,

— Redressement judiciaire,

— Liquidation judiciaire,

HRVATSKA

— Stečajni postupak,

ITALIA

— Fallimento,

— Concordato preventivo,

— Liquidazione coatta amministrativa,

— Amministrazione straordinaria,

— Accordi di ristrutturazione,

— Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),

— Liquidazione dei beni,

ΚΥΠΡΟΣ

— Υποχρεωτική εκκαθάριση από το Δικαστήριο,

— Εκούσια εκκαθάριση από μέλη,

— Εκούσια εκκαθάριση από πιστωτές

— Εκκαθάριση με την εποπτεία του Δικαστηρίου,

— Διάταγμα Παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,

— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

LATVIJA

— Tiesiskās aizsardzības process,

— Juridiskās personas maksātnespējas process,

— Fiziskās personas maksātnespējas process,

LIETUVA

— Įmonės restruktūrizavimo byla,

— Įmonės bankroto byla,

— Įmonės bankroto procesas ne teismo tvarka,

— Fizinio asmens bankroto procesas,

LUXEMBOURG

— Faillite,

— Gestion contrôlée,

— Concordat préventif de faillite (par abandon d'actif),

— Régime spécial de liquidation du notariat,

— Procédure de règlement collectif des dettes dans le cadre du surendettement,

MAGYARORSZÁG

— Csődeljárás,

— Felszámolási eljárás,

MALTA

— Xoljiment,

— Amministrazzjoni,

— Stralċ volontarju mill-membri jew mill-kredituri,

— Stralċ mill-Qorti,

— Falliment f'każ ta' kummerċjant,

— Proċedura biex kumpanija tirkupra,

NEDERLAND

— Het faillissement,

— De surséance van betaling,

— De schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Das Konkursverfahren (Insolvenzverfahren),

— Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),

— Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),

— Das Schuldenregulierungsverfahren,

— Das Abschöpfungsverfahren,

— Das Ausgleichsverfahren,

POLSKA

— Postępowanie naprawcze,

— Upadłość obejmująca likwidację,

— Upadłość z możliwością zawarcia układu,

PORTUGAL

— Processo de insolvência,

— Processo especial de revitalização,

ROMÂNIA

— Procedura insolvenței,

— Reorganizarea judiciară,

— Procedura falimentului,

— Concordatul preventiv,

SLOVENIJA

— Postopek preventivnega prestrukturiranja,

— Postopek prisilne poravnave,

— Postopek poenostavljene prisilne poravnave,

— Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja and postopek stečaja zapuščine,

SLOVENSKO

— Konkurzné konanie,

— Reštrukturalizačné konanie,

— Oddlženie,

SUOMI/FINLAND

— Konkurssi/konkurs,

— Yrityssaneeraus/företagssanering,

— Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

SVERIGE

— Konkurs,

— Företagsrekonstruktion,

— Skuldsanering,

UNITED KINGDOM

— Winding-up by or subject to the supervision of the court,

— Creditors' voluntary winding-up (with confirmation by the court),

— Administration, including appointments made by filing prescribed documents with the court,

— Voluntary arrangements under insolvency legislation,

— Bankruptcy or sequestration.

ANNEX B

Insolvency practitioners referred to in point (5) of Article 2

BELGIQUE/BELGIË

— De curator/Le curateur,

— De gedelegeerd rechter/Le juge-délégué,

— De gerechtsmandataris/Le mandataire de justice,

— De schuldbemiddelaar/Le médiateur de dettes,

— De vereffenaar/Le liquidateur,

— De voorlopige bewindvoerder/L'administrateur provisoire,

БЪЛГАРИЯ

— Назначен предварително временен синдик,

— Временен синдик,

— (Постоянен) синдик,

— Служебен синдик,

ČESKÁ REPUBLIKA

— Insolvenční správce,

— Předběžný insolvenční správce,

— Oddělený insolvenční správce,

— Zvláštní insolvenční správce,

— Zástupce insolvenčního správce,

DEUTSCHLAND

— Konkursverwalter,

— Vergleichsverwalter,

— Sachwalter (nach der Vergleichsordnung),

— Verwalter,

— Insolvenzverwalter,

— Sachwalter (nach der Insolvenzordnung),

— Treuhänder,

— Vorläufiger Insolvenzverwalter,

— Vorläufiger Sachwalter,

EESTI

— Pankrotihaldur,

— Ajutine pankrotihaldur,

— Usaldusisik,

ÉIRE/IRELAND

— Liquidator,

— Official Assignee,

— Trustee in bankruptcy,

— Provisional Liquidator,

— Examiner,

— Personal Insolvency Practitioner,

— Insolvency Service,

ΕΛΛΑΔΑ

— Ο σύνδικος,

— Ο εισηγητής,

— Η επιτροπή των πιστωτών,

— Ο ειδικός εκκαθαριστής,

ESPAÑA

— Administrador concursal,

— Mediador concursal,

FRANCE

— Mandataire judiciaire,

— Liquidateur,

— Administrateur judiciaire,

— Commissaire à l'exécution du plan,

HRVATSKA

— Stečajni upravitelj,

— Privremeni stečajni upravitelj,

— Stečajni povjerenik,

— Povjerenik,

ITALIA

— Curatore,

— Commissario giudiziale,

— Commissario straordinario,

— Commissario liquidatore,

— Liquidatore giudiziale,

— Professionista nominato dal Tribunale,

— Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,

— Liquidatore,

ΚΥΠΡΟΣ

— Εκκαθαριστής και Προσωρινός Εκκαθαριστής,

— Επίσημος Παραλήπτης,

— Διαχειριστής της Πτώχευσης,

LATVIJA

— Maksātnespējas procesa administrators,

LIETUVA

— Bankroto administratorius,

— Restruktūrizavimo administratorius,

LUXEMBOURG

— Le curateur,

— Le commissaire,

— Le liquidateur,

— Le conseil de gérance de la section d'assainissement du notariat,

— Le liquidateur dans le cadre du surendettement,

MAGYARORSZÁG

— Vagyonfelügyelő,

— Felszámoló,

MALTA

— Amministratur Proviżorju,

— Riċevitur Uffiċjali,

— Stralċjarju,

— Manager Speċjali,

— Kuraturi f'każ ta' proċeduri ta' falliment,

— Kontrolur Speċjali,

NEDERLAND

— De curator in het faillissement,

— De bewindvoerder in de surséance van betaling,

— De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Masseverwalter,

— Sanierungsverwalter,

— Ausgleichsverwalter,

— Besonderer Verwalter,

— Einstweiliger Verwalter,

— Sachwalter,

— Treuhänder,

— Insolvenzgericht,

— Konkursgericht,

POLSKA

— Syndyk,

— Nadzorca sądowy,

— Zarządca,

PORTUGAL

— Administrador da insolvência,

— Administrador judicial provisório,

ROMÂNIA

— Practician în insolvență,

— Administrator concordatar,

— Administrator judiciar,

— Lichidator judiciar,

SLOVENIJA

— Upravitelj,

SLOVENSKO

— Predbežný správca,

— Správca,

SUOMI/FINLAND

— Pesänhoitaja/bofförvaltare,

— Selvittäjä/utredare,

SVERIGE

— Förvaltare,

— Rekonstruktör,

UNITED KINGDOM

— Liquidator,

— Supervisor of a voluntary arrangement,

— Administrator,

— Official Receiver,

— Trustee,

— Provisional Liquidator,

— Interim Receiver,

— Judicial factor.

ANNEX C

Repealed Regulation with list of the successive amendments thereto

Council Regulation (EC) No 1346/2000

(OJ L 160, 30.6.2000, p. 1)

Council Regulation (EC) No 603/2005

(OJ L 100, 20.4.2005, p. 1)

Council Regulation (EC) No 694/2006

(OJ L 121, 6.5.2006, p. 1)

Council Regulation (EC) No 1791/2006

(OJ L 363, 20.12.2006, p. 1)

Council Regulation (EC) No 681/2007

(OJ L 159, 20.6.2007, p. 1)

Council Regulation (EC) No 788/2008

(OJ L 213, 8.8.2008, p. 1)

Implementing Regulation of the Council (EU) No 210/2010

(OJ L 65, 13.3.2010, p. 1)

Council Implementing Regulation (EU) No 583/2011

(OJ L 160, 18.6.2011, p. 52)

Council Regulation (EU) No 517/2013

(OJ L 158, 10.6.2013, p. 1)

Council Implementing Regulation (EU) No 663/2014

(OJ L 179, 19.6.2014, p. 4)

Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded

(OJ L 236, 23.9.2003, p. 33)

ANNEX D

Correlation table

Regulation (EC) No 1346/2000	This Regulation
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, point (a)	Article 2, point (4)
Article 2, point (b)	Article 2, point (5)
Article 2, point (c)	—
Article 2, point (d)	Article 2, point (6)
Article 2, point (e)	Article 2, point (7)
Article 2, point (f)	Article 2, point (8)
Article 2, point (g), introductory words	Article 2, point (9), introductory words
Article 2, point (g), first indent	Article 2, point (9)(vii)
Article 2, point (g), second indent	Article 2, point (9)(iv)
Article 2, point (g), third indent	Article 2, point (9)(viii)
Article 2, point (h)	Article 2, point 10
—	Article 2, points (1) to (3) and (11) to (13)
—	Article 2, point (9)(i) to (iii), (v), (vi)
Article 3	Article 3
—	Article 4
—	Article 5
—	Article 6
Article 4	Article 7
Article 5	Article 8
Article 6	Article 9
Article 7	Article 10
Article 8	Article 11(1)
—	Article 11(2)
Article 9	Article 12
Article 10	Article 13(1)
—	Article 13(2)
Article 11	Article 14
Article 12	Article 15
Article 13, first indent	Article 16, point (a)
Article 13, second indent	Article 16, point (b)
Article 14, first indent	Article 17, point (a)
Article 14, second indent	Article 17, point (b)

Regulation (EC) No 1346/2000	This Regulation
Article 14, third indent	Article 17, point (c)
Article 15	Article 18
Article 16	Article 19
Article 17	Article 20
Article 18	Article 21
Article 19	Article 22
Article 20	Article 23
—	Article 24
—	Article 25
—	Article 26
—	Article 27
Article 21(1)	Article 28(2)
Article 21(2)	Article 28(1)
Article 22	Article 29
Article 23	Article 30
Article 24	Article 31
Article 25	Article 32
Article 26	Article 33
Article 27	Article 34
Article 28	Article 35
—	Article 36
Article 29	Article 37(1)
—	Article 37(2)
—	Article 38
—	Article 39
Article 30	Article 40
Article 31	Article 41
—	Article 42
—	Article 43
—	Article 44
Article 32	Article 45
Article 33	Article 46
Article 34(1)	Article 47(1)
Article 34(2)	Article 47(2)
Article 34(3)	—
—	Article 48
Article 35	Article 49
Article 36	Article 50
Article 37	Article 51

Regulation (EC) No 1346/2000	This Regulation
Article 38	Article 52
Article 39	Article 53
Article 40	Article 54
Article 41	Article 55
Article 42	—
—	Article 56
—	Article 57
—	Article 58
—	Article 59
—	Article 60
—	Article 61
—	Article 62
—	Article 63
—	Article 64
—	Article 65
—	Article 66
—	Article 67
—	Article 68
—	Article 69
—	Article 70
—	Article 71
—	Article 72
—	Article 73
—	Article 74
—	Article 75
—	Article 76
—	Article 77
—	Article 78
—	Article 79
—	Article 80
—	Article 81
—	Article 82
—	Article 83
Article 43	Article 84(1)
—	Article 84(2)
Article 44	Article 85
—	Article 86
Article 45	—
—	Article 87
—	Article 88

Regulation (EC) No 1346/2000	This Regulation
—	Article 89
Article 46	Article 90(1)
—	Article 90(2) to (4)
—	Article 91
Article 47	Article 92
Annex A	Annex A
Annex B	—
Annex C	Annex B
—	Annex C
—	Annex D

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)

UNITED NATIONS

The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the General Assembly. It plays an important role in improving the legal framework for international trade by preparing international legislative texts for use by States in modernizing the law of international trade and non-legislative texts for use by commercial parties in negotiating transactions. UNCITRAL legislative texts address international sale of goods; international commercial dispute resolution, including both arbitration and conciliation; electronic commerce; insolvency, including cross-border insolvency; international transport of goods; international payments; procurement and infrastructure development; and security interests. Non-legislative texts include rules for conduct of arbitration and conciliation proceedings; notes on organizing and conducting arbitral proceedings; and legal guides on industrial construction contracts and countertrade.

Further information may be obtained from:

UNCITRAL secretariat, Vienna International Centre,
P.O. Box 500, 1400 Vienna, Austria

Telephone: (+43-1) 26060-4060
Telefax: (+43-1) 26060-5813
Internet: www.uncitral.org
E-mail: uncitral@uncitral.org

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)

UNITED NATIONS
New York, 2015

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

The publication reproduced here is a revised version in which part three of the original publication of 2009 has been removed.

Contents

Introduction

Objectives

Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term "non-domestic" appears to embrace awards which, although made in the state of enforcement, are treated as "foreign" under its law because of some foreign element in the proceedings, e.g. another State's procedural laws are applied.

The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Key provisions

The Convention applies to awards made in any State other than the State in which recognition and enforcement is sought. It also applies to awards "not considered as domestic awards". When consenting to be bound by the Convention, a State may declare that it will apply the Convention *(a)* in respect to awards made only in the territory of another Party and *(b)* only to legal relationships that are considered "commercial" under its domestic law.

The Convention contains provisions on arbitration agreements. This aspect was covered in recognition of the fact that an award could be refused enforcement on the grounds that the agreement upon which it was based might not be recognized. Article II (1) provides that Parties shall recognize

written arbitration agreements. In that respect, UNCITRAL adopted, at its thirty-ninth session in 2006, a Recommendation that seeks to provide guidance to Parties on the interpretation of the requirement in article II (2) that an arbitration agreement be in writing and to encourage application of article VII (1) to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

The central obligation imposed upon Parties is to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the lex fori. Each Party may determine the procedural mechanisms that may be followed where the Convention does not prescribe any requirement.

The Convention defines five grounds upon which recognition and enforcement may be refused at the request of the party against whom it is invoked. The grounds include incapacity of the parties, invalidity of the arbitration agreement, due process, scope of the arbitration agreement, jurisdiction of the arbitral tribunal, setting aside or suspension of an award in the country in which, or under the law of which, that award was made. The Convention defines two additional grounds upon which the court may, on its own motion, refuse recognition and enforcement of an award. Those grounds relate to arbitrability and public policy.

The Convention seeks to encourage recognition and enforcement of awards in the greatest number of cases as possible. That purpose is achieved through article VII (1) of the Convention by removing conditions for recognition and enforcement in national laws that are more stringent than the conditions in the Convention, while allowing the continued application of any national provisions that give special or more favourable rights to a party seeking to enforce an award. That article recognizes the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention.

Entry into force

The Convention entered into force on 7 June 1959 (article XII).

How to become a party

The Convention is closed for signature. It is subject to ratification, and is open to accession by any Member State of the United Nations, any other

State which is a member of any specialized agency of the United Nations, or is a Party to the Statute of the International Court of Justice (articles VIII and IX).

Optional and/or mandatory declarations and notifications

When signing, ratifying or acceding to the Convention, or notifying a territorial extension under article X, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Party to the Convention. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration (article I).

Denunciation/Withdrawal

Any Party may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of the receipt of the notification by the Secretary-General (article XIII).

Part one

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION, NEW YORK, 20 MAY–10 JUNE 1958

Excerpts from the Final Act of the United Nations Conference on International Commercial Arbitration[1]

"1. The Economic and Social Council of the United Nations, by resolution 604 (XXI) adopted on 3 May 1956, decided to convene a Conference of Plenipotentiaries for the purpose of concluding a convention on the recognition and enforcement of foreign arbitral awards, and to consider other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes.

[…]

"12. The Economic and Social Council, by its resolution convening the Conference, requested it to conclude a convention on the basis of the draft convention prepared by the Committee on the Enforcement of International Arbitral Awards, taking into account the comments and suggestions made by Governments and non-governmental organizations, as well as the discussion at the twenty-first session of the Council.

"13. On the basis of the deliberations, as recorded in the reports of the working parties and in the records of the plenary meetings, the Conference prepared and opened for signature the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is annexed to this Final Act.

[…]

"16. In addition the Conference adopted, on the basis of proposals made by the Committee on Other Measures as recorded in its report, the following resolution:

[1]The full text of the Final Act of the United Nations Conference on International Commercial Arbitration (E/CONF.26/8Rev.1) is available at http://www.uncitral.org

"*The Conference*,

"*Believing* that, in addition to the convention on the recognition and enforcement of foreign arbitral awards just concluded, which would contribute to increasing the effectiveness of arbitration in the settlement of private law disputes, additional measures should be taken in this field,

"*Having considered* the able survey and analysis of possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes prepared by the Secretary-General (document E/CONF.26/6),

"*Having given particular attention* to the suggestions made therein for possible ways in which interested governmental and other organizations may make practical contributions to the more effective use of arbitration,

"*Expresses the following views* with respect to the principal matters dealt with in the note of the Secretary-General:

"1. It considers that wider diffusion of information on arbitration laws, practices and facilities contributes materially to progress in commercial arbitration; recognizes that work has already been done in this field by interested organizations,[2] and expresses the wish that such organizations, so far as they have not concluded them, continue their activities in this regard, with particular attention to coordinating their respective efforts;

"2. It recognizes the desirability of encouraging where necessary the establishment of new arbitration facilities and the improvement of existing facilities, particularly in some geographic regions and branches of trade; and believes that useful work may be done in this field by appropriate governmental and other organizations, which may be active in arbitration matters, due regard being given to the need to avoid duplication of effort and to concentrate upon those measures of greatest practical benefit to the regions and branches of trade concerned;

"3. It recognizes the value of technical assistance in the development of effective arbitral legislation and institutions; and suggests that interested Governments and other organizations endeavour to furnish such assistance, within the means available, to those seeking it;

"4. It recognizes that regional study groups, seminars or working parties may in appropriate circumstances have productive results; believes that consideration should be given to the advisability of the convening of

[2]For example, the Economic Commission for Europe and the Inter-American Council of Jurists.

such meetings by the appropriate regional commissions of the United Nations and other bodies, but regards it as important that any such action be taken with careful regard to avoiding duplication and assuring economy of effort and of resources;

"5. It considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes, notes the work already done in this field by various existing organizations,[3] and suggests that by way of supplementing the efforts of these bodies appropriate attention be given to defining suitable subject matter for model arbitration statutes and other appropriate measures for encouraging the development of such legislation;

"*Expresses the wish* that the United Nations, through its appropriate organs, take such steps as it deems feasible to encourage further study of measures for increasing the effectiveness of arbitration in the settlement of private law disputes through the facilities of existing regional bodies and non-governmental organizations and through such other institutions as may be established in the future;

"*Suggests* that any such steps be taken in a manner that will assure proper coordination of effort, avoidance of duplication and due observance of budgetary considerations;

"*Requests* that the Secretary-General submit this resolution to the appropriate organs of the United Nations."

[3]For example, the International Institute for the Unification of Private Law and the Inter-American Council of Jurists.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) *(e)*, the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order

to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation

shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Part two

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

General Assembly resolution 61/33 of 4 December 2006

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,[1]

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

---

[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,[3] and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;[3]

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

64th plenary meeting
4 December 2006

---

[2]United Nations, *Treaty Series*, vol. 330, No. 4739.

[3]*Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, DONE IN NEW YORK, 10 JUNE 1958, ADOPTED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON 7 JULY 2006 AT ITS THIRTY-NINTH SESSION

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,[4] has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference "considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes",

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to

[4]United Nations, *Treaty Series*, vol. 330, No. 4739.

the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,[5] as subsequently revised, particularly with respect to article 7,[6] the UNCITRAL Model Law on Electronic Commerce,[7] the UNCITRAL Model Law on Electronic Signatures[8] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[9]

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

---

[5] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[6] Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[7] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[8] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[9] General Assembly resolution 60/21, annex.

V.15-05576

ICSID

CONVENTION, REGULATIONS AND RULES

ICSID | International Centre for Settlement of Investment Disputes
WORLD BANK GROUP

ICSID

CONVENTION, REGULATIONS AND RULES

1818 H Street, NW
Washington, DC 20433
USA

Telephone: +1 (202) 458 1534
Facsimile: +1 (202) 522 2615
Email: ICSIDsecretariat@worldbank.org

icsid.worldbank.org

ICSID/15/Rev. 3
July 2022

INTRODUCTION

The International Centre for Settlement of Investment Disputes (ICSID or the Centre) is established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention or the Convention). The Convention was formulated by the Executive Directors of the International Bank for Reconstruction and Development (the World Bank). On March 18, 1965, the Executive Directors submitted the Convention, with an accompanying Report, to member governments of the World Bank for their consideration of the Convention, with a view to its signature and ratification. The Convention entered into force on October 14, 1966, when it had been ratified by 20 countries.

In accordance with the provisions of the Convention, ICSID provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States. The provisions of the ICSID Convention are complemented by Regulations and Rules adopted by the Administrative Council of the Centre pursuant to Article 6(1)(a)–(c) of the Convention (the ICSID Regulations and Rules).

The ICSID Regulations and Rules comprise the ICSID Administrative and Financial Regulations; the ICSID Institution Rules; the ICSID Conciliation Rules; and the ICSID Arbitration Rules. The latest amendments of the ICSID Regulations and Rules adopted by the Administrative Council of the Centre came into effect on July 1, 2022.

Reprinted in this booklet are the ICSID Convention, the Report of the Executive Directors of the World Bank on the Convention, and the ICSID Regulations and Rules as amended effective July 1, 2022.

SUMMARY TABLE OF CONTENTS

CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

TABLE OF CONTENTS

PREAMBLE

The Contracting States

Considering the need for international cooperation for economic development, and the role of private international investment therein;

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases;

Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

Have agreed as follows:

CHAPTER I
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Section 1
Establishment and Organization

Article 1

(1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).

(2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

Article 2

The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

Section 2
The Administrative Council

Article 4

(1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.

(2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting

State shall be *ex officio* its representative and its alternate respectively.

Article 5

The President of the Bank shall be *ex officio* Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

(1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:

(a) adopt the administrative and financial regulations of the Centre;

(b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;

(c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);

(d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;

(e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

(f) adopt the annual budget of revenues and expenditures of the Centre;

(g) approve the annual report on the operation of the Centre.

The decisions referred to in subparagraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

(2) The Administrative Council may appoint such committees as it considers necessary.

(3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

Article 7

(1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.

(2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.

(3) A quorum for any meeting of the Administrative Council shall be a majority of its members.

(4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council. The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

Article 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

Section 3
The Secretariat

Article 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

(1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.

(2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political

function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.

(3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

Section 4
The Panels

Article 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon

to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 15

(1) Panel members shall serve for renewable periods of six years.

(2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.

(3) Panel members shall continue in office until their successors have been designated.

Article 16

(1) A person may serve on both Panels.

(2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.

(3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

Section 5
Financing the Centre

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 6
Status, Immunities and Privileges

Article 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity:

(a) to contract;

(b) to acquire and dispose of movable and immovable property;

(c) to institute legal proceedings.

Article 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

Article 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

Article 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat

(a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;

(b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

(1) The archives of the Centre shall be inviolable, wherever they may be.

(2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.

Article 24

(1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.

(2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.

(3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

CHAPTER II
JURISDICTION OF THE CENTRE

Article 25

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) "National of another Contracting State" means:

(a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

(3) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.

(4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary- General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

Article 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

Article 27

(1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.

(2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

CHAPTER III
CONCILIATION

Section 1
Request for Conciliation

Article 28

(1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2
Constitution of the Conciliation Commission

Article 29

(1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.

(2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

Article 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

Article 31

(1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.

(2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

Section 3
Conciliation Proceedings

Article 32

(1) The Commission shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

Article 34

(1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.

(2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other

proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

CHAPTER IV
ARBITRATION

Section 1
Request for Arbitration

Article 36

(1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.

(2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.

(3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2
Constitution of the Tribunal

Article 37

(1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.

(2) (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

(b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator

appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

Article 38

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

Article 39

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

Section 3
Powers and Functions of the Tribunal

Article 41

(1) The Tribunal shall be the judge of its own competence.

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by

the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 42

(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.

(2) The Tribunal may not bring in a finding of *non liquet* on the ground of silence or obscurity of the law.

(3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

Article 43

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

(a) call upon the parties to produce documents or other evidence, and

(b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

Article 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

Article 45

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so.

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Article 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.

Section 4
The Award

Article 48

(1) The Tribunal shall decide questions by a majority of the votes of all its members.

(2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.

(3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.

(4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

(5) The Centre shall not publish the award without the consent of the parties.

Article 49

(1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

(2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

Section 5
Interpretation, Revision and Annulment of the Award

Article 50

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51

(1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.

(2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.

(3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.

(4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Article 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

(a) that the Tribunal was not properly constituted;

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based.

(2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.

(3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).

(4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.

(5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

(6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

Section 6
Recognition and Enforcement of the Award

Article 53

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.

(2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

Article 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

CHAPTER V
REPLACEMENT AND DISQUALIFICATION OF CONCILIATORS AND ARBITRATORS

Article 56

(1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

(2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.

(3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

CHAPTER VI
COST OF PROCEEDINGS

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

Article 60

(1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.

(2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

(1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide

how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

CHAPTER VII
PLACE OF PROCEEDINGS

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

(a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or

(b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

CHAPTER VIII
DISPUTES BETWEEN CONTRACTING STATES

Article 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

CHAPTER IX
AMENDMENT

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

(1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.

(2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

CHAPTER X
FINAL PROVISIONS

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

(1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.

(2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

Article 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

The depositary shall notify all signatory States of the following:

(a) signatures in accordance with Article 67;

(b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;

(c) the date on which this Convention enters into force in accordance with Article 68;

(d) exclusions from territorial application pursuant to Article 70;

(e) the date on which any amendment of this Convention enters into force in accordance with Article 66; and

(f) denunciations in accordance with Article 71.

DONE at Washington, in the English, French and Spanish languages, all three texts being equally authentic, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfil the functions with which it is charged under this Convention.

ICSID ARBITRATION RULES

TABLE OF CONTENTS

INTRODUCTORY NOTE

The ICSID Arbitration Rules were adopted by the Administrative Council of the Centre pursuant to Article 6(1)(c) of the ICSID Convention.

The ICSID Arbitration Rules are supplemented by the ICSID Administrative and Financial Regulations.

The ICSID Arbitration Rules apply from the date of registration of a Request for arbitration until an Award is rendered and to any post-Award remedy proceedings.

CHAPTER I
GENERAL PROVISIONS

Rule 1
Application of Rules

(1) These Rules shall apply to any arbitration proceeding conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("Convention") in accordance with Article 44 of the Convention.

(2) The Tribunal shall apply any agreement of the parties on procedural matters to the extent that it does not conflict with the Convention or the ICSID Administrative and Financial Regulations.

Rule 2
Party and Party Representative

(1) For the purposes of these Rules, "party" includes all parties acting as claimant or as respondent.

(2) Each party may be represented or assisted by agents, counsel, advocates or other advisors, whose names and proof of authority to act shall be promptly notified by that party to the Secretary-General ("representative(s)").

Rule 3
General Duties

(1) The Tribunal and the parties shall conduct the proceeding in good faith and in an expeditious and cost-effective manner.

(2) The Tribunal shall treat the parties equally and provide each party with a reasonable opportunity to present its case.

Rule 4
Method of Filing

(1) A document to be filed in the proceeding shall be filed with the Secretary-General, who shall acknowledge its receipt.

(2) Documents shall be filed electronically. In special circumstances, the Tribunal may order that documents also be filed in a different format.

Rule 5
Supporting Documents

(1) Supporting documents, including witness statements, expert reports, exhibits and legal authorities, shall be filed together with the request, written submission, observations or communication to which they relate.

(2) An extract of a document may be filed as a supporting document if the extract is not misleading. The Tribunal or a party may require a fuller extract or a complete version of the document.

(3) If the authenticity of a supporting document is disputed, the Tribunal may order a party to provide a certified copy or to make the original available for examination.

Rule 6
Routing of Documents

The Secretary-General shall transmit a document filed in the proceeding to:

(a) the other party, unless the parties communicate directly with each other;

(b) the Tribunal, unless the parties communicate directly with the Tribunal on request of the Tribunal or by agreement of the parties; and

(c) the Chairman of the Administrative Council ("Chair") if applicable.

Rule 7
Procedural Languages, Translation and Interpretation

(1) The parties may agree to use one or two procedural languages in the proceeding. The parties shall consult with the Tribunal and the Secretary-General regarding the use of a language that is not an official language of the Centre. If the parties do not agree on the procedural language(s), each party may select one of the official languages of the Centre.

(2) In a proceeding with one procedural language:

(a) documents shall be filed and hearings shall be conducted in that procedural language;

(b) documents in another language shall be accompanied by a translation into that procedural language; and

(c) testimony in another language shall be interpreted into that procedural language.

(3) In a proceeding with two procedural languages:

(a) documents may be filed and hearings may be conducted in either procedural language, unless the Tribunal orders that a document be filed in both procedural languages or that a hearing be conducted with interpretation into both procedural languages;

(b) documents in another language shall be accompanied by a translation into either procedural language, unless the Tribunal orders translation into both procedural languages;

(c) testimony in another language shall be interpreted into either procedural language, unless the Tribunal orders interpretation into both procedural languages;

(d) the Tribunal and the Secretary-General may communicate in either procedural language; and

(e) all orders, decisions and the Award shall be rendered in both procedural languages, unless the parties agree otherwise.

(4) Translation of only the relevant part of a supporting document is sufficient, unless the Tribunal orders a party to provide a fuller or a complete translation. If the translation is disputed, the Tribunal may order a party to provide a certified translation.

Rule 8
Correction of Errors

A party may correct an accidental error in a document promptly upon discovery and before the Award is rendered. The parties may refer any dispute regarding a correction to the Tribunal for determination.

Rule 9
Calculation of Time Limits

(1) References to time shall be determined based on the time at the seat of the Centre on the relevant date.

(2) Any time limit expressed as a period of time shall be calculated from the day after the date on which:

  (a) the Tribunal, or the Secretary-General if applicable, announces the period; or

  (b) the procedural step starting the period is taken.

(3) A time limit shall be satisfied if a procedural step is taken or a document is received by the Secretary-General on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday.

Rule 10
Fixing Time Limits

(1) The Tribunal, or the Secretary-General if applicable, shall fix time limits for the completion of each procedural step in the proceeding, other than time limits prescribed by the Convention or these Rules.

(2) In fixing time limits pursuant to paragraph (1), the Tribunal, or the Secretary-General if applicable, shall consult with the parties as far as possible.

(3) The Tribunal may delegate the power to fix time limits to its President.

Rule 11
Extension of Time Limits Applicable to Parties

(1) The time limits in Articles 49, 51 and 52 of the Convention cannot be extended. An application or request filed after the expiry of such time limits shall be disregarded.

(2) A time limit prescribed by the Convention or these Rules, other than those referred to in paragraph (1), may only be extended by agreement of the parties. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal decides that there are special circumstances justifying the failure to meet the time limit.

(3) A time limit fixed by the Tribunal or the Secretary-General may be extended by agreement of the parties or the Tribunal, or the Secretary-General if applicable, upon reasoned application by either party made prior to its expiry. A procedural step taken or document received after the expiry of such time limit shall be disregarded, unless the parties agree otherwise or the Tribunal, or the Secretary-General if applicable, decides that there are special circumstances justifying the failure to meet the time limit.

(4) The Tribunal may delegate the power to extend time limits to its President.

Rule 12
Time Limits Applicable to the Tribunal

(1) The Tribunal shall use best efforts to meet time limits to render orders, decisions and the Award.

(2) If the Tribunal cannot comply with an applicable time limit, it shall advise the parties of the special circumstances justifying the delay and the date when it anticipates rendering the order, decision or Award.

CHAPTER II
ESTABLISHMENT OF THE TRIBUNAL

Rule 13
General Provisions Regarding the Establishment of the Tribunal

(1) The Tribunal shall be constituted without delay after registration of the Request for arbitration.

(2) The majority of the arbitrators on a Tribunal shall be nationals of States other than the State party to the dispute and the

State whose national is a party to the dispute, unless the Sole Arbitrator or each individual member of the Tribunal is appointed by agreement of the parties.

(3) A party may not appoint an arbitrator who is a national of the State party to the dispute or the State whose national is a party to the dispute without agreement of the other party.

(4) A person previously involved in the resolution of the dispute as a conciliator, judge, mediator or in a similar capacity may be appointed as an arbitrator only by agreement of the parties.

Rule 14
Notice of Third-Party Funding

(1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.

(2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.

(3) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).

(4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3).

Rule 15
Method of Constituting the Tribunal

(1) The number of arbitrators and the method of their appointment must be determined before the Secretary-General can act on any appointment proposed by a party.

(2) The parties shall endeavor to agree on any uneven number of arbitrators and the method of their appointment. If the parties do not advise the Secretary-General of an agreement within 45 days after the date of registration, the Tribunal shall be constituted in accordance with Article 37(2)(b) of the Convention.

Rule 16
Appointment of Arbitrators to a Tribunal Constituted in Accordance with Article 37(2)(b) of the Convention

If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention, each party shall appoint an arbitrator and the parties shall jointly appoint the President of the Tribunal.

Rule 17
Assistance of the Secretary-General with Appointment

The parties may jointly request that the Secretary-General assist with the appointment of the President of the Tribunal or a Sole Arbitrator.

Rule 18
Appointment of Arbitrators by the Chair in Accordance with Article 38 of the Convention

(1) If the Tribunal has not been constituted within 90 days after the date of registration, or such other period as the parties may agree, either party may request that the Chair appoint the arbitrator(s) who have not yet been appointed pursuant to Article 38 of the Convention.

(2) The Chair shall appoint the President of the Tribunal after appointing any members who have not yet been appointed.

(3) The Chair shall consult with the parties as far as possible before appointing an arbitrator and shall use best efforts to appoint any arbitrator(s) within 30 days after receipt of the request to appoint.

Rule 19
Acceptance of Appointment

(1) A party appointing an arbitrator shall notify the Secretary-General of the appointment and provide the appointee's name, nationality and contact information.

(2) Upon receipt of a notification pursuant to paragraph (1), the Secretary-General shall request an acceptance from the appointee and shall transmit to the appointee the information received from the parties relevant to completion of the declaration referred to in paragraph (3)(b).

(3) Within 20 days after receipt of the request for acceptance of an appointment, the appointee shall:

(a) accept the appointment; and

(b) provide a signed declaration in the form published by the Centre, addressing matters including the arbitrator's independence, impartiality, availability and commitment to maintain the confidentiality of the proceeding.

(4) The Secretary-General shall notify the parties of the acceptance of appointment by each arbitrator and transmit the signed declaration to them.

(5) The Secretary-General shall notify the parties if an arbitrator fails to accept the appointment or provide a signed declaration within the time limit referred to in paragraph (3), and another person shall be appointed as arbitrator in accordance with the method followed for the previous appointment.

(6) Each arbitrator shall have a continuing obligation promptly to disclose any change of circumstances relevant to the declaration referred to in paragraph (3)(b).

Rule 20
Replacement of Arbitrators Prior to Constitution of the Tribunal

(1) At any time before the Tribunal is constituted:

(a) an arbitrator may withdraw an acceptance;

(b) a party may replace an arbitrator whom it appointed; or

(c) the parties may agree to replace any arbitrator.

(2) A replacement arbitrator shall be appointed as soon as possible, in accordance with the method by which the withdrawing or replaced arbitrator was appointed.

Rule 21
Constitution of the Tribunal

(1) The Tribunal shall be deemed to be constituted on the date the Secretary-General notifies the parties that all the arbitrators

have accepted their appointments and signed the declaration required by Rule 19(3)(b).

(2) As soon as the Tribunal is constituted, the Secretary-General shall transmit the Request for arbitration, the supporting documents, the notice of registration and communications with the parties to each member.

CHAPTER III
DISQUALIFICATION OF ARBITRATORS AND VACANCIES

Rule 22
Proposal for Disqualification of Arbitrators

(1) A party may file a proposal to disqualify one or more arbitrators ("proposal") in accordance with the following procedure:

(a) the proposal shall be filed after the constitution of the Tribunal and within 21 days after the later of:

(i) the constitution of the Tribunal; or

(ii) the date on which the party proposing the disqualification first knew or first should have known of the facts on which the proposal is based;

(b) the proposal shall include the grounds on which it is based, a statement of the relevant facts, law and arguments, and any supporting documents;

(c) the other party shall file its response and any supporting documents within 21 days after receipt of the proposal;

(d) the arbitrator to whom the proposal relates may file a statement that is limited to factual information relevant to the proposal. The statement shall be filed within five days after the earlier of receipt of the response or expiry of the time limit referred to in paragraph (1)(c); and

(e) each party may file a final written submission on the proposal within seven days after the earlier of receipt of the statement or expiry of the time limit referred to in paragraph (1)(d).

(2) The proceeding shall be suspended upon the filing of the proposal until a decision on the proposal has been made, except to the extent that the parties agree to continue the proceeding.

Rule 23
Decision on the Proposal for Disqualification

(1) The decision on a proposal shall be made by the arbitrators not subject to the proposal or by the Chair in accordance with Article 58 of the Convention.

(2) For the purposes of Article 58 of the Convention:

(a) if the arbitrators not subject to a proposal are unable to decide the proposal for any reason, they shall notify the Secretary-General and they shall be considered equally divided;

(b) if a subsequent proposal is filed while the decision on a prior proposal is pending, both proposals shall be decided by the Chair as if they were a proposal to disqualify a majority of the Tribunal.

(3) The arbitrators not subject to the proposal and the Chair shall use best efforts to decide any proposal within 30 days after the later of the expiry of the time limit referred to in Rule 22(1)(e) or the notice in Rule 23(2)(a).

Rule 24
Incapacity or Failure to Perform Duties

If an arbitrator becomes incapacitated or fails to perform the duties required of an arbitrator, the procedure in Rules 22 and 23 shall apply.

Rule 25
Resignation

(1) An arbitrator may resign by notifying the Secretary-General and the other members of the Tribunal and providing reasons for the resignation.

(2) If the arbitrator was appointed by a party, the other members of the Tribunal shall promptly notify the Secretary-General whether they consent to the arbitrator's resignation for the purposes of Rule 26(3)(a).

Rule 26
Vacancy on the Tribunal

(1) The Secretary-General shall notify the parties of any vacancy on the Tribunal.

(2) The proceeding shall be suspended from the date of notice of the vacancy until the vacancy is filled.

(3) A vacancy on the Tribunal shall be filled by the method used to make the original appointment, except that the Chair shall fill the following vacancies from the Panel of Arbitrators:

(a) a vacancy caused by the resignation of a party-appointed arbitrator without the consent of the other members of the Tribunal; or

(b) a vacancy that has not been filled within 45 days after the notice of vacancy.

(4) Once a vacancy has been filled and the Tribunal has been reconstituted, the proceeding shall continue from the point it had reached at the time the vacancy was notified. Any portion of a hearing shall be recommenced if the newly appointed arbitrator considers it necessary to decide a pending matter.

CHAPTER IV
CONDUCT OF THE PROCEEDING

Rule 27
Orders and Decisions

(1) The Tribunal shall make the orders and decisions required for the conduct of the proceeding.

(2) Orders and decisions may be made by any appropriate means of communication, shall indicate the reasons upon which they are made, and may be signed by the President on behalf of the Tribunal.

(3) The Tribunal shall consult with the parties prior to making an order or decision it is authorized by these Rules to make on its own initiative.

Rule 28
Waiver

Subject to Article 45 of the Convention, if a party knows or should have known that an applicable rule, agreement of the parties, or any order or decision of the Tribunal or the Secretary-General has not been complied with, and does not object promptly, then that party shall be deemed to have waived its right to object to that non-compliance, unless the Tribunal decides that there are special circumstances justifying the failure to object promptly.

Rule 29
First Session

(1) The Tribunal shall hold a first session to address the procedure, including the matters listed in paragraph (4).

(2) The first session may be held in person or remotely, by any means that the Tribunal deems appropriate. The agenda, method and date of the first session shall be determined by the President of the Tribunal after consulting with the other members and the parties.

(3) The first session shall be held within 60 days after the constitution of the Tribunal or such other period as the parties may agree. If the President of the Tribunal determines that it is not possible to convene the parties and the other members within this period, the Tribunal shall decide whether to hold the first session solely between the President of the Tribunal and the parties, or solely among the Tribunal members based on the parties' written submissions.

(4) Before the first session, the Tribunal shall invite the parties' views on procedural matters, including:

(a) the applicable arbitration rules;

(b) the division of advances payable pursuant to ICSID Administrative and Financial Regulation 15;

(c) the procedural language(s), translation and interpretation;

(d) the method of filing and routing of documents;

(e) the number, length, type and format of written submissions;

(f) the place of hearings and whether a hearing will be held in person or remotely;

(g) whether there will be requests for production of documents as between the parties and, if so, the scope, timing and procedure for such requests;

(h) the procedural calendar;

(i) the manner of making recordings and transcripts of hearings;

(j) the publication of documents and recordings;

(k) the treatment of confidential or protected information; and

(l) any other procedural matter raised by either party or the Tribunal.

(5) The Tribunal shall issue an order recording the parties' agreements and any Tribunal decisions on the procedure within

15 days after the later of the first session or the last written submission on procedural matters addressed at the first session.

Rule 30
Written Submissions

(1) The parties shall file the following written submissions:

(a) a memorial by the requesting party;

(b) a counter-memorial by the other party;

and, unless the parties agree otherwise:

(c) a reply by the requesting party; and

(d) a rejoinder by the other party.

(2) A memorial shall contain a statement of the relevant facts, law and arguments, and the request for relief. A counter-memorial shall contain a statement of the relevant facts, including an admission or denial of facts stated in the memorial, and any necessary additional facts, a statement of law in reply to the memorial, arguments and the request for relief. A reply and rejoinder shall be limited to responding to the previous written submission and addressing any relevant facts that are new or could not have been known prior to filing the reply or rejoinder.

(3) A party may file unscheduled written submissions, observations or supporting documents only after obtaining leave of the Tribunal, unless the filing of such documents is provided for by the Convention or these Rules. The Tribunal may grant such leave upon a timely and reasoned application if it finds such written submissions, observations or supporting documents are necessary in view of all relevant circumstances.

Rule 31
Case Management Conferences

With a view to conducting an expeditious and cost-effective proceeding, the Tribunal shall convene one or more case management conferences with the parties at any time after the first session to:

(a) identify uncontested facts;

(b) clarify and narrow the issues in dispute; or

(c) address any other procedural or substantive issue related to the resolution of the dispute.

Rule 32
Hearings

(1) The Tribunal shall hold one or more hearings, unless the parties agree otherwise.

(2) The President of the Tribunal shall determine the date, time and method of holding a hearing after consulting with the other members of the Tribunal and the parties.

(3) A hearing in person may be held at any place agreed to by the parties after consulting with the Tribunal and the Secretary-General. If the parties do not agree on the place of a hearing, it shall be held at the seat of the Centre pursuant to Article 62 of the Convention.

(4) Any member of the Tribunal may put questions to the parties and ask for explanations at any time during a hearing.

Rule 33
Quorum

The participation of a majority of the members of the Tribunal by any appropriate means of communication shall be required at the first session, case management conferences, hearings and deliberations, except as provided in these Rules or unless the parties agree otherwise.

Rule 34
Deliberations

(1) The deliberations of the Tribunal shall take place in private and remain confidential.

(2) The Tribunal may deliberate at any place and by any means it considers appropriate.

(3) The Tribunal may be assisted by the Secretary of the Tribunal at its deliberations. No other person shall assist the Tribunal at its deliberations, unless the Tribunal decides otherwise and notifies the parties.

(4) The Tribunal shall deliberate on any matter for decision immediately after the last submission on that matter.

Rule 35
Decisions Made by Majority Vote

The Tribunal shall make decisions by a majority of the votes of all its members. Abstention shall count as a negative vote.

CHAPTER V
EVIDENCE

Rule 36
Evidence: General Principles

(1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.

(2) Each party has the burden of proving the facts relied on to support its claim or defense.

(3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.

Rule 37
Disputes Arising from Requests for Production of Documents

In deciding a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:

(a) the scope and timeliness of the request;

(b) the relevance and materiality of the documents requested;

(c) the burden of production; and

(d) the basis of the objection.

Rule 38
Witnesses and Experts

(1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.

(2) A witness who has filed a written statement may be called for examination at a hearing.

(3) The Tribunal shall determine the manner in which the examination is conducted.

(4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.

(5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.

(6) Each witness shall make the following declaration before giving evidence: "I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth."

(7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.

(8) Each expert shall make the following declaration before giving evidence: "I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief."

Rule 39
Tribunal-Appointed Experts

(1) Unless the parties agree otherwise, the Tribunal may appoint one or more independent experts to report to it on specific matters within the scope of the dispute.

(2) The Tribunal shall consult with the parties on the appointment of an expert, including on the terms of reference and fees of the expert.

(3) Upon accepting an appointment by the Tribunal, an expert shall provide a signed declaration in the form published by the Centre.

(4) The parties shall provide the Tribunal-appointed expert with any information, document or other evidence that the expert may require. The Tribunal shall decide any dispute regarding the evidence required by the Tribunal-appointed expert.

(5) The parties shall have the right to make submissions on the report of the Tribunal-appointed expert.

(6) Rule 38 shall apply, with necessary modifications, to the Tribunal-appointed expert.

Rule 40
Visits and Inquiries

(1) The Tribunal may order a visit to any place connected with the dispute, on its own initiative or upon a party's request, if it deems the visit necessary, and may conduct inquiries there as appropriate.

(2) The order shall define the scope of the visit and the subject of any inquiry, the procedure to be followed, the applicable time limits and other relevant terms.

(3) The parties shall have the right to participate in any visit or inquiry.

CHAPTER VI
SPECIAL PROCEDURES

Rule 41
Manifest Lack of Legal Merit

(1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.

(2) The following procedure shall apply:

(a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;

(b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;

(c) the Tribunal shall fix time limits for submissions on the objection;

(d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and

(e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection.

(3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise,

the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.

(4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

Rule 42
Bifurcation

(1) A party may request that a question be addressed in a separate phase of the proceeding ("request for bifurcation").

(2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.

(3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:

(a) the request for bifurcation shall be filed as soon as possible;

(b) the request for bifurcation shall state the questions to be bifurcated;

(c) the Tribunal shall fix time limits for submissions on the request for bifurcation;

(d) the Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request; and

(e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.

(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:

(a) bifurcation would materially reduce the time and cost of the proceeding;

(b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

(c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.

(5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise.

(6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

Rule 43
Preliminary Objections

(1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal ("preliminary objection").

(2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.

(3) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.

(4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4).

Rule 44
Preliminary Objections with a Request for Bifurcation

(1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:

(a) unless the parties agree otherwise, the request for bifurcation shall be filed:

(i) within 45 days after filing the memorial on the merits;

(ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or

(iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);

(b) the request for bifurcation shall state the preliminary objection to which it relates;

(c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;

(d) the Tribunal shall fix time limits for submissions on the request for bifurcation; and

(e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last submission on the request.

(2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:

(a) bifurcation would materially reduce the time and cost of the proceeding;

(b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and

(c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.

(3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:

(a) suspend the proceeding on the merits, unless the parties agree otherwise;

(b) fix time limits for submissions on the preliminary objection;

(c) render its decision or Award on the preliminary objection within 180 days after the last submission, in accordance with Rule 58(1)(b); and

(d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.

(4) If the Tribunal decides to join the preliminary objection to the merits, it shall:

(a) fix time limits for submissions on the preliminary objection;

(b) modify any time limits for submissions on the merits, as required; and

(c) render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 58(1)(c).

Rule 45
Preliminary Objections without a Request for Bifurcation

If a party does not request bifurcation of a preliminary objection within the time limits referred to in Rule 44(1)(a) or the parties confirm that they will not request bifurcation, the preliminary objection shall be joined to the merits and the following procedure shall apply:

(a) the Tribunal shall fix time limits for submissions on the preliminary objection;

(b) the memorial on the preliminary objection shall be filed:

(i) by the date to file the counter-memorial on the merits;

(ii) by the date to file the next written submission after an ancillary claim, if the objection relates to the ancillary claim; or

(iii) as soon as possible after the facts on which the objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (b)(i) and (ii);

(c) the party filing the memorial on preliminary objections shall also file its counter-memorial on the merits, or, if the objection relates to an ancillary claim, file its next written submission after the ancillary claim; and

(d) the Tribunal shall render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 58(1)(c).

Rule 46
Consolidation or Coordination of Arbitrations

(1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.

(2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in one Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or constituent subdivision or agency of the Contracting State).

(3) Coordination aligns specific procedural aspects of two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.

(4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or coordinated arbitrations and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.

(5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms.

Rule 47
Provisional Measures

(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:

(a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;

(b) maintain or restore the status quo pending determination of the dispute; or

(c) preserve evidence that may be relevant to the resolution of the dispute.

(2) The following procedure shall apply:

(a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;

(b) the Tribunal shall fix time limits for submissions on the request;

(c) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and

(d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.

(3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:

(a) whether the measures are urgent and necessary; and

(b) the effect that the measures may have on each party.

(4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.

(5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.

(6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.

(7) A party may request any judicial or other authority to order provisional measures if such recourse is permitted by the instrument recording the parties' consent to arbitration.

Rule 48
Ancillary Claims

(1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim ("ancillary claim") arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.

(2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.

(3) The Tribunal shall fix time limits for submissions on the ancillary claim.

Rule 49
Default

(1) A party is in default if it fails to appear or present its case or indicates that it will not appear or present its case.

(2) If a party is in default at any stage of the proceeding, the other party may request that the Tribunal address the questions submitted to it and render an Award.

(3) Upon receipt of the request referred to in paragraph (2), the Tribunal shall notify the defaulting party of the request and grant a grace period to cure the default, unless it is satisfied that the defaulting party does not intend to appear or present its case. The grace period shall not exceed 60 days without the consent of the other party.

(4) If the request in paragraph (2) relates to a failure to appear at a hearing, the Tribunal may:

  (a) reschedule the hearing to a date within 60 days after the original date;

  (b) proceed with the hearing in the absence of the defaulting party and fix a time limit for the defaulting party to file a written submission within 60 days after the hearing; or

  (c) cancel the hearing and fix a time limit for the parties to file written submissions within 60 days after the original date of the hearing.

(5) If the default relates to a scheduled procedural step other than a hearing, the Tribunal may set the grace period to cure the default by fixing a new time limit for the defaulting party to

complete that step within 60 days after the date of the notice of default referred to in paragraph (3).

(6) If the defaulting party fails to act within the grace period or if no such period is granted, the Tribunal shall resume consideration of the dispute and render an Award. For this purpose:

(a) a party's default shall not be deemed an admission of the assertions made by the other party;

(b) the Tribunal may invite the party that is not in default to make submissions and produce evidence; and

(c) the Tribunal shall examine the jurisdiction of the Centre and its own competence and, if it is satisfied, decide whether the submissions made are well-founded.

CHAPTER VII
COSTS

Rule 50
Costs of the Proceeding

The costs of the proceeding are all costs incurred by the parties in connection with the proceeding, including:

(a) the legal fees and expenses of the parties;

(b) the fees and expenses of the Tribunal, Tribunal assistants approved by the parties and Tribunal-appointed experts; and

(c) the administrative charges and direct costs of the Centre.

Rule 51
Statement of and Submission on Costs

The Tribunal shall request that each party file a statement of its costs and a written submission on the allocation of costs before allocating the costs between the parties.

Rule 52
Decisions on Costs

(1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:

(a) the outcome of the proceeding or any part of it;

(b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;

(c) the complexity of the issues; and

(d) the reasonableness of the costs claimed.

(2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.

(3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.

(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.

Rule 53
Security for Costs

(1) Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.

(2) The following procedure shall apply:

(a) the request shall include a statement of the relevant circumstances and the supporting documents;

(b) the Tribunal shall fix time limits for submissions on the request;

(c) if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and

(d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.

(3) In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:

(a) that party's ability to comply with an adverse decision on costs;

(b) that party's willingness to comply with an adverse decision on costs;

(c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and

(d) the conduct of the parties.

(4) The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.

(5) The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.

(6) If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.

(7) A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.

(8) The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.

CHAPTER VIII
SUSPENSION, SETTLEMENT AND DISCONTINUANCE

Rule 54
Suspension of the Proceeding

(1) The Tribunal shall suspend the proceeding by agreement of the parties.

(2) The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as otherwise provided in the ICSID Administrative and Financial Regulations or these Rules.

(3) The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).

(4) In its order suspending the proceeding, the Tribunal shall specify:

(a) the period of the suspension;

(b) any relevant terms; and

(c) a modified procedural calendar to take effect on resumption of the proceeding, if necessary.

(5) The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.

(6) The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.

(7) The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any terms agreed to by the parties.

Rule 55
Settlement and Discontinuance by Agreement of the Parties

(1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.

(2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:

(a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or

(b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their settlement and request that the Tribunal embody such settlement in an Award.

(3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 56
Discontinuance at Request of a Party

(1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have

acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.

(2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

Rule 57
Discontinuance for Failure of Parties to Act

(1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.

(2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.

(3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.

(4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

CHAPTER IX
THE AWARD

Rule 58
Timing of the Award

(1) The Tribunal shall render the Award as soon as possible, and in any event no later than:

(a) 60 days after the later of the Tribunal constitution or the last submission, if the Award is rendered pursuant to Rule 41(3);

(b) 180 days after the last submission if the Award is rendered pursuant to Rule 44(3)(c); or

(c) 240 days after the last submission in all other cases.

(2) A statement of costs and submission on costs filed pursuant to Rule 51 shall not be considered a submission for the purposes of paragraph (1).

Rule 59
Contents of the Award

(1) The Award shall be in writing and shall contain:

(a) a precise designation of each party;

(b) the names of the representatives of the parties;

(c) a statement that the Tribunal was established in accordance with the Convention and a description of the method of its constitution;

(d) the name of each member of the Tribunal and the appointing authority of each;

(e) the date and place of the first session, case management conferences and hearings;

(f) a brief summary of the proceeding;

(g) a statement of the relevant facts as found by the Tribunal;

(h) a brief summary of the submissions of the parties, including the relief sought;

(i) the decision of the Tribunal on every question submitted to it, and the reasons on which the Award is based; and

(j) a statement of the costs of the proceeding, including the fees and expenses of each member of the Tribunal, and a reasoned decision on costs.

(2) The Award shall be signed by the members of the Tribunal who voted for it. It may be signed by electronic means if the parties agree.

(3) Any member of the Tribunal may attach an individual opinion or a statement of dissent to the Award before the Award is rendered.

Rule 60
Rendering of the Award

(1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly:

(a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and

(b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent.

(2) The Award shall be deemed to have been rendered on the date of dispatch of certified copies of the Award.

(3) The Secretary-General shall provide additional certified copies of the Award to a party upon request.

Rule 61
Supplementary Decision and Rectification

(1) A party requesting a supplementary decision on, or the rectification of, an Award pursuant to Article 49(2) of the Convention shall file the request with the Secretary-General and pay the lodging fee published in the schedule of fees within 45 days after the Award was rendered.

(2) The request referred to in paragraph (1) shall:

(a) identify the Award to which it relates;

(b) be signed by each requesting party or its representative and be dated;

(c) specify:

(i) with respect to a request for a supplementary decision, any question which the Tribunal omitted to decide in the Award;

(ii) with respect to a request for rectification, any clerical, arithmetical or similar error in the Award; and

(d) attach proof of payment of the lodging fee.

(3) Upon receipt of the request and the lodging fee, the Secretary-General shall promptly:

(a) transmit the request to the other party;

(b) register the request, or refuse registration if the request is not filed or the fee is not paid within the time limit referred to in paragraph (1); and

(c) notify the parties of the registration or refusal to register.

(4) As soon as the request is registered, the Secretary-General shall transmit the request and the notice of registration to each member of the Tribunal.

(5) The President of the Tribunal shall determine the procedure to consider the request, after consulting with the other members of the Tribunal and the parties.

(6) Rules 59-60 shall apply to any decision of the Tribunal pursuant to this Rule.

(7) The Tribunal shall issue a decision on the request for supplementary decision or rectification within 60 days after the last submission on the request.

(8) The date of dispatch of certified copies of the supplementary decision or rectification shall be the relevant date for the purposes of calculating the time limits in Articles 51(2) and 52(2) of the Convention.

(9) A supplementary decision or rectification under this Rule shall become part of the Award and shall be reflected on all certified copies of the Award.

CHAPTER X
PUBLICATION, ACCESS TO PROCEEDINGS AND NON-DISPUTING PARTY SUBMISSIONS

Rule 62
Publication of Awards and Decisions on Annulment

(1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.

(2) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).

(3) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the dispatch of the document.

(4) Absent consent of the parties pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the documents referred to in paragraph (1). The following procedure shall apply to publication of excerpts:

(a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which either party objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;

(b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and

(c) the Secretary-General shall consider any comments received on the proposed excerpts and publish such excerpts within 30 days after the expiry of the time limit referred to in paragraph (4)(b).

Rule 63
Publication of Orders and Decisions

(1) The Centre shall publish orders and decisions, with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order or decision is issued.

(2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order or decision to the Tribunal to decide any disputed redactions. The Centre shall publish the order or decision in accordance with the decision of the Tribunal.

(3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

Rule 64
Publication of Documents Filed in the Proceeding

(1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.

(2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any disputed redactions and the Centre shall publish the written submission in accordance with the decision of the Tribunal.

(3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

Rule 65
Observation of Hearings

(1) The Tribunal shall allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, unless either party objects.

(2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 66 to persons observing the hearings.

(3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

Rule 66
Confidential or Protected Information

For the purposes of Rules 62-65, confidential or protected information is information which is protected from public disclosure:

(a) by the instrument of consent to arbitration;

(b) by the applicable law or applicable rules;

(c) in the case of information of a State party to the dispute, by the law of that State;

(d) in accordance with the orders and decisions of the Tribunal;

(e) by agreement of the parties;

(f) because it constitutes confidential business information or protected personal information;

(g) because public disclosure would impede law enforcement;

(h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;

(i) because public disclosure would aggravate the dispute between the parties; or

(j) because public disclosure would undermine the integrity of the arbitral process.

Rule 67
Submission of Non-Disputing Parties

(1) Any person or entity that is not a party to the dispute ("non-disputing party") may apply for permission to file a written submission in the proceeding. The application shall be made in the procedural language(s) used in the proceeding.

(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:

(a) whether the submission would address a matter within the scope of the dispute;

(b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;

(c) whether the non-disputing party has a significant interest in the proceeding;

(d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and

(e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.

(3) The parties shall have the right to make observations on whether a non-disputing party should be permitted to file a written submission in the proceeding and on any conditions for filing such a submission.

(4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length, scope or publication of the written submission and the time limit to file the submission.

(5) The Tribunal shall issue a reasoned decision on whether to permit a non-disputing party submission within 30 days after the last written submission on the application.

(6) The Tribunal shall provide the non-disputing party with relevant documents filed in the proceeding, unless either party objects.

(7) If the Tribunal permits a non-disputing party to file a written submission, the parties shall have the right to make observations on the submission.

Rule 68
Participation of Non-Disputing Treaty Party

(1) The Tribunal shall permit a Party to a treaty that is not a party to the dispute ("non-disputing Treaty Party") to make a submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.

(2) The Tribunal shall ensure that non-disputing Treaty Party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the making of the submission by the non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.

(3) The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless either party objects.

(4) The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.

CHAPTER XI
INTERPRETATION, REVISION AND ANNULMENT OF THE AWARD

Rule 69
The Application

(1) A party applying for interpretation, revision or annulment of an Award shall file the application with the Secretary-General, together with any supporting documents, and pay the lodging fee published in the schedule of fees.

(2) The application shall:

(a) identify the Award to which it relates;

(b) be in a language in which the Award was rendered or if the Award was not rendered in an official language of the Centre, be in an official language;

(c) be signed by each applicant or its representative and be dated;

(d) attach proof of any representative's authority to act; and

(e) attach proof of payment of the lodging fee.

(3) An application for interpretation pursuant to Article 50(1) of the Convention may be filed at any time after the Award is rendered and shall specify the points in dispute concerning the meaning or scope of the Award.

(4) An application for revision pursuant to Article 51(1) of the Convention shall be filed within 90 days after the discovery of a fact of such a nature as decisively to affect the Award, and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered. The application shall specify:

(a) the change sought in the Award;

(b) the newly discovered fact that decisively affects the Award; and

(c) that the fact was unknown to the Tribunal and to the applicant when the Award was rendered, and that the applicant's ignorance of that fact was not due to negligence.

(5) An application for annulment pursuant to Article 52(1) of the Convention shall:

(a) be filed within 120 days after the Award (or any supplementary decision on or rectification of the Award) was rendered if the application is based on any of the grounds in Article 52(1)(a), (b), (d) or (e) of the Convention; or

(b) be filed within 120 days after the discovery of corruption on the part of a member of the Tribunal and in any event within three years after the Award (or any supplementary decision on or rectification of the Award) was rendered, if the application is based on Article 52(1)(c) of the Convention; and

(c) specify the grounds on which it is based, limited to the grounds in Article 52(1)(a)-(e) of the Convention, and the reasons in support of each ground.

(6) Upon receipt of an application and the lodging fee, the Secretary-General shall promptly:

(a) transmit the application and the supporting documents to the other party;

(b) register the application, or refuse registration if the application is not filed or the fee is not paid within the time limits referred to in paragraphs (4) or (5); and

(c) notify the parties of the registration or refusal to register.

(7) At any time before registration, an applicant may notify the Secretary-General in writing of the withdrawal of the application or, if there is more than one applicant, that it is withdrawing from the application. The Secretary-General shall promptly notify the parties of the withdrawal, unless the application has not yet been transmitted to the other party pursuant to paragraph (6)(a).

Rule 70
Interpretation or Revision: Reconstitution of the Tribunal

(1) As soon as an application for the interpretation or revision of an Award is registered, the Secretary-General shall:

(a) transmit the notice of registration, the application and any supporting documents to each member of the original Tribunal; and

(b) request each member of the Tribunal to inform the Secretary-General within 10 days whether that member can take part in the consideration of the application.

(2) If all members of the Tribunal can take part in the consideration of the application, the Secretary-General shall notify the Tribunal and the parties of the reconstitution of the Tribunal.

(3) If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall invite the parties to constitute a new Tribunal without delay. The new Tribunal shall have the same number of arbitrators and be appointed by the same method as the original Tribunal.

Rule 71
Annulment: Appointment of the *ad hoc* Committee

(1) As soon as an application for annulment of an Award is registered, the Chair shall appoint an *ad hoc* Committee in accordance with Article 52(3) of the Convention.

(2) Each member of the Committee shall provide a signed declaration in accordance with Rule 19(3).

(3) The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointments.

Rule 72
Procedure Applicable to Interpretation, Revision and Annulment

(1) Except as provided below, these Rules shall apply, with necessary modifications, to any procedure relating to the interpretation, revision or annulment of an Award and to the decision of the Tribunal or Committee.

(2) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall continue to apply to an interpretation, revision or annulment proceeding, with necessary modifications, unless the parties agree or the Tribunal or Committee orders otherwise.

(3) In addition to the application, the written procedure shall consist of one round of written submissions in an interpretation or revision proceeding, and two rounds of written submissions in an annulment proceeding, unless the parties agree or the Tribunal or Committee orders otherwise.

(4) A hearing shall be held upon the request of either party, or if ordered by the Tribunal or Committee.

(5) The Tribunal or Committee shall issue its decision within 120 days after the last submission on the application.

Rule 73
Stay of Enforcement of the Award

(1) A party to an interpretation, revision or annulment proceeding may request a stay of enforcement of all or part of the Award at any time before the final decision on the application.

(2) If the stay is requested in the application for revision or annulment of an Award, enforcement shall be stayed provisionally until the Tribunal or Committee decides on the request.

(3) The following procedure shall apply:

(a) the request shall specify the circumstances that require the stay;

(b) the Tribunal or Committee shall fix time limits for submissions on the request;

(c) if a party files the request before the constitution of the Tribunal or Committee, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal or Committee may consider the request promptly upon its constitution; and

(d) the Tribunal or Committee shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or Committee or the last submission on the request.

(4) If a Tribunal or Committee decides to stay enforcement of the Award, it may impose conditions for the stay, or for lifting the stay, in view of all relevant circumstances.

(5) A party shall promptly disclose to the Tribunal or Committee any change in the circumstances upon which the enforcement was stayed.

(6) The Tribunal or Committee may at any time modify or terminate a stay of enforcement, on its own initiative or upon a party's request.

(7) A stay of enforcement shall terminate on the date of dispatch of the decision on the application for interpretation, revision or annulment, or on the date of discontinuance of the proceeding.

Rule 74
Resubmission of Dispute after an Annulment

(1) If a Committee annuls all or part of an Award, either party may file with the Secretary-General a request to resubmit the dispute to a new Tribunal, together with any supporting documents, and pay the lodging fee published in the schedule of fees.

(2) The request shall:

(a) identify the Award to which it relates;

(b) be in an official language of the Centre;

(c) be signed by each requesting party or its representative and be dated;

(d) attach proof of any representative's authority to act; and

(e) specify which aspect(s) of the dispute is resubmitted to the new Tribunal.

(3) Upon receipt of a request for resubmission and the lodging fee, the Secretary-General shall promptly:

(a) transmit the request and the supporting documents to the other party;

(b) register the request;

(c) notify the parties of the registration; and

(d) invite the parties to constitute a new Tribunal without delay, which shall have the same number of arbitrators, and be appointed by the same method as the original Tribunal, unless the parties agree otherwise.

(4) If the original Award was annulled in part, the new Tribunal shall not reconsider any portion of the Award that was not annulled.

(5) Except as otherwise provided in paragraphs (1)-(4), these Rules shall apply to the resubmission proceeding.

(6) The procedural agreements and orders on matters addressed at the first session of the original Tribunal shall not apply to the resubmission proceeding, unless the parties agree otherwise.

CHAPTER XII
EXPEDITED ARBITRATION

Rule 75
Consent of Parties to Expedited Arbitration

(1) At any time, the parties to an arbitration conducted under the Convention may consent to expedite the arbitration in accordance with this Chapter ("expedited arbitration") by jointly notifying the Secretary-General in writing of their consent.

(2) Chapters I-XI of the Arbitration Rules apply to an expedited arbitration except that:

(a) Rules 15, 16, 18, 39, 40, 41, 42, 44 and 46 do not apply in an expedited arbitration; and

(b) Rules 19, 29, 37, 43, 49, 58, 61 and 72, as modified by Rules 76-84, apply in an expedited arbitration.

(3) If the parties consent to expedited arbitration after the constitution of the Tribunal pursuant to Chapter II, Rules 76-78 shall not apply, and the expedited arbitration shall proceed subject to all members of the Tribunal confirming their availability pursuant to Rule 79(2). If an arbitrator is unavailable to proceed on an expedited basis, the arbitrator may offer to resign.

Rule 76
Number of Arbitrators and Method of Constituting the Tribunal for Expedited Arbitration

(1) The Tribunal in an expedited arbitration shall consist of a Sole Arbitrator appointed pursuant to Rule 77 or a three-member Tribunal appointed pursuant to Rule 78.

(2) The parties shall jointly notify the Secretary-General in writing of their election of a Sole Arbitrator or a three-member Tribunal within 30 days after the date of the notice of consent referred to in Rule 75(1).

(3) If the parties do not notify the Secretary-General of their election within the time limit referred to in paragraph (2), the Tribunal shall consist of a Sole Arbitrator to be appointed pursuant to Rule 77.

(4) An appointment pursuant to Rule 77 or 78 is an appointment in accordance with the method agreed by the parties pursuant to Article 37(2)(a) of the Convention.

Rule 77
Appointment of Sole Arbitrator for Expedited Arbitration

(1) The parties shall jointly appoint the Sole Arbitrator within 20 days after the notice referred to in Rule 76(2).

(2) The Secretary-General shall appoint the Sole Arbitrator if:

(a) the parties do not appoint the Sole Arbitrator within the time limit referred to in paragraph (1);

(b) the parties notify the Secretary-General that they are unable to agree on the Sole Arbitrator; or

(c) the appointee declines the appointment or does not comply with Rule 79(1).

(3) The following procedure shall apply to an appointment by the Secretary-General of the Sole Arbitrator pursuant to paragraph (2):

(a) the Secretary-General shall transmit a list of five candidates for appointment as Sole Arbitrator to the parties within 10 days after the relevant event referred to in paragraph (2);

(b) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;

(c) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

(d) if the selected candidate declines the appointment or does not comply with Rule 79(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 78
Appointment of Three-Member Tribunal for Expedited Arbitration

(1) A three-member Tribunal shall be appointed in accordance with the following procedure:

(a) each party shall appoint an arbitrator ("co-arbitrator") within 20 days after the notice referred to in Rule 76(2); and

(b) the parties shall jointly appoint the President of the Tribunal

within 20 days after the receipt of the acceptances from both co-arbitrators.

(2) The Secretary-General shall appoint the arbitrators not yet appointed if:

(a) an appointment is not made within the applicable time limit referred to in paragraph (1);

(b) the parties notify the Secretary-General that they are unable to agree on the President of the Tribunal; or

(c) an appointee declines the appointment or does not comply with Rule 79(1).

(3) The following procedure shall apply to the appointment by the Secretary-General of any arbitrators pursuant to paragraph (2):

(a) the Secretary-General shall first appoint the co-arbitrator(s) not yet appointed. The Secretary-General shall consult with the parties as far as possible and use best efforts to appoint the co-arbitrator(s) within 15 days after the relevant event in paragraph (2);

(b) within 10 days after the later of the date on which both co-arbitrators have accepted their appointments or the relevant event referred to in paragraph (2), the Secretary-General shall transmit a list of five candidates for appointment as President of the Tribunal to the parties;

(c) each party may strike one name from the list and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 10 days after receipt of the list;

(d) the Secretary-General shall inform the parties of the result of the rankings on the next business day after receipt of the rankings and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them; and

(e) if the selected candidate declines the appointment or does not comply with Rule 79(1), the Secretary-General shall select the next highest-ranked candidate.

Rule 79
Acceptance of Appointment in Expedited Arbitration

(1) An arbitrator appointed pursuant to Rule 77 or 78 shall accept the appointment and provide a declaration pursuant to Rule 19(3) within 10 days after receipt of the request for acceptance.

(2) An arbitrator appointed to a Tribunal constituted pursuant to Chapter II shall confirm being available to conduct an expedited arbitration within 10 days after receipt of the notice of consent pursuant to Rule 75(3).

Rule 80
First Session in Expedited Arbitration

(1) The Tribunal shall hold a first session pursuant to Rule 29 within 30 days after the constitution of the Tribunal.

(2) The first session shall be held remotely, unless both parties and the Tribunal agree it shall be held in person.

Rule 81
Procedural Schedule in Expedited Arbitration

(1) The following schedule for written submissions and the hearing shall apply in an expedited arbitration:

(a) the claimant shall file a memorial within 60 days after the first session;

(b) the respondent shall file a counter-memorial within 60 days after the date of filing the memorial;

(c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 200 pages;

(d) the claimant shall file a reply within 40 days after the date of filing the counter-memorial;

(e) the respondent shall file a rejoinder within 40 days after the date of filing the reply;

(f) the reply and rejoinder referred to in paragraph (1)(d) and (e) shall be no longer than 100 pages;

(g) the hearing shall be held within 60 days after the last written submission is filed;

(h) the parties shall file statements of their costs and written submissions on costs within 10 days after the last day of the hearing referred to in paragraph (1)(g); and

(i) the Tribunal shall render the Award as soon as possible, and in any event no later than 120 days after the hearing referred to in paragraph (1)(g).

(2) Any preliminary objection, counterclaim, incidental or additional claim shall be joined to the schedule referred to in paragraph (1).

The Tribunal shall adjust the schedule if a party raises any such matter, taking into account the expedited nature of the process.

(3) The Tribunal may extend the time limits referred to in paragraph (1) by up to 30 days to decide a dispute arising from requests to produce documents pursuant to Rule 37. The Tribunal shall decide such requests based on written submissions and without an in-person hearing.

(4) Any schedule for submissions other than those referred to in paragraphs (1)-(3) shall run in parallel with the schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal shall take into account the expedited nature of the process.

Rule 82
Default in Expedited Arbitration

A Tribunal may grant a party in default a grace period not to exceed 30 days pursuant to Rule 49.

Rule 83
Procedural Schedule for Supplementary Decision and Rectification in Expedited Arbitration

The Tribunal shall issue a supplementary decision or rectification pursuant to Rule 61 within 30 days after the last submission on the request.

Rule 84
Procedural Schedule for Interpretation, Revision or Annulment in Expedited Arbitration

(1) The following schedule for written submissions and the hearing shall apply to the procedure relating to an interpretation, revision or annulment of an Award rendered in an expedited arbitration:

(a) the applicant shall file a memorial on interpretation, revision or annulment within 30 days after the first session;

(b) the other party shall file a counter-memorial on interpretation, revision or annulment within 30 days after the memorial;

(c) the memorial and counter-memorial referred to in paragraph (1)(a) and (b) shall be no longer than 100 pages;

(d) a hearing shall be held within 45 days after the date for filing the counter-memorial;

(e) the parties shall file statements of their costs and written submissions on costs within 5 days after the last day of the hearing referred to in paragraph (1)(d); and

(f) the Tribunal or Committee shall issue the decision on interpretation, revision or annulment as soon as possible, and in any event no later than 60 days after the hearing referred to in paragraph (1)(d).

(2) Any schedule for submissions other than those referred to in paragraph (1) shall run in parallel with the schedule referred to in paragraph (1), unless the proceeding is suspended or the Tribunal or Committee decides that there are special circumstances justifying the suspension of the schedule. In fixing time limits for such submissions, the Tribunal or Committee shall take into account the expedited nature of the process.

Rule 85
Resubmission of a Dispute after Annulment in Expedited Arbitration

The consent of the parties to expedited arbitration pursuant to Rule 75 shall not apply to resubmission of the dispute.

Rule 86
Opting Out of Expedited Arbitration

(1) The parties may opt out of an expedited arbitration at any time by jointly notifying the Tribunal and Secretary-General in writing of their agreement.

(2) Upon request of a party, the Tribunal may decide that an arbitration should no longer be expedited. In deciding the request, the Tribunal shall consider the complexity of the issues, the stage of the proceeding and all other relevant circumstances.

(3) The Tribunal, or the Secretary-General if a Tribunal has not been constituted, shall determine the further procedure pursuant to Chapters I-XI and fix any time limit necessary for the conduct of the proceeding.