

Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968

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Preamble

The High Contracting Parties to the Treaty establishing the European Economic Community;

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

Anxious to strengthen in the Community the legal protection of persons therein established;

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

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

(Designations of Plenipotentiaries of the original six Contracting States)

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

Have agreed as follows:

Title I - Scope

Article 1

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

The Convention shall not apply to:

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

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

(3) social security;

(4) arbitration.

Title II - Jurisdiction 19

Section 1 - General provisions 20

Article 2 21

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State. 22

Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State. 23

Article 3 24

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title. 25

In particular the following provisions shall not be applicable as against them: 26

- in Belgium: Article 15 of the civil code (Code civil-Burgerlijk Wetboek) and Article 638 of the Judicial code (Code Judiciaire-Gerechtigelijk Wetboek) 27

- in Denmark: Article 248(2) of the law on civil procedure (lov om retsens pleje) and Chapter 3, Article 3 of the Greenland law on civil procedure (Lov for Grønland om retsens pleje) 28

- in the Federal Republic of Germany: Article 23 of the code of civil procedure (Zivilprozessordnung) 29

- in France: Articles 14 and 15 of the civil code (Code civil) 30

- in Ireland: the rules which enable jurisdiction to be founded on the document instituting the proceedings having been served on the defendant during his temporary presence in Ireland: 31

- in Italy: Article 2 and Article 4, Nos 1 and 2 of the code of civil procedure (Codice di procedura civile) 32

- in Luxembourg: Articles 14 and 15 of the civil code (Code civil) 33

- in the Netherlands: Article 126(3) and Article 127 of the code of civil procedure (Wetboek van Burgerlijke Rechtsvordering) 34

- in the United Kingdom: the rules which enable jurisdiction to be founded on: 35

(a) the document instituting the proceedings having been served on the defendant during his temporary presence in the United Kingdom; or 36

(b) the presence within the United Kingdom of property belonging to the defendant; or 37

(c) the seizure by the plaintiff of property situated in the United Kingdom. 38

Article 4

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

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

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Section 2 - Special jurisdiction

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Article 5

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

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(1) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

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

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

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

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(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;

49

(6) in his capacity as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Contracting State in which the trust is domiciled;

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(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.

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

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

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Article 6 54

A person domiciled in a Contracting State may also be sued: 55

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled; 56

(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; 57

(3) on a counterclaim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending. 58

Article 6 A 59

Where by virtue of this Convention a court of a Contracting State has jurisdiction in actions relating to liability arising from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability. 60

Section 3 - Jurisdiction in matters relating to insurance 61

Article 7 62

In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5). 63

Article 8 64

An insurer domiciled in a Contracting State may be sued: 65

(1) in the courts of the State where he is domiciled, or 66

(2) in another Contracting State, in the courts for the place where the policy-holder is domiciled, or 67

(3) if he is a co-insurer, in the courts of a Contracting State in which proceedings are brought against the leading insurer. An insurer who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State. 68

Article 9

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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.

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Article 10

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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.

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

73

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

74

Article 11

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

76

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

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Article 12

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

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

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(2) which allows the policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section, or

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(3) which is concluded between a policy-holder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State, or

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(4) which is concluded with a policy-holder who is not domiciled in a Contracting State, except in so far as the insurance is compulsory or relates to immovable property in a Contracting State, or

83

(5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 12 A. 84

Article 12 A 85

The following are the risks referred to in Article 12(5): 86

(1) Any loss of or damage to 87

(a) sea-going ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes. 88

(b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft; 89

(2) Any liability, other than for bodily injury to passengers or loss of or damage to their baggage, 90

(a) arising out of the use or operation of ships, installations or aircraft as referred to in (1)(a) above in so far as the law of the Contracting State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks, 91

(b) for loss or damage caused by goods in transit as described in (1)(b) above; 92

(3) Any financial loss connected with the use or operation of ships, installations or aircraft as referred to in (1) (a) above, in particular loss of freight or charter-hire; 93

(4) Any risk or interest connected with any of those referred to in (1) to (3) above. 94

Section 4 - Jurisdiction over consumer contracts 95

Article 13 96

In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called the 'consumer', jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5), if it is: 97

(1) a contract for the sale of goods on instalment credit terms, or 98

(2) a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods, or 99

(3) any other contract for the supply of goods or a contract for the supply of services and 100

(a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and 101

(b) the consumer took in that State the steps necessary for the conclusion of the con- 102

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

This Section shall not apply to contracts of transport.

Article 14

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

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

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

Article 15

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

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

(2) which allows the consumer to bring proceedings in courts other than those indicated in this Section, or

(3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Contracting State, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5 - Exclusive jurisdiction

Article 16

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

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

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

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

(4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place; 119

(5) in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced. 120

Section 6 - Prorogation of jurisdiction 121

Article 17 122

If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either in writing or evidenced in writing or, in international trade or commerce, in a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware. Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction. 123

The court or courts of a Contracting State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved. 124

Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 12 or 15, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 16. 125

If an agreement conferring jurisdiction was concluded for the benefit of only one of the parties, that party shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of this Convention. 126

Article 18 127

Apart from jurisdiction derived from other provisions of this Convention, a court of a Contracting State before whom a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered solely to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16. 128

Section 7 - Examination as to jurisdiction and admissibility 129

Article 19 130

Where a court of a Contracting State is seised of a claim which is principally concerned with a matter over which the courts of another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction. 131

Article 20 132

Where a defendant domiciled in one Contracting State is sued in a court of another Contracting State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention. 133

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive a 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. 134

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, if the documents instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention. 135

Section 8 - Lis Pendens-Related actions 136

Article 21 137

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court. 138

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested. 139

Article 22 140

Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings. 141

A court other than the court first seised may also, on the application of one of the parties, 142

decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions.

For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. 143

Article 23 144

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. 145

Section 9 - Provisional, including protective, measures 146

Article 24 147

Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter. 148

Title III - Recognition and Enforcement 149

Article 25 150

For the purposes of this Convention, 'judgment' means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court. 151

Section 1 - Recognition 152

Article 26 153

A judgment given in a Contracting State shall be recognised in the other Contracting States without any special procedure being required. 154

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognised. 155

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question. 156

Article 27

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A judgment shall not be recognised:

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(1) If such recognition is contrary to public policy in the State in which recognition is sought;

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

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(3) if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;

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

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

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Article 28

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

165

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

166

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27(1) may not be applied to the rules relating to jurisdiction.

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Article 29

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

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Article 30

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

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A court of a Contracting State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State in which the judgment was given by reason of an appeal. 172

Section 2 - Enforcement 173

Article 31 174

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there. 175

However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom. 176

Article 32 177

The application shall be submitted: 178

- in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg ; 179

- in Denmark, to the underret ; 180

- in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht ; 181

- in France, to the presiding judge of the tribunal de grande instance ; 182

- in Ireland, to the High Court; 183

- in Italy, to the corte d'appello ; 184

- in Luxembourg, to the presiding judge of the tribunal d'arrondissement ; 185

- in the Netherlands, to the presiding judge of the arrondissementsrechtbank ; 186

- in the United Kingdom; 187

(1) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State; 188

(2) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State; 189

(3) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State. The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement. 190

Article 33 191

The procedure for making the application shall be governed by the law of the State in which enforcement is sought. 192

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem. 193

The documents referred to in Articles 46 and 47 shall be attached to the application. 194

Article 34 195

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application. 196

The application may be refused only for one of the reasons specified in Articles 27 and 28. 197

Under no circumstances may the foreign judgment be reviewed as to its substance. 198

Article 35 199

The appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought. 200

Article 36 201

If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof. 202

If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance. 203

Article 37 204

An appeal against the decision authorising enforcement shall be lodged in accordance with the rules governing procedure in contentious matters: 205

- in Belgium, with the tribunal de première instance or rechtbank van eerste aanleg ; 206

- in Denmark, to the landsret ; 207
 - in the Federal Republic of Germany, with the Oberlandesgericht ; 208
 - in France, with the cour d'appel ; 209
 - in Ireland, with the High Court; 210
 - in Italy, with the corte d'appello ; 211
 - in Luxembourg, with the Cour supérieure de Justice sitting as a court of civil appeal; 212
 - in the Netherlands, with the arrondissementsrechtbank ; 213
 - in the United Kingdom; 214
 - (1) in England and Wales, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court; 215
 - (2) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court; 216
 - (3) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance judgment with the Magistrates' Court. 217
- The judgment given on the appeal may be contested only: 218
- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation; 219
 - in Denmark, by an appeal to the højesteret , with the leave of the Minister of Justice; 220
 - in the Federal Republic of Germany, by a Rechtsbeschwerde ; 221
 - in Ireland, by an appeal on a point of law to the Supreme Court; 222
 - in the United Kingdom, by a single further appeal on a point of law. 223

Article 38 224

The court with which the appeal under the first paragraph of Article 37 is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged. 225

Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State in which it was given shall be treated as an ordinary appeal for the purposes of the first paragraph. 226

The court may also make enforcement conditional on the provision of such security as it shall determine. 227

Article 39

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

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

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Article 40

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

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

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- in Denmark, to the landsret ;

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- in the Federal Republic of Germany, to the Oberlandesgericht ;

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- in France, to the cour d'appel ;

236

- in Ireland, to the High Court;

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- in Italy, to the corte d'appello ;

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- in Luxembourg, to the Cour supérieure de Justice sitting as a court of civil appeal;

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- in the Netherlands, to the gerechtshof ;

240

- in the United Kingdom:

241

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

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

243

(3) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

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Article 41

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

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- in Belgium, France, Italy, Luxembourg and the Netherlands, by an appeal in cassation;

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

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tice;

- in the Federal Republic of Germany, by a Rechtsbeschwerde ; 249
- in Ireland, by an appeal on a point of law to the Supreme Court; 250
- in the United Kingdom, by a single further appeal on a point of law. 251

Article 42 252

Where a foreign judgment has been given in respect of several matters and enforcement cannot be authorised for all of them the court shall authorise enforcement for one or more of them. 253

An applicant may request partial enforcement of a judgment. 254

Article 43 255

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State in which the judgment was given. 256

Article 44 257

An applicant who, in the State in which the judgment was given, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed. 258

An applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph if he presents a statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses. 259

Article 45 260

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought. 261

Section 3 - Common provisions

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Article 46

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

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(1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

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

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Article 47

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A party applying for enforcement shall also produce:

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(1) documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;

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(2) where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which the judgment was given.

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Article 48

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

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

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Article 49

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

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Title IV - Authentic Instruments and Court Settlements

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Article 50

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A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the

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procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin. 279

The provisions of Section 3 of Title III shall apply as appropriate. 280

Article 51 281

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State in which enforcement is sought under the same conditions as authentic instruments. 282

Title V - General Provisions 283

Article 52 284

In order to determine whether a party is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its internal law. 285

If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Contracting State, the court shall apply the law of that State. 286

The domicile of a party shall, however, be determined in accordance with his national law if, by that law, his domicile depends on that of another person or on the seat of an authority. 287

Article 53 288

For the purposes of this Convention, the seat of a company or other legal person or association of natural or legal persons shall be treated as its domicile. However in order to determine that seat, the court shall apply its rules of private international law. 289

In order to determine whether a trust is domiciled in the Contracting State whose courts are seised of the matter, the court shall apply its rules of private international law. 290

Title VI - Transitional Provisions 291

Article 54 292

The provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force. 293

However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III if jurisdiction was founded upon rules which accorded with those provided for either in Title II of this Convention or in a convention concluded between the State or origin and the State addressed which was in force when the proceedings were instituted. 294

Title VII - Relationship to other Conventions 295

Article 55 296

Subject to the provisions of the second paragraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them: 297

- 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; 298

- the Convention between Belgium and the Netherlands on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925; 299

- the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930; 300

- the Convention between the United Kingdom and the French Republic providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Paris on 18 January 1934; 301

- 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; 302

- the Convention between Germany and Italy on the Recognition and Enforcement of the Judgments in Civil and Commercial matters, signed at Rome on 9 March 1936; 303

- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the Mutual Recognition and Enforcement of Judgments, Arbitration Awards and Authentic Instruments in Civil and Commercial Matters, signed at Bonn on 30 June 1958; 304

- the Convention between the Kingdom of the Netherlands and the Italian Republic on the Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 17 April 1959; 305

- the Convention between the United Kingdom and the Federal Republic of Germany for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Bonn on 14 July 1960; 306

- the Convention between the Kingdom of Belgium and the Italian Republic on the Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at Rome on 6 April 1962; 307
- 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; 308
- the Convention between the United Kingdom and the Republic of Italy for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 7 February 1864, with amending Protocol signed at Rome on 14 July 1970; 309
- the Convention between the United Kingdom and the Kingdom of the Netherlands providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, signed at The Hague on 17 November 1967. and, in so far as it is in force: 310
- the Treaty between Belgium, the Netherlands and Luxembourg on Jurisdiction, Bankruptcy, and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 24 November 1961. 311

Article 56 312

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply. 313

They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention. 314

Article 57 315

This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. 316

This Convention shall not affect the application of provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the Institutions of the European Communities or in national laws harmonised in implementation of such acts. 317

(Article 25(2) of the Accession Convention provides : 318

`With a view of its uniform interpretation, paragraph 1 of Article 57 shall be applied in the following manner: 319

(a) The 1968 Convention as amended shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in 320

accordance with that convention, even where the defendant is domiciled in another Contracting State which is not a party to that convention. The court shall, in any event, apply Article 20 of the 1968 Convention as amended.

(b) A judgment given in a Contracting State in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Contracting States in accordance with the 1968 Convention as amended. 321

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

Article 58 323

This Convention shall not affect the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and the Swiss Confederation on Jurisdiction and the Enforcement of Judgments in Civil Matters. 324

Article 59 325

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognise judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3. 326

However, a Contracting State may not assume an obligation towards a third State not to recognise a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there: 327

(1) if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or, 328

(2) if the property constitutes the security for a debt which is the subject-matter of the action. 329

Title VIII - Final Provisions 330

Article 60 331

This Convention shall apply to the European territories of the Contracting States, in- 332

cluding Greenland, to the French overseas departments and territories, and to Mayotte.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to the Netherlands Antilles. In the absence of such declaration, proceedings taking place in the European territory of the Kingdom as a result of an appeal in cassation from the judgment of a court in the Netherlands Antilles shall be deemed to be proceedings taking place in the latter court. 333

Notwithstanding the first paragraph, this Convention shall not apply to: 334

(1) the Faroe Islands, unless the Kingdom of Denmark makes a declaration to the contrary, 335

(2) any European territory situated outside the United Kingdom for the international relations of which the United Kingdom is responsible, unless the United Kingdom makes a declaration to the contrary in respect of any such territory. 336

Such declarations may be made at any time by notifying the Secretary-General of the Council of the European Communities. 337

Proceedings brought in the United Kingdom on appeal from courts in one of the territories referred to in subparagraph (2) of the third paragraph shall be deemed to be proceedings taking place in those courts. 338

Proceedings which in the Kingdom of Denmark are dealt with under the law on civil procedure for the Faroe Islands (lov for Faerøerne om rettens pleje) shall be deemed to be proceedings taking place in the courts of the Faroe Islands. 339

Article 61 340

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. 341

Article 62 342

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step. 343

Article 63 344

The Contracting States recognise that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure 345

the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member State of the other part. 346

Article 64 347

The Secretary-General of the Council of the European Communities shall notify the signatory States of: 348

(a) the deposit of each instrument of ratification; 349

(b) the date of entry into force of this Convention; 350

(c) any declaration received pursuant to Article 60; 351

(d) any declaration received pursuant to Article IV of the Protocol; 352

(e) any communication made pursuant to Article VI of the Protocol. 353

Article 65 354

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof. 355

Article 66 356

This Convention is concluded for a unlimited period. 357

Article 67 358

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. 359

Article 68 360

This Convention, drawn up in a single original in the Dutch, French, German and Italian languages, all four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory State. 361

[Signatures of the original six Contracting States] 362

Annexed Protocol

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Article I

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

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

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Article II

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

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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 Contracting States.

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Article III

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

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Article IV

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

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Unless the State in which service is to take place objects by declaration to the Secretary-General of the Council of the European Communities, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State addressed who is competent to forward it to the

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addressee. The document shall be forwarded in the manner specified by the law of the State addressed. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

Article V

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The jurisdiction specified in Article 6(2) and Article 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal Republic of Germany. In that State, any person domiciled in another Contracting State may be sued in the courts in pursuance of Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices.

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

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Article V A

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

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Article V B

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

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Article V C

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

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Article V D

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

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Article VI

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

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