

No. 20748

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## MULTILATERAL

**Protocol concerning the interpretation by the Court of Justice of the Convention of 27 September 1968 concerning judicial competence and the execution of decisions in civil and commercial matters (with joint declaration). Concluded at Luxembourg on 3 June 1971**

*Authentic texts: German, French, Italian and Dutch.*

*Registered by the Secretary-General of the Council of the European Communities, acting on behalf of the Parties, on 17 February 1982.*

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## MULTILATÉRAL

**Protocole concernant l'interprétation par la Cour de Justice de la Convention du 27 septembre 1968 concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale (avec déclaration commune). Conclu à Luxembourg le 3 juin 1971**

*Textes authentiques : allemand, français, italien et néerlandais.*

*Enregistré par le Secrétaire général du Conseil des Communautés européennes, agissant au nom des Parties, le 17 février 1982.*

## [TRANSLATION — TRADUCTION]

# PROTOCOL<sup>1</sup> CONCERNING THE INTERPRETATION BY THE COURT OF JUSTICE OF THE CONVENTION OF 27 SEPTEMBER 1968 CONCERNING JUDICIAL COMPETENCE AND THE EXECUTION OF DECISIONS IN CIVIL AND COMMERCIAL MATTERS

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

Referring to the Declaration annexed to the Convention concerning judicial competence and the execution of decisions in civil and commercial matters, signed at Brussels on 27 September 1968,<sup>2</sup>

Have decided to conclude a Protocol assigning competence to the Court of Justice of the European Communities for the interpretation of the said Convention and have, to that end, designated as their plenipotentiaries:

His Majesty the King of the Belgians:

Mr. Alfons Vranckx, Minister of Justice;

The President of the Federal Republic of Germany:

Mr. Gerhard Jahn, Federal Minister of Justice;

The President of the French Republic:

Mr. René Pleven, Keeper of the Seals, Minister of Justice;

The President of the Italian Republic:

Mr. Erminio Pennacchini, Under-Secretary of State for Clemency and Justice;

His Royal Highness the Grand Duke of Luxembourg:

Mr. Eugène Schaus, Minister of Justice, Deputy Prime Minister;

Her Majesty the Queen of the Netherlands:

C. H. F. Polak, Minister of Justice,

Who, meeting in the Council, after exchanging their full powers, found in good and due form,

Have agreed on the following provisions:

**Article 1.** The Court of Justice of the European Communities shall be competent to rule on the interpretation of the Convention concerning judicial competence and the execution of decisions in civil and commercial matters and of the Protocol

<sup>1</sup> Came into force on 1 September 1975, i.e., the first day of the third month following the deposit with the Secretary-General of the Council of the European Communities of the last instrument of ratification, in accordance with article 8. The instruments of ratification were deposited as follows:

State	Date of deposit of the instrument of ratification
Belgium .....	20 September 1973
France .....	23 July 1971
Germany, Federal Republic of .....	22 January 1973
Italy .....	18 June 1975
Luxembourg .....	8 October 1973
Netherlands .....	2 September 1974

<sup>2</sup> See p. 153 of this volume.

annexed to that Convention, signed at Brussels on 27 September 1968, as well as of this Protocol.

*Article 2.* The following courts may submit a question of interpretation to the Court of Justice for a decision on a pre-judicial basis:

1. In Belgium: *la Cour de Cassation — het Hof van Cassatie, and le Conseil d'Etat — de Raad van State,*  
In the Federal Republic of Germany: *die obersten Gerichtshöfe des Bundes,*  
In France: *la Cour de Cassation and le Conseil d'Etat,*  
In Italy: *la Corte Suprema di Cassazione,*  
In Luxembourg: *la Cour supérieure de Justice siégeant comme cour de cassation,*  
and  
In the Netherlands: *de Hoge Raad;*
2. The courts of the Contracting States when they rule as courts of appeal;
3. In the cases referred to in article 37 of the Convention, the courts specified in that article.

*Article 3.* 1. When a question relating to the interpretation of the Convention and of the other agreements referred to in article 1 is raised in a matter pending before one of the courts referred to in article 2, subparagraph 1, that court shall, if it believes that a decision on that question is necessary for the rendering of its judgement, be required to submit that question to the Court of Justice for a decision.

2. When such a question is raised before one of the courts referred to in article 2, subparagraphs 2 and 3, that court may, under the conditions specified in paragraph 1, submit the question to the Court of Justice for a decision.

*Article 4.* 1. The competent authority of a Contracting State may request the Court of Justice to rule on a question of interpretation of the Convention and of the other agreements referred to in article 1 if decisions rendered by courts of that State are contrary to the interpretation given either by the Court of Justice or in a decision of one of the courts of another Contracting State which are specified in article 2, subparagraphs 1 and 2. The provisions of this paragraph shall apply only to decisions which have become final.

2. The interpretation given by the Court of Justice in response to such a request shall be without effect with respect to the decisions on which the request for an interpretation was based.

3. A request for an interpretation may be submitted to the Court of Justice in accordance with paragraph 1 by the Procurators General at the Court of Cassation of the Contracting States or by any other authority designated by a Contracting State.

4. The Clerk of the Court of Justice shall notify the request to the Contracting States, as well as to the Commission and the Council of the European Communities, which may, within a period of two months counted from the date of the notification, submit memoranda or written comments to the Court.

5. The procedure provided for in this article shall not involve either the collection or the reimbursement of costs and expenses.

*Article 5.* 1. Save as otherwise provided in this Protocol, those provisions of the Treaty establishing the European Economic Community<sup>1</sup> and of the Protocol on the Statute of the Court of Justice annexed thereto which are applicable when the Court is called upon to rule on a pre-judicial basis shall also apply to the procedure for the interpretation of the Convention and of the other agreements referred to in article 1.

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

*Article 6.* This Protocol shall apply to the European territory of the Contracting States, to French overseas departments and to French overseas territories.

The Kingdom of the Netherlands may declare, at the time of signature or ratification of this Protocol or at any later time, through notification sent to the Secretary-General of the Council of the European Communities, that this Protocol is applicable to Suriname and the Netherlands Antilles.

*Article 7.* This Protocol is 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 8.* This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification of the signatory State which last carries out that formality. However, its entry into force shall, at the earliest, take place at the same time as that of the Convention of 27 September 1968 concerning judicial competence and the execution of decisions in civil and commercial matters.

*Article 9.* The Contracting States recognize that any State which becomes a member of the European Economic Community and to which article 63 of the Convention concerning judicial competence and the execution of decisions in civil and commercial matters applies must accept the provisions of this Protocol, subject to the necessary adaptations.

*Article 10.* The Secretary-General of the Council of the European Communities shall notify to the signatory States:

- (a) The deposit of each instrument of ratification;
- (b) The date of entry into force of this Protocol;
- (c) Any declarations received in accordance with article 4, paragraph 3;
- (d) Any declarations received in accordance with article 6, second paragraph.

*Article 11.* The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of their legal provisions which imply any alteration of the list of the courts specified in article 2, subparagraph 1.

*Article 12.* This Protocol is concluded for an indefinite period.

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<sup>1</sup> United Nations, *Treaty Series*, vol. 298, p. 3.

*Article 13.* Each Contracting State may request a review of this Protocol. In such case the President of the Council of the European Communities shall convene a review conference.

*Article 14.* This Protocol, drawn up in a single copy in the German, French, Italian and Dutch 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 each of the Governments of the signatory States.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed this Protocol.

DONE at Luxembourg on 3 June 1971.

For His Majesty the King of the Belgians:

[ALFONS VRANCKX]

For the President of the Federal Republic of Germany:

[GERHARD JAHN]

For the President of the French Republic:

[RENÉ PLEVEN]

For the President of the Italian Republic:

[ERMINIO PENNACCHINI]

For His Royal Highness the Grand Duke of Luxembourg:

[EUGÈNE SCHAUS]

For Her Majesty the Queen of the Netherlands:

[C. H. F. POLAK]

#### JOINT DECLARATION

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

At the time of signature of the Protocol concerning the interpretation by the Court of Justice of the Convention of 27 September 1968 concerning judicial competence and the execution of decisions in civil and commercial matters,

Desiring to guarantee as effective and uniform an application of the provisions of the Protocol as possible,

Declare their readiness to set up, in collaboration with the Court of Justice, and exchange of information concerning the decisions rendered by the courts specified in article 2, subparagraph 1, of the Protocol in implementation of the Convention and of the Protocol of 27 September 1968.

IN WITNESS WHEREOF the undersigned plenipotentiaries have signed this Joint Declaration.

DONE at Luxembourg on 3 June 1971.

For His Majesty the King of the Belgians:

[ALFONS VRANCKX]

For the President of the Federal Republic of Germany:

[GERHARD JAHN]

For the President of the French Republic:

[RENÉ PLEVEN]

For the President of the Italian Republic:

[ERMINIO PENNACCHINI]

For His Royal Highness the Grand Duke of Luxembourg:

[EUGÈNE SCHAUS]

For Her Majesty the Queen of the Netherlands:

[C. H. F. POLAK]

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