

CONVENTION

**on jurisdiction and the enforcement of judgments in civil and commercial matters
done at Lugano on 16 September 1988**

(90/C 189/07)

REPORT

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In addition to the draft Convention and the other instruments drawn up by the government experts, the draft explanatory report was submitted to the Governments of the Member States of the European Communities and of the European Free Trade Association before the Diplomatic Conference held in Lugano from 12 to 16 September 1988.

This report takes account of the comments made by certain Governments and of the amendments made by the Diplomatic Conference to the drafts before it. It takes the form of a commentary on the Convention signed in Lugano on 16 September 1988.

LIST OF CONTENTS

	Point No	Page
Chapter I		
— <i>General Considerations</i>	1-13	61
1. Introductory remarks	1-2	61
2. Justification for and background to the Lugano Convention	3-12	61
3. Identity of structure between the Brussels Convention and the Lugano Convention — fundamental principles	13	65
Chapter II		
— <i>Respective scope of the Brussels Convention and the Lugano Convention (Article 54b)</i>	14-17	67
Chapter III		
— <i>Provisions which distinguish the Lugano Convention from the Brussels Convention</i>	18-97	69
1. Summary of these provisions	18-22	69
2. Detailed examination	23-97	70
— Title I: Scope of the Lugano Convention (Article 1)	23	70
— Title II: Jurisdiction (Articles 2 to 24)	24-65	70
— Section 1: General provisions (Articles 2 to 4)	24-35	70
a) Introductory remarks	24	70
b) Exorbitant jurisdictional bases in force in the EFTA Member States and in Portugal	25-31	70
c) The relevance of the second paragraph of Article 3 to the whole structure of the Lugano Convention	32-35	71
1. Scope of the second paragraph of Article 3	32	71
2. Impossibility of founding jurisdiction on the location of property	33-35	71
— Section 2: Special jurisdiction (Articles 5 and 6)	36-47	72
a) Article 5 (1) — Contract of employment	36-44	72
b) Article 6 (1) — Co-defendants	45	73
c) Article 6 (4) — Combination of actions <i>in rem</i> and <i>in personam</i>	46-47	74
— Sections 3 and 4: Jurisdiction in matters relating to insurance (Articles 7 to 12a) and consumer contracts (Articles 13 to 15) ..	48	74
— Section 5: Exclusive jurisdiction (Article 16 — Tenancies) ...	49-54	74
— Section 6: Prorogation of jurisdiction (Articles 17 and 18) ...	55-62	76
a) Article 17 — Prorogation by an agreement	55-61	76
b) Article 18 — Submission to jurisdiction	62	78
— Section 7: Examination as to jurisdiction and admissibility (Articles 19 and 20)	63	78
— Section 8: <i>Lis pendens</i> and related actions (Articles 21 to 23) ..	64	78
— Article 21 — <i>Lis pendens</i>	64	78
— Section 9: Provisional, including protective, measures (Article 24)	65	79
— Title III: Recognition and enforcement (Articles 25 to 49)	66-71	79
— Section 1: Recognition (Articles 26 to 30)	66-67	79
— Section 2: Enforcement (Articles 31 to 45)	68-70	79
— Section 3: Common provisions (Articles 46 to 49)	71	80
— Title IV: Authentic instruments and court settlements (Articles 50 and 51)	72	80
— Title V: General provisions (Articles 52 and 53)	73	80

— Title VI: Transitional provisions (Articles 54 and 54a)	74-75	81
— Article 54 — Temporal application	74	81
— Article 54a — Maritime claims	75	81
— Title VII: Relationship to the Brussels Convention and to other conventions (Articles 54b to 57)	76-84	81
a) Article 54b — Relationship to the Brussels Convention	76	81
b) Articles 55 and 56 — Conventions concluded between Member States of EFTA	77-78	81
c) Article 57 — Conventions concluded in relation to particular matters	79-84	81
— Title VIII: Final provisions (Articles 60 to 68)	85-97	83
a) Introductory remarks	85	83
b) Article 60 — States party to the Convention	86	83
c) Article 61 — Signature, ratification and entry into force	87-88	83
d) Articles 62 and 63 — Accession	89-90	84
e) Territorial application	91-96	85
f) Territories which become independent	97	86
Chapter IV		
— <i>Protocols</i>	98-128	86
— Protocol 1 on certain questions of jurisdiction, procedure and enforcement	99-109	86
1. Introductory remarks	99	86
2. Article 1a — Swiss reservation	100-102	86
3. Article 1b — Reservation on tenancies	103	88
4. Article IV — Judicial and extrajudicial documents	104	88
5. Article V — Actions on a warranty or guarantee	105	88
6. Article Va — Jurisdiction of administrative authorities	106-107	89
7. Article Vb — Dispute between the master and a member of a ship's crew	108	89
8. Article VI — Amendment of national legislation	109	89
— Protocol 2 on the uniform interpretation of the Convention	110-119	89
1. Introductory remarks	110-111	89
2. Preamble	112	90
3. Article 1 — Duty of the courts	113-116	90
4. Article 2 — System of exchange of information	117	91
5. Article 3 — Setting up and composition of a Standing Committee ..	118	91
6. Article 4 — Convocation and tasks of the Committee	119	92
— Protocol 3 on the application of Article 57 (Community acts)	120-128	93
Chapter V		
— <i>Declarations annexed to the Convention</i>	129	96
Chapter VI		
— <i>Judgments of the Court of Justice of the European Communities concerning the interpretation of the Brussels Convention</i>	130-133	97
1. Introductory remarks	130	97
2. Content of the judgments	131	97
3. List of judgments	132	108
4. Cases pending	133	110

Annex I

— <i>The law in force in the EFTA Member States</i>	134-138	111
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Annex II

— <i>Conventions concluded by the EFTA Member States</i>	139	114
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Annex III

— <i>Final Act of the Lugano Conference</i>	-	115
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CHAPTER I

GENERAL CONSIDERATIONS

1. INTRODUCTORY REMARKS

1. The Lugano Convention, opened for signature on 16 September 1988, is concluded between the Member States of the European Communities and the Member States of the European Free Trade Association (EFTA).

It will be referred to in this report as the 'Lugano Convention' although during the preparatory proceedings it was known as the 'Parallel Convention'. It was given that name because it corresponds very closely to the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, which was concluded between the six original Community Member States⁽¹⁾ and adopted consequent upon the accession of new Member States to the Communities⁽²⁾. For convenience, that Convention, in its adopted form, will be referred to as the 'Brussels Convention'.

Although the Lugano Convention takes not only its structure but also numerous provisions from the Brussels Convention, it is nevertheless a separate instrument.

2. This report does not contain a detailed commentary on all the provisions of the Lugano Convention.

Where provisions are identical to those of the Brussels Convention, the reader should refer to the existing reports by Mr P. Jenard on the 1968 Convention, by Mr P. Schlosser on the 1978 Convention on the accession of Denmark, Ireland and the United Kingdom and by Messrs Evrigenis and Kerameus on the 1982 Convention on the accession of Greece⁽³⁾.

The provisions in force in each of the EFTA Member States on the recognition and enforcement of foreign judgments and an account of the relevant conventions concluded by those States with one another or with Member States of the Communities are not included in the body of this report but are given in Annexes I and II. This different layout from previous reports has been adopted so as not to complicate the text.

2. JUSTIFICATION FOR AND BACKGROUND TO THE LUGANO CONVENTION

3. The European Communities and EFTA are at present made up of a great many European countries who share very similar conceptions of constitu-

tional (separation of powers between the legislature, the executive and the judiciary), legal (primacy of the rule of law and the rights of the individual) and economic matters (market economy).

The two organizations differ however with regard to their objectives and institutions. That is why we felt it useful to give a brief outline.

A. THE EUROPEAN COMMUNITIES

4. The European Communities differ substantially from the other international or European organizations on account of their particular aims and the originality of their institutional machinery.

They pursue the specific objectives assigned to them by the three Treaties establishing them (ECSC, EEC and Euratom) but their ultimate objective is to establish a real European union.

The economic dimension of this union in the making is complemented by a political discussion which is expressed through the medium of European Political Cooperation, by means of which the Twelve endeavour to harmonize their foreign policies.

The construction of Europe initiated by the six founding States (Belgium, the Federal Republic of Germany, France, Italy, the Grand Duchy of Luxembourg and the Netherlands) took a step forward with the signing first of all of the Treaty of Paris (18 April 1951) which established the European Coal and Steel Community (ECSC) and subsequently (on 25 March 1957) of the two Treaties of Rome which laid the foundations of the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).

Denmark, Ireland and the United Kingdom acceded to those three Treaties on 1 January 1973 (the Nine), Greece on 1 January 1981 (the Ten), Spain and Portugal on 1 January 1986 (the Twelve).

The European Communities therefore currently comprise twelve European countries which are bound together by jointly undertaken commitments.

5. With the Single European Act, which entered into force on 1 July 1987, a new stage was reached on the path towards a European union. This new Community legal instrument aims in particular at the progressive establishment, over a period expir-

ing on 31 December 1992, of a real internal market providing for the free movement of goods, persons, services and capital. It also aims at promoting significant progress in both the monetary field and new policy sectors (in particular the environment and new technologies). It makes Community decision-making machinery more flexible in a number of fields and, by means of treaty provisions, institutionalizes European Political Cooperation.

6. The institutional architecture of the Communities rests on four pillars:

1. The Council of Ministers

The Council consists of the representatives of the Member States and each Government delegates one of its members to it, depending on the field of competence and the nature of the subjects under discussion.

The Ministers of Foreign Affairs coordinate general Community policy.

The Council of Ministers is the Communities' decision-making body. It participates in legislative power and as such is empowered to take binding measures in the form of Regulations or Directives which are directly binding on the Member States and/or their nationals. The Regulations are directly applicable in the Member States, whereas Directives have to be incorporated into national legislation.

The Council's decisions are prepared by the Permanent Representatives Committee (Coreper), composed of the Permanent Representatives of the Member States to the European Communities.

The Council's decisions are taken unanimously, by a simple majority or by a qualified majority, depending on the legal provisions on which they are based.

The Single Act aims at multiplying the cases in which a majority vote becomes standard practice, so as to expedite the proceedings of an enlarged Community.

Twice a year the European Council brings together the Heads of State or of Government of the Member States. This body, set up at the highest level on a political basis in 1975, was given Treaty recognition following the adoption of the Single Act.

Its main task is to work out guidelines and give the necessary impetus to the development of the Community process.

2. The Commission

The Commission currently consists of 17 members chosen by common agreement by the Governments.

The Commission is the most original institution in the Community's institutional machinery. It cannot be likened to a secretariat because the authors of the Treaties chose to make it the prime mover of European integration. It participates actively in the preparation and formulation of the acts of the Council by virtue of its power of initiative.

3. The Court of Justice

The role of the Court of Justice is to ensure that Community law is obeyed in the implementation of the three Treaties establishing the European Communities. Its powers are manifold and it has *inter alia* the power to give rulings in the form of judgments on the validity of the acts of Community authorities and on the interpretation of the Treaties and Community acts.

In its decisions, the Court has affirmed the precedence of Community law over Member States' constitutional and legislative provisions.

Under the Luxembourg Protocol of 3 June 1971, the Member States of the Communities conferred jurisdiction upon the Court of Justice for giving judgment on the interpretation of the 1968 Brussels Convention, which is of particular concern to us.

4. The European Parliament

Since 1979 the Members of the European Parliament have been elected by direct universal suffrage for a five-year term of office.

Although the European Parliament has quite extensive powers of political supervision in respect of the action of the Council and the Commission and in the budgetary field, it does not however have legislative powers similar to those of national Parliaments.

The Single Act contains new cooperation arrangements designed to involve the Parliament more closely in the exercise of the legislative power conferred jointly upon the Council and the Commission.

7. In conclusion, in the field under review, it should be noted that:

1. the Lugano Convention is linked to the 1968 Brussels Convention which is based on Article 220 of the Treaty establishing the European Economic Community;
2. with regard to Community acts, legislative power is mainly conferred upon the Council;

