

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1979 Nr. 56

A. TITEL

Verdrag betreffende de rechterlijke bevoegdheid en de tenuitvoerlegging van beslissingen in burgerlijke en handelszaken, met Protocol en Gemeenschappelijke Verklaring; Brussel, 27 september 1968

B. TEKST

De Nederlandse en de Franse tekst van Verdrag, Protocol en Gemeenschappelijke Verklaring zijn geplaatst in *Trb.* 1969, 101.

Voor de Engelse tekst van Verdrag, Protocol en Gemeenschappelijke Verklaring zie rubriek J van dit Tractatenblad.

De tekst van het onderhavige Verdrag en Protocol is gewijzigd en aangevuld bij het in rubriek J hieronder genoemde Verdrag van 9 oktober 1978.

D. PARLEMENT

E. BEKRACHTIGING

Zie *Trb.* 1973, 2.

F. TOETREDING

In het in rubriek J hieronder genoemde Verdrag van 9 oktober 1978 is de mogelijkheid van toetreding tot het onderhavige Verdrag voorzien voor de aldaar genoemde Staten.

G. INWERKINGTREDING

Zie *Trb.* 1973, 2 en 19.

H. TOEPASSELIJKVERKLARING

Zie *Trb.* 1973, 19.

J. GEGEVENS

Zie *Trb.* 1969, 101 en *Trb.* 1973, 2.

Voor het op 15 november 1965 te 's-Gravenhage tot stand gekomen Verdrag inzake de betekening en de kennisgeving in het buitenland van gerechtelijke en buitengerechtelijke stukken in burgerlijke en handelszaken zie ook, laatstelijk, *Trb.* 1975, 150.

Voor het op 28 juni 1919 te Versailles tot stand gekomen Statuut van de Internationale Arbeidsorganisatie zie ook, laatstelijk, *Trb.* 1977, 105.

Voor het op 5 mei 1949 te Londen tot stand gekomen Statuut van de Raad van Europa zie ook, laatstelijk, *Trb.* 1979, 40.

Voor het op 3 februari 1958 te 's-Gravenhage tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden, het Koninkrijk België en het Groothertogdom Luxemburg tot instelling van de Benelux Economische Unie zie ook, laatstelijk, *Trb.* 1979, 42.

Voor het op 15 april 1958 te 's-Gravenhage tot stand gekomen Verdrag nopens de erkenning en de tenuitvoerlegging van beslissingen over onderhoudsverplichtingen jegens kinderen zie ook, laatstelijk, *Trb.* 1978, 4.

Voor het op 1 maart 1954 te 's-Gravenhage voor ondertekening opengestelde Verdrag betreffende de burgerlijke rechtsvordering zie ook, laatstelijk, *Trb.* 1978, 3.

Voor het op 5 oktober 1961 te 's-Gravenhage voor ondertekening opengestelde Verdrag tot afschaffing van het vereiste van legalisatie voor buitenlandse openbare akten zie ook, laatstelijk, *Trb.* 1979, 44.

Op 9 oktober 1978 is te Brussel tot stand gekomen het Verdrag inzake de toetreding van het Koninkrijk Denemarken, Ierland en het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland tot het onderhavige Verdrag en tot het Protocol betreffende de uitlegging daarvan door het Hof van Justitie. De Nederlandse tekst van dat Verdrag is geplaatst in *Trb.* 1978, 175, de Engelse en de Franse tekst in *Trb.* 1979, 58. Bij het Verdrag is de Engelse tekst van het onderhavige Verdrag, het Protocol en de Gemeenschappelijke Verklaring vastgesteld, welke als volgt luidt:

**Convention on jurisdiction and the enforcement of judgments
in civil and commercial matters**

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:

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;

Her Majesty the Queen of the Netherlands:

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

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.

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

SECTION 1

General provisions

Article 2

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

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

Article 3

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

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

- in Belgium: Article 15 of the civil code (*Code civil*), or the provisions of Articles 52, 52 *bis* and 53 of the law of 25 March 1876 on jurisdiction (*loi sur la compétence*);
- in the Federal Republic of Germany: Article 23 of the code of civil procedure (*Zivilprozessordnung*);

- in France: Articles 14 and 15 of the civil code (*Code civil*);
- in Italy: Article 2 and Article 4, Nos 1 and 2, of the code of civil procedure (*Codice di procedura civile*);
- in Luxembourg: Articles 14 and 15 of the civil code (*Code civil*);
- in the Netherlands: Articles 126 (3) and 127 of the code of civil procedure (*Wetboek van Burgerlijke Rechtsvordering*).

Article 4

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

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

SECTION 2

Special jurisdiction

Article 5

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

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment in the courts of the place in which the branch, agency or other establishment is situated.

Article 6

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

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

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seized of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

3. on a 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.

SECTION 3

Jurisdiction in matters relating to insurance

Article 7

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

Article 8

An insurer domiciled in a Contracting State may be sued, either in the courts of that State, or in another Contracting State in the courts for the place where the policy-holder is domiciled, or, if two or more insurers are the defendants, in the courts of the Contracting State where any one of them is domiciled.

An insurer may also, if there is provision for such jurisdiction in the law of the court seized of the matter, be sued in a Contracting State other than that of his domicile in the courts for the place where the agent who acted as intermediary in the making of the contract of insurance has his domicile, provided that this domicile is mentioned in the insurance policy or proposal.

An insurer who is not domiciled in a Contracting State but has a branch or an agency in one of the Contracting States shall, in disputes arising out of the operations of the branch or agency, be deemed to be domiciled in that State.

Article 9

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 10

In respect of liability insurance, the insurer may also, if the law of

the court permits it, be joined in proceedings which the injured party has brought against the insured.

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

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

Article 11

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

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

Article 12

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 policy-holder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section or
3. which is concluded between a policy-holder and an insurer, both of whom are domiciled in the same Contracting State, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State.

SECTION 4

Jurisdiction in matters relating to instalment sales and loans

Article 13

In matters relating to the sale of goods on instalment credit terms, or to loans expressly made to finance the sale of goods and repayable by instalments, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 (5).

Article 14

A seller or lender who is domiciled in a Contracting State may be sued either in the courts of that State or in the courts of the Contracting State in which the buyer or borrower is domiciled.

Proceedings may be brought by a seller against a buyer or by a lender against a borrower only in the courts of the State in which the defendant 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 buyer or the borrower to bring proceedings in courts other than those indicated in this Section or
3. which is concluded between a buyer and a seller, or between a borrower and a lender, both of whom are 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 decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;

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

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

SECTION 6

Prorogation of jurisdiction

Article 17

If the Parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement evidenced in writing, 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.

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

If the 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.

Article 18

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

SECTION 7

Examination as to jurisdiction and admissibility

Article 19

Where a court of a Contracting State is seized of a claim which is principally concerned with a matter over which the courts of

another Contracting State have exclusive jurisdiction by virtue of Article 16, it shall declare of its own motion that it has no jurisdiction.

Article 20

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

The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, if the document instituting the proceedings or notice thereof had to be transmitted abroad in accordance with that Convention.

SECTION 8

Lis Pendens – Related actions

Article 21

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 seized shall of its own motion decline jurisdiction in favour of that court.

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

Article 22

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

A court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seized has jurisdiction over both actions.

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

Article 23

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seized shall decline jurisdiction in favour of that court.

SECTION 9

Provisional, including protective, measures

Article 24

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

TITLE III

Recognition and enforcement

Article 25

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

SECTION 1

Recognition

Article 26

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

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

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

Article 27

A judgment shall not be recognized:

1. if such recognition is contrary to public policy in the State in which recognition is sought;

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

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

4. if the court of the State 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.

Article 28

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

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

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.

Article 29

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

Article 30

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

SECTION 2

Enforcement

Article 31

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

Article 32

The application shall be submitted:

- in Belgium, to the “tribunal de première instance” or “rechtbank van eerste aanleg”;
- in the Federal Republic of Germany, to the presiding judge of a chamber of the “Landgericht”;
- in France, to the presiding judge of the “tribunal de grande instance”;
- in Italy, to the “corte d’appello”;
- in Luxembourg, to the presiding judge of the “tribunal d’arrondissement”;
- in the Netherlands, to the presiding judge of the “arrondissementsrechtbank”.

The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Article 33

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

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

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

Article 34

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

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

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

Article 35

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

Article 36

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

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

Article 37

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

- in Belgium, with the "tribunal de première instance" or "rechtbank van eerste aanleg";
- 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" sitting as a court of civil appeal;
- in the Netherlands, with the "arrondissementsrechtbank".

The judgment given on the appeal may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a "Rechtsbeschwerde".

Article 38

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.

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

Article 39

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

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

Article 40

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

- in Belgium, to the “Cour d’appel” or “hof van beroep”;
- in the Federal Republic of Germany, to the “Oberlandesgericht”;
- in France, to the “Cour d’appel”;
- in Italy, to the “corte d’appello”;
- in Luxembourg, to the “Cour supérieure de Justice” sitting as a court of civil appeal;
- in the Netherlands, to the “Gerechtshof”.

The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Article 41

A judgment given on an appeal provided for in Article 40 may be contested only by an appeal in cassation or, in the Federal Republic of Germany, by a “Rechtsbeschwerde”.

Article 42

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

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is

sought only if the amount of the payment has been finally determined by the courts of the State in which the judgment was given.

Article 44

An applicant who has been granted legal aid in the State in which the judgment was given shall automatically also qualify for legal aid in the procedures provided for in Articles 32 to 35.

Article 45

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

SECTION 3

Common provisions

Article 46

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

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings.

Article 47

A party applying for enforcement shall also produce:

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

Article 48

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.

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

Article 49

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

TITLE IV

Authentic instruments and Court settlements

Article 50

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 *et seq.* The application may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought.

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

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

Article 51

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

TITLE V

General provisions

Article 52

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

If a party is not domiciled in the State whose courts are seized 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.

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.

Article 53

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

TITLE VI

Transitional provisions

Article 54

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.

However, judgments given after the date of entry into force of this Convention in proceedings instituted before that date shall be recognized and enforced in accordance with the provisions of Title III 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 of origin and the State addressed which was in force when the proceedings were instituted.

TITLE VII

Relationship to other conventions

Article 55

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:

- the Convention between Belgium and France on jurisdiction and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Paris on 8 July 1899;
- the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 28 March 1925;
- the Convention between France and Italy on the enforcement of judgments in civil and commercial matters, signed at Rome on 3 June 1930;

- the Convention between Germany and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 9 March 1936;
- the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the mutual recognition and enforcement of judgments, arbitration awards and authentic instruments in civil and commercial matters, signed at Bonn on 30 June 1958;
- the Convention between the Kingdom of the Netherlands and the Italian Republic on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959;
- the Convention between the Kingdom of Belgium and the Italian Republic on the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at Rome on 6 April 1962;
- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the mutual recognition and enforcement of judgment and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,

and, insofar as it is in force:

- the Treaty between Belgium, the Netherlands and Luxembourg on jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961.

Article 56

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

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

Article 57

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 and the recognition and enforcement of judgments.

Article 58

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.

Article 59

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

TITLE VIII

Final provisions

Article 60

This Convention shall apply to the European territories 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 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 Surinam and the Netherlands Antilles. In the absence of such declaration with respect to the Netherlands Antilles, 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.

Article 61

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

Article 62

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.

Article 63

The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

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

Article 64

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

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Convention;
- (c) any declaration received pursuant to the second paragraph of Article 60;
- (d) any declaration received pursuant to Article IV of the Protocol;
- (e) any communication made pursuant to Article VI of the Protocol.

Article 65

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

Article 66

This Convention is concluded for an unlimited period.

Article 67

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

Article 68

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.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Convention.

DONE at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

(sd.) PIERRE HARMEL

For the President of the Federal Republic of Germany,
(sd.) WILLY BRANDT

For the President of the French Republic,
(sd.) MICHEL DEBRÉ

For the President of the Italian République,
(sd.) GIUSEPPE MEDICI

For His Royal Highness the Grand Duke of Luxembourg,
(sd.) PIERRE GRÉGOIRE

For Her Majesty the Queen of the Netherlands,
(sd.) J. M. A. H. LUNS

Protocol

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

Article I

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.

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

Article II

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.

However, the court seized 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 recognized or enforced in the other Contracting States.

Article III

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.

Article IV

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.

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 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

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.

Judgments given in the other Contracting States by virtue of Article 6 (2) or Article 10 shall be recognized 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 recognized in the other Contracting States.

Article VI

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.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

DONE at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

For His Majesty the King of the Belgians,

(sd.) PIERRE HARMEL

For the President of the Federal Republic of Germany,

(sd.) WILLY BRANDT

For the President of the French Republic,
(sd.) MICHEL DEBRÉ

For the President of the Italian Republic,
(sd.) GIUSEPPE MEDICI

For His Royal Highness the Grand Duke of Luxembourg,
(sd.) PIERRE GRÉGOIRE

For Her Majesty the Queen of the Netherlands,
(sd.) 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,

On signing the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters,

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

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

Recognizing that claims and disclaimers of jurisdiction may arise in the application of the Convention,

Declare themselves ready:

1. to study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;
2. to arrange meetings at regular intervals between their representatives.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Joint Declaration.

DONE at Brussels this twenty-seventh day of September in the year one thousand nine hundred and sixty-eight.

(sd.) PIERRE HARMEL

(sd.) PIERRE GRÉGOIRE

(sd.) GIUSEPPE MEDICI

(sd.) MICHEL DEBRÉ

(sd.) WILLY BRANDT

(sd.) J. M. A. H. LUNS

In *Pb EG* L 304 van 30 oktober 1978 is op blz. 77 e.v. de tekst van het onderhavige Verdrag en Protocol, zoals gewijzigd door het Toetredingsverdrag van 9 oktober 1978, afgedrukt.

Uitgegeven de tweede april 1979.

De Minister van Buitenlandse Zaken,
C. A. VAN DER KLAUW