

No. 20747

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## MULTILATERAL

**Convention concerning judicial competence and the execution of decisions in civil and commercial matters (with protocol and joint declaration). Concluded at Brussels on 27 September 1968**

*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

**Convention concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale (avec protocole et déclaration commune). Conclue à Bruxelles le 27 septembre 1968**

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

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

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> CONCERNING JUDICIAL COMPETENCE AND THE EXECUTION OF DECISIONS IN CIVIL AND COMMERCIAL MATTERS

## PREAMBLE

The High Contracting Parties to the Treaty establishing the European Economic Community<sup>2</sup>,

Desiring to implement the provisions of article 220 of the said Treaty, by virtue of which they have undertaken to ensure the simplification of the formalities governing the reciprocal recognition and execution of judicial decisions,

Endeavouring to strengthen in the Community the legal protection for persons resident therein,

Considering it important, to that end, to determine the competence of their courts in the international context, to facilitate the recognition of decisions and of authentic acts and judicial settlements and to institute a rapid procedure with a view to ensuring their execution,

Have decided to conclude this Convention and have, to that end, designated as their plenipotentiaries:

His Majesty the King of the Belgians:

Mr. Pierre Harmel, Minister for Foreign Affairs;

The President of the Federal Republic of Germany:

Mr. Willy Brandt, Vice-Chancellor, Minister for Foreign Affairs;

The President of the French Republic:

Mr. Michel Debré, Minister for Foreign Affairs;

The President of the Italian Republic:

Mr. Giuseppe Medici, Minister for Foreign Affairs;

His Royal Highness the Grand Duke of Luxembourg:

Mr. Pierre Grégoire, Minister for Foreign Affairs;

<sup>1</sup> Came into force on 1 February 1973, 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 62. The instruments of ratification were deposited as follows:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Belgium .....	16 February 1971
France .....	13 April 1970
Germany, Federal Republic of .....	30 October 1972
Italy .....	11 August 1972
Luxembourg .....	22 November 1972
Netherlands .....	26 June 1972

<sup>2</sup> United Nations, *Treaty Series*, vol. 294, p. 3.

Her Majesty the Queen of the Netherlands:

Mr. J. M. A. H. Luns, Minister for Foreign Affairs,

Who, meeting in the Council, having exchanged their full powers, found in good and due form,

Have agreed on the following provisions:

#### TITLE I. SPHERE OF APPLICATION

*Article 1.* This Convention shall be applicable in civil and commercial matters, irrespective of the nature of the court.

The following shall be excluded from its sphere of application:

1. The status and capacity of individuals, matrimonial property law, wills and successions;
2. Bankruptcy, composition and other similar proceedings;
3. Social security;
4. Arbitration.

#### TITLE II. COMPETENCE

##### Section 1. GENERAL PROVISIONS

*Article 2.* Subject to the provisions of this Convention, persons domiciled in the territory of a Contracting State may, irrespective of their nationality, be summoned before that State's courts.

Persons who are not nationals of the State in which they are domiciled shall be subject therein to the rules of competence applicable to nationals of that State.

*Article 3.* Persons domiciled in the territory of a Contracting State may be summoned before the courts of another Contracting State only in accordance with the rules stated in sections 2 to 6 of this title.

In particular, the following may not be invoked against them:

— in Belgium:

Article 15 of the Civil Code and the provisions of articles 52, 52 *bis* and 53 of the Act of 25 March 1876 relating to competence;

— in the Federal Republic of Germany:

Article 23 of the Code of Civil Procedure;

— in France:

Articles 14 and 15 of the Civil Code;

— in Italy:

Article 2 and article 4, items 1 and 2, of the Code of Civil Procedure;

— in Luxembourg:

Articles 14 and 15 of the Civil Code;

— in the Netherlands:

Article 126, third paragraph, and article 127 of the Code of Civil Procedure.

*Article 4.* If the defendant is not domiciled in the territory of a Contracting State, competence shall, in each Contracting State, be governed by the law of that State, subject to the application of the provisions of article 16.

Every person, irrespective of nationality, who is domiciled in the territory of a Contracting State may in that State, like its nationals, invoke against the said defendant the rules of competence which are in force there, in particular those referred to in article 3, second paragraph.

## Section 2. SPECIAL COMPETENCES

*Article 5.* A defendant domiciled in the territory of a Contracting State may be summoned in another Contracting State:

1. In contractual matters, before the court of the place at which the obligation has been carried out or is to be carried out;
2. In matters relating to maintenance obligations, before the court of the place at which the person entitled to maintenance is domiciled or habitually resident;
3. In criminal or quasi criminal matters, before the court of the place at which the act causing the damage was committed;
4. In the case of an action for compensation of damages or of an action for restitution based on a punishable act, before the court before which the prosecution has been undertaken, in so far as, according to its own law, that court may rule in civil actions;
5. In the case of a dispute relating to the operation of a branch, agency or any other establishment, before the court of the place at which it is situated.

*Article 6.* The defendant referred to in the preceding article may also be summoned:

1. If there are several defendants before the court of the place of domicile of one of them;
2. In the case of an action for guarantee or an action for intervention, before the court before which the original action was instituted, unless the original action was instituted solely for the purpose of removing the summoned person from the jurisdiction of the court which is competent with respect to him;
3. In the case of a counter-action which is based on the same contract or circumstances as the original action, before the court before which the latter was instituted.

## Section 3. COMPETENCE IN INSURANCE MATTERS

*Article 7.* In insurance matters, competence shall be determined by this section, without prejudice to the provisions of article 4 and article 5, subparagraph 5.

*Article 8.* An insurer domiciled in the territory of a Contracting State may be summoned either before the courts of that State or, in another Contracting State, before the court of the place at which the policyholder is domiciled or, if several insurers are defendants, before the courts of the Contracting State in which one of them is domiciled.

If the law of the court before which the proceedings are instituted provides for such competence, the insurer may also be summoned, in a Contracting State other than that of his domicile, before the court of the place of domicile of the intermedi-

ary through whom the insurance contract was concluded, provided that that domicile is mentioned in the insurance policy or insurance proposal.

An insurer who, without being domiciled in the territory of any Contracting State, has a branch or an agency in a Contracting State shall be considered, in respect of disputes relating to the operation of the said branch or agency, to be domiciled in the territory of that State.

*Article 9.* The insurer may, in addition, be summoned before the court of the place at which the event causing the damage occurred if the case is one of liability insurance or of insurance relating to immovable property. The same shall apply if the insurance relates both to immovable property and to movable property covered by the same policy and damaged as a result of the same event.

*Article 10.* In matters of liability insurance, the insurer may also be summoned before the court before which the action of the injured person against the insured person has been instituted if the law of that court so permits.

The provisions of articles 7, 8 and 9 shall apply in cases of a direct action instituted by the injured person against the insurer where such a direct action is permissible.

If the law relating to such a direct action provides for the institution of proceedings against the policyholder or against the insured person, the same court shall also be competent with respect to them.

*Article 11.* Subject to the provisions of article 10, third paragraph, the action of the insurer may be instituted only before the courts of the Contracting State in whose territory the defendant is domiciled, irrespective of whether the latter is a policyholder, an insured person or a beneficiary.

The provisions of this section shall be without prejudice to the right to institute a counter-action before the court before which the original action was instituted in accordance with this section.

*Article 12.* Derogations from the provisions of this section may be made only by agreements:

1. Which were concluded after the dispute arose, or
2. Which permit the policyholder, the insured person or the beneficiary to institute proceedings before courts other than those referred to in this section, or
3. Which, having been concluded between a policyholder and an insurer domiciled in the same Contracting State, have the effect, even where the event causing the damage took place abroad, of assigning competence to the courts of that State except where its law prohibits such agreements.

#### Section 4. COMPETENCE IN MATTERS INVOLVING INSTALMENT SALES AND INSTALMENT LOANS

*Article 13.* In matters relating to the instalment sale of movable physical objects or to an instalment loan directly linked to the financing of the sale of such objects, competence shall be determined by this section, without prejudice to the provisions of article 4 and article 5, subparagraph 5.

*Article 14.* A seller or a lender domiciled in the territory of a Contracting State may be summoned either before the courts of that State or before the courts of the Contracting State in whose territory the buyer or borrower is domiciled.

An action by the seller against the buyer and an action by the lender against the borrower may be instituted only before the courts of the State in whose territory the defendant is domiciled.

These provisions shall be without prejudice to the right to institute a counteraction before the court before which the original action was instituted in accordance with this section.

*Article 15.* Derogations from the provisions of this section may be made only by agreements:

1. Which were concluded after the dispute arose; or
2. Which permit the buyer or the borrower to institute proceedings before courts other than those referred to in this section;
3. Which, having been concluded between a buyer and a seller, or between a borrower and a lender, domiciled or habitually resident in the same Contracting State, assign competence to the courts of that State except where its law prohibits such agreements.

#### Section 5. EXCLUSIVE COMPETENCES

*Article 16.* Exclusive competence shall rest, irrespective of considerations of domicile:

1. In matters relating to real rights to immovable property and to leases of immovable property, with the courts of the Contracting State in which the immovable property is situated;
2. In matters relating to the validity, nullity or dissolution of companies or bodies corporate having their principal place of business in the territory of a Contracting State, or relating to the decisions of their organs, with the courts of that State;
3. In matters relating to the validity of entries in civil registers, with the courts of the Contracting State in whose territory those registers are kept;
4. In matters relating to the registration or validity of patents, trade marks, designs and models and other similar rights requiring deposit or registration, with the courts of the Contracting State in whose territory the deposit or registration was required, has been made or is deemed, by virtue of an international agreement, to have been made;
5. In matters relating to the execution of decisions, with the courts of the Contracting State in whose territory execution is to take place or has taken place.

#### Section 6. AGREEMENT ON COMPETENCES

*Article 17.* Where, by a written agreement or by an oral agreement confirmed in writing, the Parties, at least one of whom is domiciled in the territory of a Contracting State, have designated a court or the courts of a Contracting State to rule on disputes which have arisen or will arise in connection with a specific legal relationship, exclusive competence shall rest with that court or with the courts of the latter State.

Agreements assigning competence shall be without legal effect if they are contrary to the provisions of articles 12 and 15 or if the courts from whose competence derogation is made thereby have exclusive competence under article 16.

If the agreement assigning competence has been stipulated only in favour of one of the Parties, the latter shall retain the right to institute proceedings before any other court which has competence under this Convention.

*Article 18.* In addition to cases in which it has competence by virtue of other provisions of this Convention, a court of a Contracting State shall have competence if the defendant appears before it. This rule shall not be applicable if the purpose of the appearance is to dispute that competence or if there is another court which has exclusive competence under article 16.

#### Section 7. VERIFICATION OF COMPETENCE AND RECEIVABILITY

*Article 19.* A court of a Contracting State shall disqualify itself *ex officio* if the proceeding instituted before it is one in respect of which a court of another Contracting State has exclusive competence under article 16.

*Article 20.* Where a defendant domiciled in the territory of a Contracting State is summoned before a court of another Contracting State and fails to appear, the court shall disqualify itself *ex officio* if its competence is not provided for by this Convention.

The court must suspend the proceedings until such time as it is established that the said defendant has been afforded an opportunity to receive the document instituting the proceedings in good time to defend himself or that all necessary efforts have been made for that purpose.

The provisions of the preceding 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<sup>1</sup> if transmittal of the document instituting the proceedings was required under that Convention.

#### Section 8. PENDING PROCEEDINGS AND RELATED ACTIONS

*Article 21.* Where proceedings based on the same claim and between the same Parties are pending before the courts of different Contracting States, the court before which the proceedings were instituted later must *ex officio* disqualify itself in favour of the court before which the proceedings were first instituted.

The court which would be required to disqualify itself may suspend the proceedings if the competence of the other court is disputed.

*Article 22.* When related actions are instituted before courts of different Contracting States and are pending in first instance, the court before which the proceedings were instituted later may suspend the proceedings.

The said court may also disqualify itself at the request of one of the Parties if its law permits the combining of related actions and the court before which the proceedings were first instituted is competent to rule on both actions.

Actions which are related within the meaning of this article shall be those which are linked to one another by such a close relationship that it is desirable to examine

<sup>1</sup> United Nations, *Treaty Series*, vol. 658, p. 163.

and judge them at the same time in order to avoid the rendering of contradictory decisions in proceedings judged separately.

*Article 23.* Where the actions are subject to the exclusive competence of several courts, disqualification shall take place in favour of the court before which the proceedings were first instituted.

#### Section 9. PROVISIONAL MEASURES AND MEASURES TO PRESERVE RIGHTS

*Article 24.* Application for provisional or conservative measures provided for by the law of a Contracting State may be made to the courts of that State even if, by virtue of this Convention, a court of another Contracting State is competent to consider the substance of the case.

### TITLE III. RECOGNITION AND EXECUTION

*Article 25.* The term “decision” within the meaning of this Convention means any decision rendered by a court of a Contracting State, irrespective of its designation, such as “decree”, “judgement”, “ordinance” or “execution order”, as well as the fixing by the clerk of the court of the amount of the costs of the proceeding.

#### Section 1. RECOGNITION

*Article 26.* Decisions rendered in a Contracting State shall be recognized in the other Contracting States without requiring any special procedure.

In the event of an obligation to the recognition of a decision, any party that seeks recognition of the decision may, in accordance with the procedure provided for in sections 2 and 3 of this title, apply for a finding to the effect that the decision is to be recognized.

If recognition is sought in a dispute before a court of a Contracting State whose decision depends on such recognition, that court shall be competent to rule on the question of recognition.

*Article 27.* Decisions shall not be recognized:

1. If recognition would be contrary to the public order of the State applied to;
2. If the document instituting the proceedings has not been served upon the defaulting defendant properly and in good time for him to defend himself;
3. If the decision is irreconcilable with a decision rendered between the same parties in the State applied to;
4. If the court of the State of origin, in order to render its decision, has, in deciding a question relating to the status or capacity of individuals, to matrimonial property law, to wills and to successions, violated a rule of the international private law of the State applied to, unless its decision brings about the same result as if it had applied the rules of the international private law of the State applied to.

*Article 28.* Similarly, decisions shall not be recognized if the provisions of sections 3, 4 and 5 of title II have been violated, or in the case referred to in article 59.

In the evaluation of the competences referred to in the preceding paragraph, the authority applied to shall be bound by the findings of fact on which the court of the State of origin based its competence.



Without prejudice to the provisions of the first paragraph, steps may not be taken to verify the competence of the courts of the State of origin; the rules relating to competence shall not form part of the public order referred to in article 27, subparagraph 1.

*Article 29.* The foreign decision may not, under any circumstances, be reviewed with regard to the substance of the case.

*Article 30.* The court of a Contracting State before which the recognition of a decision rendered in another Contracting State is sought may suspend the proceedings if an ordinary appeal against the decision has been lodged.

## Section 2. EXECUTION

*Article 31.* Decisions rendered in one Contracting State and executable there shall be executed in another Contracting State after an authorization for execution has been issued there at the request of any party concerned.

*Article 32.* The request shall be submitted:

- In Belgium, to the *tribunal de première instance* or the *rechtbank van eerste aanleg*;
- In the Federal Republic of Germany, to the President of a chamber of the *Landgericht*;
- In France, to the President of the *tribunal de grande instance*;
- In Italy, to the *corte d'appello*;
- Luxembourg, to the President of the *tribunal d'arrondissement*;
- In the Netherlands, to the President of the *Arrondissementsrechtbank*.

Territorial competence shall be determined by the domicile of the party against whom execution is requested. If the said party is not domiciled in the territory of the State applied to, competence shall be determined by the place at which execution is to be carried out.

*Article 33.* The procedure for the submission of the request shall be determined by the law of the State applied to.

The requestor must make a choice of domicile in the area of competence of the court to which the request is submitted. However, if the law of the State applied to does not provide for a choice of domicile, the requestor shall designate a representative *ad litem*.

The documents referred to in articles 46 and 47 shall be attached to the request.

*Article 34.* The court to which the request is submitted shall render its decision without delay, and the party against whom the execution is requested may not, at that stage of the proceedings, submit any comments.

The request may be denied only for one of the reasons referred to in articles 27 and 28.

The foreign decision may not, under any circumstances, be reviewed with regard to the substance of the case.

*Article 35.* The decision rendered upon request shall be made known to the requestor without delay, through the clerk of the court, in accordance with the procedures prescribed by the law of the State applied to.

*Article 36.* If execution is authorized, the party against whom the execution is requested may lodge an appeal against the decision within one month after notice thereof is served upon him.

If the said party is domiciled in a Contracting State other than the one in which the decision authorizing execution was rendered, the time-limit shall be two months and shall run from the date on which notice was served upon the party in person or upon his domicile. The said time-limit shall not be extended by reason of distance.

*Article 37.* Appeals shall be lodged, in accordance with the rules governing adversary proceedings:

- In Belgium, with the *tribunal de première instance* or the *rechtbank van eerste aanleg*;
- In the Federal Republic of Germany, with the *Oberlandesgericht*;
- In France, with the *cour d'appel*;
- In Italy, with the *corte d'appello*;
- In Luxembourg, with the *Cour supérieure de Justice siégeant en matière d'appel civil*;
- In the Netherlands, with the *Arrondissementsrechtbank*.

No action other than an appeal to the court of cassation or, in the Federal Republic of Germany, a *Rechtsbeschwerde* may be taken against the decision rendered on the appeal.

*Article 38.* The court with which the appeal is lodged may, at the request of the party lodging the appeal, suspend the proceedings if an ordinary appeal against the foreign decision has been lodged in the State of origin or if the time-limit for lodging such an appeal has not expired; in the latter case, the court may impose a time-limit for lodging the appeal.

The said court may also make the execution conditional on the deposit of security which it shall determine.

*Article 39.* During the time-limit for the appeal referred to in article 36 and until a decision has been rendered on the appeal, only conservative measures may be taken in respect of the property of the party against whom the execution is requested.

The decision granting execution shall include the authorization for taking such measures.

*Article 40.* If the request is denied, the requestor may lodge an appeal:

- In Belgium, with the *Cour d'appel* or the *Hof van Beroep*;
- In the Federal Republic of Germany, with the *Oberlandesgericht*;
- In France, with the *Cour d'appel*;
- In Italy, with the *corte d'appello*;
- In Luxembourg, with the *Cour supérieure de Justice siégeant en matière d'appel civil*;
- In the Netherlands, with the *Gerechtshof*.

The party against whom the execution is requested shall be summoned to appear before the court with which the appeal has been lodged. If he fails to appear, the provisions of article 20, second and third paragraphs, shall apply even if the said party is not domiciled in the territory of a Contracting State.

*Article 41.* No action other than an appeal to the court of cassation or, in the Federal Republic of Germany, a *Rechtsbeschwerde* may be taken against the decision rendered on the appeal referred to in article 40.

*Article 42.* Where the foreign decision includes rulings on several points of the request and execution cannot be authorized for all of them, the court shall authorize execution for one or more of the points.

The requestor may request partial execution.

*Article 43.* Foreign decisions imposing a fine shall be executable in the State applied to only if the amount of the fine has been definitively fixed by the courts of the State of origin.

*Article 44.* A requestor granted legal aid in the State in which the decision was rendered shall, without any new examination, receive such aid in the proceedings referred to in articles 32 to 35.

*Article 45.* If a party requests execution in a Contracting State of a decision rendered in another Contracting State, no security and no deposit, irrespective of its designation, may be required of him on the grounds that he is an alien or that he has no domicile or residence in the country.

### Section 3. COMMON PROVISIONS

*Article 46.* The party who seeks the recognition of a decision or requests its execution must produce:

1. A copy thereof which meets the requirements for its authenticity;
2. In the case of a decision by default, the original or a certified correct copy of the document establishing that the document instituting the proceedings has been served upon or notified to the defaulting party.

*Article 47.* The party requesting execution must, in addition, produce:

1. Any document from which it can be established that, under the law of the State of origin, the decision is executable and has been served;
2. Where necessary, a document attesting that the requestor is entitled to legal aid in the State of origin.

*Article 48.* If the documents referred to in article 46, subparagraph 2, and article 47, subparagraph 2, are not produced, the court may impose a time-limit for producing them or may accept equivalent documents or, if it believes that it has been sufficiently well informed, may dispense with them.

A translation of the documents shall be produced if the court demands it; the translation shall be certified by a person authorized thereto in one of the Contracting States.

*Article 49.* No legalization or similar formality shall be required with regard to the documents referred to in article 46, article 47 and article 48, second paragraph or, where necessary, to a power of attorney *ad litem*.

#### TITLE IV. AUTHENTIC ACTS AND JUDICIAL SETTLEMENTS

*Article 50.* Where an authentic act has been received and becomes executable in a Contracting State, an authorization for its execution shall, upon request, be issued in another Contracting State, in accordance with the procedure provided for in article 31 and the subsequent articles. The request may be denied only if the execution of the authentic act would be contrary to the public order of the State applied to.

The act submitted must meet the requirements for its authenticity in the State of origin.

The provisions of title III, section 3, shall be applicable where necessary.

*Article 51.* Settlements concluded before a judge during a proceeding and executable in the State of origin shall be executable in the State applied to under the same conditions as authentic acts.

#### TITLE V. GENERAL PROVISIONS

*Article 52.* In order to determine whether a party is domiciled in the territory of the Contracting State before whose courts the proceedings have been instituted, the court shall apply its own domestic law.

Where a party is not domiciled in the Contracting State before whose courts the proceedings have been instituted, the court shall, in order to determine whether that party is domiciled in another Contracting State, apply the law of the latter State.

However, in order to determine the domicile of a party, his national law shall be applied if, under that law, his domicile depends on that of another person or on the seat of an authority.

*Article 53.* The head office of a company or a body corporate shall be assimilated to domicile for the purposes of this Convention. However, in determining the location of such a head office, the court before which the proceedings have been instituted shall apply the rules of its own international private law.

#### TITLE VI. TRANSITIONAL PROVISIONS

*Article 54.* The provisions of this Convention shall be applicable only to judicial proceedings instituted and authentic acts received after its entry into force.

However, decisions rendered after the date of entry into force of this Convention as the result of proceedings instituted before that date shall be recognized and executed, in accordance with the provisions of title III, if the rules of competence applied are in conformity with those provided for either by title II or by a convention which was in force between the State of origin and the State applied to at the time when the proceedings were instituted.

## TITLE VII. RELATIONSHIP TO OTHER CONVENTIONS

*Article 55.* Without prejudice to the provisions of article 54, second paragraph, and article 56, this Convention replaces between the States Parties hereto the following conventions concluded between two or more of those States:

- The Convention between Belgium and France on judicial competence and on the authority and execution of judicial decisions, arbitral awards and authentic acts, signed at Paris on 8 July 1899;
- The Convention between Belgium and the Netherlands concerning territorial jurisdiction, bankruptcy and the authority and execution of judgments, arbitral awards, and notarial acts, signed at Brussels on 28 March 1925<sup>1</sup>;
- The Convention between France and Italy on the execution of judgements in civil and commercial matters, signed at Rome on 3 June 1930<sup>2</sup>;
- The Convention between Germany and Italy on the recognition and execution of judicial decisions in civil and commercial matters, signed at Rome on 9 March 1936;
- The Convention between the Federal Republic of Germany and the Kingdom of Belgium concerning the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authentic acts in civil and commercial matters, signed at Bonn on 30 June 1958<sup>3</sup>;
- The Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judicial decisions in civil and commercial matters, signed at Rome on 17 April 1959<sup>4</sup>;
- The Convention between the Kingdom of Belgium and the Italian Republic concerning the recognition and enforcement of judicial decisions and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962<sup>5</sup>;
- The Treaty between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters, signed at The Hague on 30 August 1962<sup>6</sup>;

and in so far as it is in force:

- The Treaty between Belgium, the Netherlands and Luxembourg on judicial competence, bankruptcy and the authority and execution of judicial decisions, arbitral awards and authentic acts, signed at Brussels on 24 November 1961.

*Article 56.* The treaties and conventions referred to in article 55 shall continue to have effect in matters to which this Convention is not applicable.

They shall continue to have effect with regard to decisions rendered and authentic acts received before the entry into force of this Convention.

*Article 57.* This Convention does not derogate from the conventions to which the Contracting States are or will be Parties and which, in particular matters, govern judicial competence and the recognition and execution of decisions.

<sup>1</sup> League of Nations, *Treaty Series*, vol. XCIII, p. 431.

<sup>2</sup> *Ibid.*, vol. CLIII, p. 135.

<sup>3</sup> United Nations, *Treaty Series*, vol. 387, p. 245.

<sup>4</sup> *Ibid.*, vol. 474, p. 207.

<sup>5</sup> *Ibid.*, vol. 490, p. 317.

<sup>6</sup> *Ibid.*, vol. 547, p. 173.

*Article 58.* The provisions of this Convention shall be without prejudice to the rights accorded to Swiss nationals under the convention concluded on 15 June 1869 between France and the Swiss Confederation on judicial competence and the execution of judgements in civil matters.

*Article 59.* This Convention shall not preclude a Contracting State from undertaking to a third State, under the terms of a convention on the recognition and execution of judgements, not to recognize decisions rendered, including those rendered in another Contracting State, against defendants who were domiciled or habitually resident in the territory of the third State when, in cases of the kinds referred to in article 4, the decision could be based only on a competence of the kind referred to in article 3, second paragraph.

#### TITLE VIII. FINAL PROVISIONS

*Article 60.* This Convention shall apply to the European territory of the Contracting States, to the French overseas departments and to the French overseas territories.

The Kingdom of the Netherlands may declare at the time of the signature or ratification of 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 Suriname and the Netherlands Antilles. In the absence of such a declaration concerning the Netherlands Antilles, proceedings conducted in the European territory of the Kingdom as the result of an appeal to the court of cassation against decisions rendered by courts of the Netherlands Antilles shall be regarded as proceedings conducted before those courts.

*Article 61.* This Convention 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 62.* This Convention 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 is the last to carry out that formality.

*Article 63.* The Contracting States recognize that any State which becomes a member of the European Economic Community shall have the obligation to accept the use of this Convention as the basis for the negotiations necessary to ensure the implementation of article 220, last paragraph, of the Treaty establishing the European Economic Community in the relations between the Contracting States and that State.

Any necessary adaptations may be made the subject of a special convention between the Contracting States, on the one hand, and the said State, on the other hand.

*Article 64.* The Secretary-General 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 Convention;
- (c) The declaration received in pursuance of article 60, second paragraph;

- (d) The declarations received in pursuance of article IV of the Protocol;  
(e) The communications sent in pursuance of article VI of the Protocol.

*Article 65.* The Protocol which, by agreement between the Contracting States, is annexed to this Convention shall constitute an integral part of the Convention.

*Article 66.* This Convention is concluded for an indefinite period.

*Article 67.* Each Contracting State may request a review of this Convention. In such case, a review conference shall be convened by the President of the Council of the European Communities.

*Article 68.* This Convention, done 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 correct copy to the Government of each signatory State.

IN WITNESS WHEREOF the undersigned plenipotentiaries have affixed their signatures at the bottom of this Convention.

DONE at Brussels on 27 September 1968.

For His Majesty the King of the Belgians:

[PIERRE HARMEL]

For the President of the Federal Republic of Germany:

[WILLY BRANDT]

For the President of the French Republic:

[MICHEL DEBRÉ]

For the President of the Italian Republic:

[GIUSEPPE MEDICI]

For His Royal Highness the Grand Duke of Luxembourg:

[PIERRE GRÉGOIRE]

For Her Majesty the Queen of the Netherlands:

[J. M. A. H. LUNS]

## PROTOCOL

The High Contracting Parties have agreed on the following provisions, which are annexed to the Convention:

*Article I.* Any person domiciled in Luxembourg who is summoned before a court of another Contracting State in pursuance of article 5, subparagraph 1, may reject the competence of that court. The court shall *ex officio* disqualify itself if the defendant does not appear.

Any agreement assigning competence within the meaning of article 17 shall have effect in respect of a person domiciled in Luxembourg only if that person has expressly and specifically accepted it.

*Article II.* Without prejudice to national provisions which are more favourable, persons domiciled in a Contracting State and prosecuted for an unintentionally committed offence before the criminal courts of another Contracting State, of which they are not nationals, may arrange to be defended by persons authorized thereto even if they do not personally appear.

However, the court before which the proceedings are instituted may order a personal appearance; if the order is not obeyed, the decision rendered in respect of the claim arising out of a legal relationship under civil law without an opportunity having been given to the person in question to defend himself need not be recognized or executed in the other Contracting States.

*Article III.* No tax, charge or duty proportional to the value in dispute shall, in the State applied to, be levied in connection with the proceeding instituted in order to secure the granting of the authorization of execution.

*Article IV.* Judicial and extrajudicial acts drawn up in the territory of a Contracting State which are to be notified or served upon persons who are in the territory of another Contracting State shall be transmitted in the manner provided for by the conventions or agreements concluded between the Contracting States.

Except where the State of destination expresses its opposition by a declaration made to the Secretary-General of the Council of the European Communities, such acts may also be sent direct by the court officers of the State in which the acts were drawn up to the court officers of the State in whose territory the addressee of the act is to be found. In such case, the court officer of the State of origin shall transmit a copy of the act to the court officer of the State applied to who is competent to deliver it to the addressee. Such delivery shall be made in accordance with the procedures provided for by the law of the State applied to. It shall be certified by an attestation sent direct to the court officer of the State of origin.

*Article V.* The judicial competence referred to in article 6, subparagraph 2, and article 10, for an action for guarantee or an action for intervention may not be claimed in the Federal Republic of Germany. In that State, any person domiciled in the territory of another Contracting State may be summoned before the courts in accordance with articles 68, 72, 73 and 74 of the Code of Civil Procedure, which relate to *litis denunciatio*.

Decisions rendered in the other Contracting States under article 6, subparagraph 2, and article 10 shall be recognized and executed in the Federal Republic of Germany in accordance with title III. The effects produced in respect of third persons, in accordance with articles 68, 72, 73 and 74 of the Code of Civil Procedure, by decisions rendered in that State shall be recognized in the other Contracting States as well.

*Article VI.* The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the text of their legislative provisions which modify either those provisions of their laws which are referred to in the Convention or the jurisdictions referred to in title III, section 2, of the Convention.



IN WITNESS WHEREOF the undersigned plenipotentiaries have affixed their signatures at the bottom of this Protocol.

DONE at Brussels on 27 September 1968.

For His Majesty the King of the Belgians:

[PIERRE HARMEL]

For the President of the Federal Republic of Germany:

[WILLY BRANDT]

For the President of the French Republic:

[MICHEL DEBRÉ]

For the President of the Italian Republic:

[GIUSEPPE MEDICI]

For His Royal Highness the Grand Duke of Luxembourg:

[PIERRE GRÉGOIRE]

For Her Majesty the Queen of the Netherlands:

[J. M. A. H. LUNS]

#### 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 Convention concerning judicial competence and the execution of decisions in civil and commercial matters,

Desiring to ensure an implementation of the provisions of that Convention which is as effective as possible,

Endeavouring to prevent the unity aimed at by the Convention from being impaired by differences in interpretation,

Recognizing that positive or negative conflicts of competence may arise in the implementation of the Convention,

Declare that they are prepared:

1. To examine those questions, and in particular to investigate the possibility of assigning certain competences to the Court of Justice of the European Communities and, where necessary, to enter into negotiations concerning the conclusion of an agreement to that effect;
2. To have their representatives communicate with each other at regular intervals.

IN WITNESS WHEREOF the undersigned plenipotentiaries have affixed their signatures at the bottom of this Joint Declaration.

DONE at Brussels on 27 September 1968.

[PIERRE HARMEL]

[WILLY BRANDT]

[MICHEL DEBRÉ]

[GIUSEPPE MEDICI]

[PIERRE GRÉGOIRE]

[J. M. A. H. LUNS]

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