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Proposal for a

COUNCIL REGULATION (EC)

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

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1. GENERAL

1.1. Background

By Article 2 of the Treaty on European Union, the Member States set themselves the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country.

To establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market. Reinforcement of judicial cooperation in civil matters, which many believe has developed too slowly, represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen¹.

The sound operation of the internal market creates a need to create clear rules on jurisdiction and to improve and speed up the recognition and enforcement of judgments in civil and commercial matters. To this end, rapid enforcement procedures and legal certainty as regards jurisdiction are of the essence at a time when the increasing frequency of exchanges between persons and economic operators in different Member States leads to a growth in litigation.

1.2. Work on revision of the Brussels and Lugano Conventions

On 27 September 1968, the six Member States of the European Economic Community concluded a Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (the Brussels Convention) on the basis of Article 293(4) (formerly 220(4)) of the EEC Treaty. A Protocol concerning the interpretation of the Convention by the Court of Justice of the European Communities was signed in 1971. The Convention and the Protocol, which are part of the Community *acquis*, have been extended successively to all the new Member States². The Brussels Convention was also taken as a model for the drafting of a similar Convention between the Member States and the States belonging to the European Free Trade Association – the Lugano Convention – signed on 16 September 1988³.

At its meeting on 4 and 5 December 1997 the Council instructed an ad hoc working party composed of representatives of all the Member States and the EFTA States parties to the Lugano Convention, with observers from various sources, to undertake work on the parallel revision of the Brussels and Lugano Conventions. The Commission presented a proposal for a Convention to replace

¹ Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, point 16: OJ C 19, 23.1.1999.

² The consolidated version of the Convention and the Protocol following the accession of Austria, Finland and Sweden were published in OJ C 27, 26.1.1998.

³ OJ L 319, 25.11.1988.

the Brussels Convention on the basis of Article K.3(2) of the Treaty on European Union⁴. The proposal has been presented to the European Parliament, which has not yet given its Opinion, and to the Council.

Work continued on the basis of Article 293(4) (formerly 220) of the EC Treaty, the Commission being closely involved, until the Amsterdam Treaty entered into force on 1 May 1999. On 28 May, the Council gave its political agreement on the outcome of the work done by the ad hoc working party.

2. PROPOSAL FOR A COUNCIL REGULATION

2.1. Subject-matter

The purpose of this proposal for a Regulation is to uniformise the rules of private international law in the Member States relating to jurisdiction and to improve the recognition and enforcement of judgments in civil and commercial matters. It replaces and updates the Brussels Convention of 1968 and the Protocol to it, with a view *inter alia* to take account of new forms of commerce which did not exist in 1968. The proposal broadly takes over the results of the Council ad hoc working party's revision negotiations preceding the entry into force of the Amsterdam Treaty. It thus incorporates the substance of the agreement reached in the Council on the balance needed between the interests of the different parties who might be involved in litigation. It is clear that the choice made for the purposes of achieving this balance may have consequences for those who engage in these new forms of commerce (see in particular the comments on Article 15 below).

The effect of incorporating the revision in a Community instrument will be that the new rules enter into force on a well-known, uniform and not-too-distant date. The Brussels Convention, as amended following the accession negotiations with Austria, Finland and Sweden, has not yet entered into force for all the Member States as only a minority of them have ratified it. But the Lugano Convention, to which non-member States are parties, cannot be taken over in the same way.

2.2. Legal basis

The subject-matter covered by the Convention is now within the ambit of Article 65 of the Treaty; the legal basis for this proposal is Article 61(c) of that Treaty.

The form chosen for the instrument – a regulation – is warranted by a number of considerations. The Member States cannot be left with the discretion not only to determine rules of jurisdiction, the purpose of which is to achieve certainty in the law for the benefit of individuals and economic operators, but also the procedures for the recognition and enforcement of judgments, which must be clear and uniform in all Member States.

⁴ OJ C 33, 31.1.1998.

Moreover, transparency is a vital objective in this context; it must be possible to come to an immediate uniform understanding of the rules applicable in the Community without the need to seek the provisions of national law that transpose the content of the Community instrument, bearing in mind that national law will very often be foreign to the plaintiff. And opting for a Regulation enables the Court of Justice to ensure that it is applied uniformly throughout the Member States.

The instrument falls to be adopted by the procedure of Article 67 of the Treaty, which provides that, during a transitional period of five years, the Council is to act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

The new Title IV of the EC Treaty, which applies to the matters covered by this proposal for a Directive, is not applicable in the United Kingdom and Ireland, unless they “opt in” in the manner provided by the Protocol annexed to the Treaties. At the Council meeting (Justice and Home Affairs) held on 12 March 1999, these two Member States announced their intention of being fully associated with Community activities in relation to judicial cooperation in civil matters. It will be for them to embark on the procedure of Article 3 of the Protocol in due course.

Title IV of the EC Treaty is likewise not applicable in Denmark, by virtue of the relevant Protocol. But Denmark may waive its opt-out at any time. Denmark has so far given no notice of its intention of embarking on the procedure of Article 7 of the Protocol.

The proposal has been drafted on the basis of the current situation. If the Regulation were to be applicable in one or more of these Member States, the requisite adjustments will have to be made.

3. JUSTIFICATION FOR PROPOSAL IN TERMS OF PROPORTIONALITY AND SUBSIDIARITY PRINCIPLES

What are the objectives of the proposed measure in relation to the obligations imposed on the Community?

The objectives of the proposal are to improve and expedite the free movement of judgments in civil and commercial matters within the internal market. This will contribute to the establishment of an area of freedom, security and justice within which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country. To establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.

Does the measure satisfy the criteria of subsidiarity?

Its objectives cannot be attained by the Member States acting alone and must therefore, by reason of the cross-border impact, be attained at Community level.

Are the means deployed at Community level proportional to the objectives?

The proposed instrument is confined to the minimum needed for the attainment of these objectives and does not exceed what is necessary for that purpose.

4. INDIVIDUAL PROVISIONS

4.1. General objective

Like the Convention it is to replace, the Regulation, which takes over its essential structure and most of its fundamental principles, aims to:

- introduce uniform modern standards for jurisdiction in civil and commercial matters; and
- simplify the formalities governing the rapid and automatic recognition and enforcement of the relevant judgments by a simple and uniform procedure.

4.2. Continuity

The proposed Regulation closely corresponds to the Brussels Convention and the results of the negotiations in the ad hoc working party for the revision of the Brussels and Lugano Conventions, which it takes over to a substantial extent.

The chief innovations following the work done by the working party are in the following areas:

1. Rules of jurisdiction:

- The concept of the domicile of natural persons is maintained, but there is now an autonomous definition of the seat of a legal person in place of a reference to the rules of private international law of the State in which jurisdiction is exercised. But there is still a reference to that law as regards the validity, nullity and dissolution of legal persons and decisions of their managing bodies;
- The alternative jurisdiction under Article 5(1) (contracts) has been reframed. The place of performance of the obligation underlying the claim will now be given an autonomous definition in two categories of situation: the sale of goods and the provision of services. This solution obviates the need for reference to the rules of private international law of the State whose courts are seised.

- The material scope of the provisions governing consumer contracts has been extended so as to offer consumers better protection, notably in the context of electronic commerce;
 - To make the *lis pendens* rules (Article 27) more effective, the Regulation provides an autonomous definition of the date on which a case is “pending” (Article 30).
2. Procedure for recognition and enforcement:
- The procedure has been modified to improve the time taken for the declaration of enforceability and therefore the enforcement of judgments for the creditor. In particular, the first stage of the enforcement procedure in the Member State requested becomes virtually automatic, as no grounds for non-recognition or non-enforcement may be raised automatically. A uniform certificate, containing certain basic information, will help to expedite and facilitate the procedure. The protection afforded to the claimant is maintained: he may now appeal against the decision.

4.3. Adaptations

Apart from the changes of substance described at 4.5 below, the obvious differences between the two types of instrument warrant departures from the Brussels Convention in a number of respects:

- the 1971 Protocol concerning the interpretation of the Convention by the Court of Justice of the European Communities is now superfluous in view of Articles 293 *et seq.* of the EC Treaty, which will apply here subject to Article 68. It should, however, be noted that where a case is brought in a national court before the Regulation enters into force, and the Brussels Convention accordingly applies, the Protocol will continue to apply to such case;
- Given the position of the United Kingdom, Ireland and Denmark, the specific provisions of Articles 3, 5(6), 17(3), 30(2), 31(2), 32, 37, 38(2), 40, 41, 44(2), 53(2), 54(2), 54a and 55 of the Brussels Convention are deleted;
- the formal provisions of Articles 60 to 68 of the Convention would be out of place in a Community instrument. Articles 249 and 254 of the Treaty are fully applicable to the entry into force of the Regulation. The Commission, acting under Article 211 of the Treaty, will fully assume the role of proposing amendments if need be;
- Article 59 of the Convention, which permitted the signing of bilateral agreements not to recognise judgments given against nationals of non-member countries on grounds of excess of jurisdiction would be out of place in a Community instrument. Such agreements by their very nature affect the Community rules of recognition and, after adoption of the Regulation, will be within the exclusive powers of the Community

without the need for an express provision to that effect. Articles 28(1) and 59 of the Convention have accordingly been dropped in the Regulation. But agreements already entered into between Member States and non-member countries should be preserved;

- since the Regulation will be binding on some Member States but not others, provision should be made for rules implementing the rules on jurisdiction in the Regulation and in the Brussels Convention and on recognition and enforcement under the Regulation of judgments given on the basis of the Convention;
- the Protocol annexed to the Convention is dropped. Certain articles are incorporated in the Regulation itself, either because they apply to all the Member States or because they reflect specific procedural rules of individual Member States. But some derogations in the Protocol for certain Member States have not been taken over (Articles I and Vb). If the relevant Member States wish to preserve them, they must demonstrate the need for them to be reinstated in the Regulation itself.

4.4. Comparative table

Brussels Convention ⁵	Proposal for a Regulation
Preamble	Deleted
	Recital 1 (Objective)
	Recital 2 (Unification)
	Recital 3 (Scope)
	Recital 4 (subsidiarity, proportionality)
	Recital 5 (Continuity)
	Recital 6 (Scope)
	Recital 7 (Material scope)
	Recital 8 (Geographical scope)
	Recital 9 (Coordination of instruments for judicial cooperation in the Union)
	Recital 10 (Basic jurisdiction)
	Recital 11 (Special jurisdiction)
	Recital 12 (Special protection)

⁵ OJ C 27, 26.1.1998.

	Recital 13 (New technologies)
	Recital 14 (Autonomous determination by parties)
	Recital 15 (Changes to Regulation)
	Recital 16 (Parallel proceedings)
	Recital 17 (Recognition)
	Recital 18 (Enforcement)
	Recital 19 (Redress procedures)
	Recital 20 (Transitional provisions)
	Recital 21 (Situation of United Kingdom, Ireland and Denmark)
	Recital 22 (Coordination between Regulation and Convention)
	Recital 23 (Other Community instruments)
	Recital 24 (International commitments)
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 6a	Article 7
Article 7	Article 8
Article 8	Article 9
Article 9	Article 10
Article 10	Article 11
Article 11	Article 12
Article 12	Article 13
Article 12a	Article 14

Article 13	Article 15
Article 14	Article 16
Article 15	Article 17
	Articles 18 to 21: new section
Article 16	Article 22
Article 17	Article 23
Article 18	Article 24
Article 19	Article 25
Article 20	Article 26
Article 21	Article 27
Article 22	Article 28
Article 23	Article 29
	Addition of Article 30
Article 24	Article 31
Article 25	Article 32
Article 26	Article 33
Article 27	Article 41
Article 28	Article 42
Article 29	Article 41
Article 30	Article 43
Article 31	Article 34
Article 32	Article 35
Article 33	Article 36
Article 34	Article 37 (recast)
Article 35	Article 38
Article 36 (deleted)	
Article 37 (deleted)	

	Article 39
	Article 40
Article 38	Deleted
Article 39	Article 44
Article 40 (deleted)	
Article 41 (deleted)	
Article 42	Article 45
Article 43	Article 46
Article 44	Article 47
Article 45	Article 49
	Article 52 - new
Article 46	Article 50
Article 47 (amended)	Article 50
Article 48	Article 52
Article 49	Article 53
Article 50	Article 54
Article 51	Article 55
Article 52	Article 56
Article 53	Article 57
Article 54	Article 58
Article 54a	Deleted
Article 57(3)	Article 59
	Article 60
Article 55	Article 61
Article 56	Article 62
Article 57	Article 63
	Article 64

Article 58	Deleted
Article 59	Deleted
Article 60	Deleted
Article 61	Deleted
Article 62	Article 67
Article 63	Deleted
Article 64	Deleted
Article 65	Deleted
Article 66	Deleted
Article 67 (Amendments)	Article 65 (Review)
	Article 66 (Amendment of list of courts and redress procedures)
Article 68	Deleted

4.5. Individual Articles

Given the great similarity between the current Brussels Convention and this proposal, only departures from the Convention are considered here.

Certain language versions of the proposed Regulation contain minor corrections in relation to the Convention, designed to restore perfect concordance of all versions.

Many Articles of the Convention have been taken over unchanged. For those Articles, refer to the Explanatory Reports published on the occasion of successive accessions⁶.

⁶ OJ C 59, 6.3.1979; OJ C 189, 28.7.1990.

Chapter I - Scope

Article 1

This Chapter contains a single Article, which is unchanged. The scope is the same as that of the Brussels Convention; it should be remembered that the Commission has presented a proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters⁷, and Germany and Finland have presented the Council with a proposal for a Regulation on insolvency procedures⁸.

Chapter II - Jurisdiction

Section 1 - General provisions

Article 2

This Article establishes the principle of the defendant's domicile as the general ground for jurisdiction. It contains two new paragraphs. The purpose of paragraph 3 is to make the text more transparent; it refers to Article 57 for the definition of domicile in relation to legal persons. Paragraph 4 defines the concept of "Member State" as being a Member State bound by the Regulation. Denmark, the United Kingdom and Ireland are not concerned by the Regulation. But they cannot be treated as non-member countries, either as regards the rules of jurisdiction to be applied there or as regards the recognition of judgments given there.

Article 3

The list of national grounds of jurisdiction that may be used in the Member States against defendants not domiciled in a Member State are given in Annex I to the Regulation. The Annex may be amended if need be and will be published in the Official Journal. The list has been amended very slightly to reflect a subsequent change in Italian national legislation.

Article 4

The rule determining the scope *rationae personae* distinguishes between two situations: cases where the defendant is domiciled in a non-member country and cases where the defendant is domiciled in a Member State not bound by the Regulation.

Where the defendant is domiciled in a non-member country, national rules will apply. But this rule does not operate where a court in a Member State has exclusive jurisdiction (Article 22). Nor will it operate where the defendant, although domiciled in a non-member country, has signed a contract containing a clause conferring jurisdiction on a court in a Member State. By Article 23, it is enough that one of the parties to the case (not necessarily the claimant) be domiciled in a Member State.

⁷ COM(1999) 220.

⁸ OJ C 221, 3.8.1999.

Where the defendant is domiciled in a Member State not bound by the Regulation, the Brussels Convention rules on jurisdiction will, of course, be applicable.

Section 2 - Special jurisdiction

Article 5

The Brussels Convention rule regarding contractual obligations is maintained. But to remedy the shortcomings of applying the rules of private international law of the State whose courts are seised⁹, the second subparagraph of Article 5(1) gives an autonomous definition of the place for enforcement of “the obligation in question” in two specific situations. For the sale of goods, it will be the place where, under the contract, the goods were or should have been delivered. In the case of the provision of services, it will be the place where, still under the contract, the services were or should have been provided. This pragmatic determination of the place of enforcement applies regardless of the obligation in question, even where this obligation is the payment of the financial consideration for the contract. It also applies where the claim relates to several obligations. The rule may, however, be “displaced” by an explicit agreement on the place of performance.

Where the effect of the autonomous definition is to designate a court in a non-member country, rule (a) will apply rather than rule (b). Jurisdiction will lie with the court designated by the rules of private international law of the State seised as the court for the place of performance of the obligation in question (c).

Article 5(3) covers not only cases where the harmful event has occurred but also those where it may occur. The proposed text removes an ambiguity in the interpretation of Article 5(3) of the Convention. It offers litigants a clear ground of jurisdiction for preventive measures. And since the Protocol annexed to the Brussels Convention is deleted, Article II of the Protocol (proceedings for involuntary offences before criminal courts) is incorporated here.

Article 6

Paragraph 1 explicitly makes the subjecting of cases involving several defendants to a single forum conditional on the claims being so closely linked that there is a risk of irreconcilable judgments. It expressly takes over the rule posited by the Court of Justice for the interpretation of this Article¹⁰.

Paragraph 2 contains a new subparagraph incorporating the provision earlier contained in Article V of the Protocol to the Brussels Convention in favour of Austria and Germany, where the procedural law makes no provision for claims for guarantees or intervention but only “*litis denuntiatio*” (third-party notices).

⁹ Case 12/76 *Tessili* [1976] ECR 1473 (judgment given on 6 October 1976).

¹⁰ Case 189/87 *Kalfelis v Banque Schröder* [1988] ECR 5565 (judgment given on 27 September 1988).

Section 3 - Jurisdiction in matters relating to insurance

The jurisdiction conferred by this Section is substituted for that conferred by Sections 1 and 2.

Article 8

This Article is unchanged. But in matters of reinsurance it must be interpreted as not applying in relations between insurers or in relations between insurers and reinsurers. There is no particular need for weaker-party protection. On the other hand the Article does apply actions brought by policy-holders against reinsurers.

Article 9

The right of the applicant to sue in his own courts, originally conferred by this Article solely on insurance policy-holders (first paragraph, point (2)) is now extended to the insured person and the beneficiary where they are the applicant. The objective of protecting the weaker party in the case, which warrants an exception from the principle that jurisdiction lies in the defendant's domicile in favour of the applicant's domicile, also applies to applicants who are insured persons or beneficiary, who are likewise in a weak position in relation to the insurer.

Article 11

As in Article 6, Article V of the Protocol applicable to Austria and Germany, where the procedural law makes no provision for claims for guarantees or intervention but only "*litis denuntiatio*" (third-party notices).

Articles 13 and 14

The derogation provided for by paragraph 5 of Article 13 from the strict rules governing clauses conferring jurisdiction in relation to insurance is extended to all "large risks" that are or will be defined in Article 5(d) of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Council Directives 88/357/EEC and 90/618/EEC, and to ancillary risks. Subsequent amendments to Directive 73/239/EEC will affect the scope of the concept of large risks to which Article 14 applies.

Section 4 - Jurisdiction over consumer contracts

The jurisdiction conferred by this Section is substituted for that conferred by Sections 1 and 2.

Article 15

Article 15 confirms the orientation reached in the Council concerning the need to protect consumers, as the weaker parties to a contract. The contracts traditionally covered by this Article – sale of goods on instalment credit terms and contracts for loans repayable by instalments other and similar credit arrangements to finance the sale of goods – automatically entitle the consumer to sue in the courts for his

domicile, and in this respect there is no change to the content of Article 13 of the Brussels Convention. It is also proposed that Article 15, first paragraph, point (3), be amended to extend this entitlement to all other consumer contracts, provided certain conditions are met.

The use of general terms makes clear that all the contracts mentioned in points (1), (2) and (3), whether they relate to goods or to services, are within Article 15 as long as they are consumer contracts. “Time-share” contracts¹¹ are within Article 15 and not Article 22(1)(a), unlike contracts for the sale of real property.

The criteria given in Article 13(3) of the Brussels Convention have been reframed to take account of developments in marketing techniques. For one thing, the fact that the condition in old Article 13 that the consumer must have taken the necessary steps in his State has been removed means that Article 15, first paragraph, point (3), applies to contracts concluded in a State other than the consumer’s domicile. This removes a proved deficiency in the text of old Article 13, namely that the consumer could not rely on this protective jurisdiction when he had been induced, at the cocontractor’s instigation, to leave his home State to conclude the contract. For another, the consumer can avail himself of the jurisdiction provided for by Article 16 where the contract is concluded with a person pursuing commercial or professional activities in the State of the consumer’s domicile directing such activities towards that State, provided the contract in question falls within the scope of such activities.

The concept of activities pursued in or directed towards a Member State is designed to make clear that point (3) applies to consumer contracts concluded via an interactive website accessible in the State of the consumer’s domicile. The fact that a consumer simply had knowledge of a service or possibility of buying goods via a passive website accessible in his country of domicile will not trigger the protective jurisdiction. The contract is thereby treated in the same way as a contract concluded by telephone, fax and the like, and activates the grounds of jurisdiction provided for by Article 16.

The removal of the condition in old Article 13(3)b) that the consumer must have taken necessary steps for the conclusion of the contract in his home State shall also be seen in the context of contracts concluded via an interactive website. For such contracts the place where the consumer takes these steps may be difficult or impossible to determine, and they may in any event be irrelevant to creating a link between the contract and the consumer’s State. The philosophy of new Article 15 is that the cocontractor creates the necessary link when directing his activities towards the consumer’s State.

Article 15, third paragraph, also contains an amendment. The exclusion of transport contracts does not apply where the contract covers both travel and accommodation for an all-in price (package holidays)¹².

¹¹ Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29 October 1994).

¹² Council Directive 90/314/EC of 13 June 1990 on package travel, package holidays and package tours: OJ L 158, 23.6.1990.

The Commission has noted that the wording of Article 15 has given rise to certain anxieties among part of the industry looking to develop electronic commerce. These concerns relate primarily to the fact that companies engaging in electronic commerce will have to contend with potential litigation in every Member State, or will have to specify that their products or services are not intended for consumers domiciled in certain Member States. One such concern relates to the perceived problems with the notion of "directing his activities" in Article 15, first paragraph, point (3), which is considered difficult to comprehend in the Internet world.

In order to further clarify the legal implications and requirements of electronic commerce, in particular in respect of jurisdiction and applicable law, as a result of the economic, transborder development of electronic commerce, the Commission will organise a hearing on this subject in the autumn of 1999 with the participation of regulators, legislators, consumers, industry and other interested parties.

The Commission intends to report in accordance with Article 65 on the application of Article 15 not later than two years after the entry into force of the Regulation.

Article 16

To increase consumer protection, the option available to the consumer in case of dispute is either the Member State where the other party is domiciled or the courts of the place where he is domiciled (and not the Member State where he is domiciled). This departure from the rule that the Regulation applies only to international jurisdiction and not to jurisdiction within a Member State is warranted by the concern to enable the consumer to sue the other party as close as possible to his home.

Section 5 - Jurisdiction over individual contracts of employment

The jurisdiction conferred by this Section is substituted for that conferred by Sections 1 and 2.

The provisions concerning jurisdiction in relation to employment contracts undergo little change of substance but are regrouped in a specific section as is the case for insurance and consumer contracts. The rules of jurisdiction in Articles 19 and 20 apply without prejudice to the rule laid down by Parliament and Council Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services¹³.

Article 18

Article 18(2) applies where the employer, although not domiciled in a Member State, operates a branch, agency or other establishment there. The employer is then presumed to be domiciled in a Member State. This increases the protection given the worker, considered to be the weaker party to the contract. The same protection is already available to the insurance policy-holder and is now extended to the insured and the beneficiary (Article 9(2)) and to the consumer (Article 15(2)), who again are the weaker parties enjoying enhanced protection.

¹³ OJ L 18, 21.1.1997.

Section 6 - Exclusive jurisdiction

Article 22

There is now greater flexibility in the rules derogating from the principle of jurisdiction governed by the *lex loci situationis* in respect of short-term leases (paragraph 1). To enable the defendant to be sued also in the courts for his domicile, it will now suffice for the tenant to be a natural person, irrespective of whether the landlord is a natural or a legal person, and for both landlord and tenant to be domiciled in the same Member State. This solution lies midway between the solutions accepted in the Brussels and Lugano Conventions.

Contrary to the autonomous rule now laid down in Article 57, the location of the “seat”, which is the exclusive linking factor as regards the validity, nullity and dissolution of companies, legal persons and associations, and the validity of decisions of their organs, is determined in accordance with the rules of private international law of the court seised.

Lastly, the reason for the amendment to paragraph 4 is that there are other relevant instruments governing the deposit or registration of patents, trade-marks, designs, models and the like. The exclusive jurisdiction conferred by paragraph 4 on the courts of the State of deposit or registration extends to Community and European patents. The effect of this amendment is to reinstate in the Regulation Article Vd of the Protocol since the Luxembourg Convention of 15 December 1975 has never entered into force.

Section 7 - Extension of jurisdiction

Article 23

Two amendments are made to this Article. The first (paragraph 1) confirms that the jurisdiction conferred by a choice-of-forum clause is an exclusive jurisdiction¹⁴, while enabling the parties to agree that this jurisdiction is not exclusive. This additional flexibility is warranted by the need to respect the autonomous will of the parties.

The second (paragraph 3) takes account of the development of new communication techniques. The need for an agreement “in writing or evidenced in writing” should not invalidate a choice-of-forum clause concluded in a form that is not written on paper but accessible on screen. The reference, of course, is mainly to clauses in contracts concluded by electronic means. This amendment is also directed to the objectives pursued by the Commission proposal for a Council Directive on certain legal aspects of electronic commerce in the internal market¹⁵.

¹⁴ Case 23/78 *Meeth v Glacetal* [1978] ECR 2133 (judgment given on 9 November 1978).

¹⁵ OJ C 30, 5 February 1990, COM(1998) 586.

Article 24

Certain language versions of this Article have been amended to clarify the point that a defendant who enters an appearance may contest the jurisdiction of the court seised no later than the time at which he is considered by national law as presenting his defence on the merits. In other words, the fact of presenting a defence on the merits may render the argument contesting the jurisdiction nugatory only if that argument is presented no later than the defence on the merits¹⁶.

Section 8 - Examination as to jurisdiction and admissibility

Article 26

The amendment to this Article is basically technical. Its purpose is to be coherent with the proposal for a Directive on the transmission of documents for service in the Member States of the European Union in civil and commercial matters, now before the Council¹⁷. Once this proposal has been adopted and transposed in all the Member States, the national transposal provisions will supersede the Hague Convention of 1965 on the service abroad of judicial documents in civil and commercial matters, currently in force in virtually all the Member States.

Section 9 - *Lis pendens* and related actions

No change has been made to the basic *lis pendens* and related actions machinery, which proceeds from the priority given to the court first seised. But the date on which an action is “pending” for the purposes of this section is defined autonomously, and a mistake in the framing of the related actions rule in the Brussels Convention has been corrected.

Article 28

The amendments to paragraph 2 rectify an anomaly originating in the negotiations for the 1968 Brussels Convention. To permit the stay of proceedings in the court first seised in the event of related actions, there is no need for the actions to be both pending at the first-instance stage.

But if the court second seised is minded to decline jurisdiction in favour of the first, the actions must both be pending at first instance; otherwise the parties might lose the benefit of the two-stage procedure. The court first seised must also have jurisdiction to hear the two applications and its law must permit the related actions to be joined.

¹⁶ Case 150/80 [1981] ECR 1671 (judgment given on 24 June 1981).

¹⁷ COM(1999) 219.

Article 30

This Article fills in a gap in the Brussels Convention¹⁸ by giving a definition of the date on which an action is “pending” for the purposes of Articles 27 and 28. Treating an action as “pending” when the claim has been lodged with the court has the advantage of simplicity. But this solution is particularly unfair on the party commencing proceedings in a Member State where proceedings are commenced after service on the defendant of the document instituting proceedings. Yet to consider that the case is “pending” once the complaint has been served on the defendant again has the advantage of simplicity. But this solution penalises the party which commences the proceedings in a Member State where the court must be seised before notice is served. Another, legally sound, solution consists of considering that an action is pending only when the two procedural steps of notification or service and registration of the case in the court having jurisdiction have been performed. But this solution has the negative effect of delaying the determination that there is a *lis pendens* situation.

Article 30 proposes a third course, which reconciles the various procedural systems while ensuring both that applicants will all be on an equal footing and that there can be no abuse of procedures. The date on which an action is considered to be “pending” will depend on the procedural system:

- in Member States where the claim is lodged with the court before service of the document instituting the proceedings on the defendant, the action will be pending from the date of lodging, provided the plaintiff takes all the requisite steps to have it served on the defendant. These steps will depend on the legal system: they may include transmission to the court of all material facts enabling it to serve notice of the action, or the handing over of the document already registered at the court to the competent authority for service;
- in Member States where service precedes lodging with the Court, the action becomes pending when the document is handed over to the authority responsible for service (and not on the date of actual service), provided the applicant lodges the document with the court as soon as he is required to do so by the *lex fori*.

Section 10 - Provisional, including protective, measures

Article 31

Article 31, the sole article in this section, is unchanged. Like the other provisions of the Regulation, it must be read in the light of preliminary rulings given by the Court of Justice under the Protocol to the Brussels Convention¹⁹.

¹⁸ Case 129/83 *Zelger v Salinitri* [1984] ECR 2397 (judgment given on 7 June 1984).

¹⁹ E.g. Case C-391/95 *Van Uden v Deco Line* [1998] ECR I-7091 (judgment given on 17 November 1998) and Case C-99/96 *H.H. MIETZ v Intership Yachting Sneek BV* (judgment given on 27 April 1999).

Chapter 3 - Recognition and enforcement

This Chapter deals in turn with recognition and enforcement of judgments. The sole Article in Section 1 lays down the principle of automatic recognition and refers, for formal recognition, to the *exequatur* procedure. It also provides for the possibility of relying on the grounds for non-enforcement provided for by Articles 41 and 42 in the event of recognition being an incidental issue. Section 2 sets out the procedural requirements for a declaration of enforceability.

Article 32

This Article defines what judgments may be eligible for recognition and enforcement. It also reflects specific features of procedural law in Sweden and incorporates the provisions of Article II of the Protocol annexed to the Brussels Convention.

Section 1 - Recognition

Article 33

This Article lays down the principle of automatic recognition of judgments given in the European Community. The consequence of this automatic recognition, founded on mutual trust between the Member States' judicial authorities, is that the same proceedings cannot be recommenced in another Member State.

But it may be that a party against whom judgment has been given may contest recognition. The Regulation provides that in such cases the procedure to be followed is that provided for by the section (Section 2) governing enforcement.

The question of recognition of a judgment may also be raised as an incidental issue in another action. Recognition can then be contested on the basis of one of the grounds for non-enforcement set out in Articles 41 and 42.

Section 2 - Enforcement

This Section describes the procedure to be followed either for formal recognition under Article 33(2) or for a declaration of enforceability in a Member State other than the State of origin of the judgment. The purpose of this procedure, of course, is to declare a judgment that is enforceable in the State of origin enforceable; there is no effect on actual enforcement of the judgment in the Member State addressed. The procedure is directed towards obtaining a rapid decision. Considerable changes have accordingly been made to the Brussels Convention mechanism. For one thing, the court or authority responsible for declaring the judgment enforceable in the Member State addressed has no power to proceed of its own motion to review the grounds for non-enforcement of the judgment provided for by Articles 41 and 42. These may be reviewed, if at all, only in the course of an appeal from the party against whom enforcement has been authorised. The court or competent authority is limited to making formal checks on the documents presented in support of the application; they are determined by the Regulation. Moreover, the grounds for non-recognition or non-enforcement have been narrowed down quite considerably.

Article 35

This Article governs jurisdiction to receive applications for a declaration of enforceability. The list of courts and competent authorities in the Member States that may examine applications is given at Annex II. The authorities designated may be judicial or administrative.

A degree of flexibility is introduced into paragraph 2, relating to geographic jurisdiction *ratione loci* in the enforcement procedure. Jurisdiction depends on the domicile of the party against whom enforcement is sought or by the place of enforcement.

Article 36

The purpose of paragraph 3 is to release the applicant from the need to elect an address for service within the area of jurisdiction of the competent authority applied to where an administrative authority is concerned. The same applies to appointments of representatives *ad litem*.

Article 37

In order substantially to reduce the time taken by the enforcement procedure, this Article introduces binding provisions addressed to the courts or other authorities designated pursuant to Article 35 to receive applications. They must declare the judgment enforceable immediately on completion of the formalities provided for by Article 50. In particular, the court may not of its own motion review the existence of one of the grounds for non-recognition or non-enforcement provided for by Articles 41 and 42. These grounds can be reviewed subsequently on application from the party against whom enforcement is sought, in accordance with Articles 39 and 40. In other words, an application for enforcement must not be treated as just another case. The Member States must take the requisite measures to ensure that such applications are given priority so as to avoid further complicating the judgment creditor's procedural burden. It is also particularly important that the procedure should remain *ex parte*; the defendant must not be informed of the application nor summoned to hearings which have no reason not to take place.

Articles 39 and 40

The redress procedures available to the two parties are regrouped in these two Articles, with no change of substance. Unlike the first stage of the procedure, which is entirely unilateral and must never involve hearings of the parties, these appeal procedures are of an adversarial nature.

Article 41

This Article determines the sole grounds on which a court seised of an appeal may refuse or revoke a declaration of enforceability. These grounds have been reframed in a restrictive manner to improve the free movement of judgments.

For one thing, adding the adverb “manifestly” in point 1 underscores the exceptional nature of the public policy ground. For another, the ground most commonly relied on by debtors to oppose enforcement has been modified to avoid abuses of procedure. To prevent enforcement being excluded, it will be enough for the defaulting defendant in the State of origin to have been served with notice in sufficient time and in such a way as to enable him to arrange for his defence. A mere formal irregularity in the service procedure will not debar recognition or enforcement if it has not prevented the debtor from arranging for his defence. Moreover, if the debtor was in a position to appeal in the State of origin on grounds of a procedural irregularity and has not done so, he is not entitled to invoke that procedural irregularity as a ground for refusing or revoking a declaration in the State addressed. Thirdly, the ground of failure to abide by a rule of private international law in the State addressed relating to personal status and capacity of natural persons has been dropped as these rules are gradually being approximated in the Member States. Lastly, to fill a gap in the Brussels Convention, the ground of irreconcilable judgments has been extended to cover judgments given in another Member State. Of course, the court may not review the judgment as to substance.

Article 42

This Article defines the rules of jurisdiction that may be reviewed by a court hearing an appeal pursuant to Articles 39 and 40. These are the rules of jurisdiction over insurance and consumer contracts and exclusive jurisdiction. Employment contracts are not concerned here, as any review of jurisdiction would affect only the applicant, who will generally be the worker.

Article 43

To ensure flexibility and avoid the potentially irreversible consequences of enforcement, the court hearing an appeal must be able to stay proceedings if the original judgment, although enforceable, is under appeal in the Member State of origin. It may also declare the judgment enforceable while subjecting enforcement to the provision of security. This rule must be applicable at all levels of appellate jurisdiction.

Article 44

This Article defines the rules applicable to provisional, including protective, measures to be taken by the State addressed where the foreign judgment is to be recognised under the Regulation. Firstly, the power to take provisional measures in relation to a defendant against whom enforcement is sought is implied by the declaration of enforceability. In addition, where there is a judgment on the merits provisional, including protective, measures may be applied for in accordance with the law of the Member State addressed even before the judgment on the merits has been declared enforceable by the court or other competent authority in that State. Article 44 is the extension, as it were, of Article 31. In most Member States the existence of a foreign judgment will ground a credit claim warranting provisional measures.

In all cases, the declaration of enforceability implies the power to order provisional measures and no further procedure can be required of the applicant for authorisation to order them.

Article 49

The purpose of this rule is to cut the costs of the procedure for obtaining a declaration of enforceability. It was previously in the Protocol annexed to the Brussels Convention.

Section 3 - Common provisions

Articles 50 and 51

To simplify the procedural formalities incumbent on the applicant, it is provided that the only documents of which the court or competent authority responsible for examining the appeal must be notified are a certified copy of the judgment and a certificate from the court or competent authority of the Member States of origin. The certificate (a model appears in Annex 4 to the Regulation) provides the court or competent authority in the Member States addressed with all the information it needs to declare the judgment enforceable.

Chapter IV - Authentic instruments and judicial settlements

Articles 54 and 55

The new procedure for recognition or enforcement provided for by Chapter III applies *mutatis mutandis* to authentic documents that have been drawn up and are enforceable in a Member State. The sole ground for non-recognition or non-enforcement, which can be raised only if there is an appeal, is where recognition or enforcement is manifestly contrary to public policy in the Member State addressed.

Settlements approved by a court in the course of proceedings are now treated in the same way as authentic documents. The same applies to arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them in certain Member States, notably in Scandinavia. This rule was already in Article Va of the Protocol annexed to the Brussels Convention.

Authentic documents, court settlements and arrangements relating to maintenance obligations must be accompanied by the certificate in Annex 5 to the Regulation, which provides the court or competent authority in the Member States addressed with all the information it needs to declare that it is enforceable.

Chapter V - General provisions

Article 57

The approach to determining the domicile of companies and other legal persons has changed. The definition of autonomous concepts is now the preferred approach. It is no longer necessary for a Member State to refer to its rules of private international law to locate the “seat” of a body corporate. This will avoid negative or positive conflicts of jurisdiction. The domicile of companies and other legal persons is now defined by three alternative criteria - the statutory seat, the central administration or the principal place of business. They correspond to the three criteria in Article 48 (ex-58) of the EC Treaty (right of establishment of companies within the Community).

Chapter VI - Transitional provisions

Article 58

This is the sole Article constituting the Chapter; it provides for recognition or enforcement of judgments given during the transitional period, taking over a rule already laid down by the Brussels Convention. It has been modified to allow a smooth changeover from the old instrument - the Brussels Convention - to the new one – this Regulation. Judgments given in a Member State after the date of entry into force of the Regulation but in actions begun before then are to be recognised and enforced under the Regulation if they are given by a court that enjoys jurisdiction under the Brussels Convention.

Chapter VII - Relations with other instruments

This Chapter is restructured in three sections to circumscribe and define the rules governing relations between the Regulation and, in turn, Community secondary legislation, the Brussels Convention, which will remain in force as several Member States are not bound by the Regulation, and other general or specific Conventions.

Article 59

This takes over a rule that was already in the Brussels Convention. It preserves existing and future rules on conflict of jurisdictions in sectoral Community instruments.

Article 60

The basic rule is that the Regulation replaces the Brussels Convention in relations between Member States other than the United Kingdom, Ireland and Denmark. In other words, as the criterion for application of the Regulation is still the defendant's domicile in one of the Member States bound by the Regulation, a defendant domiciled there must be sued in a court enjoying jurisdiction under the Regulation.

But if the defendant is domiciled in one of the Member States not bound by the Regulation, or if Articles 16 and 17 of the Brussels Convention confer jurisdiction on such a State, the Brussels Convention rules of jurisdiction remain applicable. This rule complements Article 4(1) allowing courts to apply their national rules in relation to defendants domiciled in a non-member country. The Regulation makes a distinction between the rules applying to a defendant domiciled in a non-member country or in a Member States not bound by the Regulation. Likewise the *lis pendens* rules of the Brussels Convention will apply where claims are made in a Member State not bound by the Regulation and in a Member State that is so bound.

In any event, judgments given in any Member State, whether or not bound by the Regulation, will be recognised and enforced in Member States bound by the Regulation. This rule amplifies the rule on jurisdiction in Article 4(3) (Chapter 1). Of course, judgments given in a Member State against a defendant domiciled in a non-member country will also be recognised and enforced under the Regulation.

Article 62 and 63

For the sake of transparency, the Regulation enumerates the specific conventions to which the Member States are parties and which will continue to apply. This closed list will be extended in light of the information to be supplied by the Member States. It should be noted that, unlike the Brussels Convention (Article 57), this provision no longer allows the Member States, after the entry into force of this Regulation, to accede to existing or future conventions governing jurisdiction and the recognition and enforcement of judgments in specific matters.

In accordance with Brussels Convention practice, judgments given in a Member State under one of the specific conventions are to be recognised and enforced in another Member State under the rules on recognition and enforcement either of the relevant convention or of the Regulation.

Article 64

The purpose of this new Article is to take account of the removal of Article 59 of the Brussels Convention, whereby a Member State, in a convention on the recognition and enforcement of judgments, could depart from the general obligations of the Convention. Such conventions are now excluded, and Article 59 is accordingly not taken over in the Regulation. But account must be taken of agreements already signed by Member States with non-member countries on the basis of Article 59. Such agreements may continue to be applied pursuant to the Regulation.

Chapter VIII - Final provisions

Article 65

This is a new Article not found in the Convention. It is for the Commission, by virtue of Article 211 of the EC Treaty, to ensure that the Regulation is applied. No later than five years after the date of adoption of the Regulation, the Commission is to report on its application, with proposals for adaptations if need be.

Article 66

This is a also new Article, providing that the Member States are to notify the Commission of changes to the lists of courts and redress procedures; the Commission is to publish them in the Official Journal of the European Communities.

Article 67

Another new provision specifies the date of entry into force, in accordance with Article 254 of the Treaty.

Proposal for a

COUNCIL REGULATION (EC)

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Parliament²,

Having regard to the Opinion of the Economic and Social Committee³,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. In order to establish progressively such an area, the Community is to adopt, amongst other things, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.
- (2) Differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities for rapid and simple recognition and enforcement of judgments are essential.
- (3) This area is within the field of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (4) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore only be achieved by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

¹ OJ.....

² OJ.....

³ OJ

- (5) On 27 September 1968 the Member States, acting under Article 293, fourth indent, of the EC Treaty, concluded the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters⁴ ("the Brussels Convention"). Work has been undertaken for the revision of that Convention, which is part of the *acquis communautaire* and has been extended to all the new Member States, and the Council has approved the content of the revised text. Continuity in the results achieved in that revision should be ensured.
- (6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.
- (7) The scope of this Regulation must cover all the main civil and commercial matters. The matters excluded from its scope must be as limited as possible.
- (8) There must be a link between proceedings to which this Regulation applies and the territory of the Member States bound by this Regulation. Common rules should accordingly apply, in principle, when the defendant is domiciled in one of those Member States.
- (9) A defendant domiciled in a third country may be subject to the rules of conflict of jurisdiction applicable in the territory of the State of the court seised, and a defendant domiciled in a Member State not bound by this Regulation must remain subject to the Brussels Convention. For the purposes of the free movement of judgments, judgments given on the basis of these rules must be recognised and enforced throughout the Community in accordance with this Regulation
- (10) The rules of jurisdiction must be highly predictable and founded on the principle jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.
- (11) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction in view of the close link between the court and the action or in order to facilitate the sound administration of justice.
- (12) In relation to insurance, employment and consumer contracts, the weaker party should be protected and there should be an exception from the general rule allowing that party in appropriate cases to bring the action in the courts for his domicile.

⁴ See consolidated text in OJ C 27, 26.1.1998, p. 1.

- (13) Account must be taken of the growing development of the new communication technologies, particularly in relation to consumers; whereas, in particular, electronic commerce in goods or services by a means accessible in another Member State constitutes an activity directed to that State. Where that other State is the State of the consumer's domicile, the consumer must be able to enjoy the protection available to him when he enters into a consumer contract by electronic means from his domicile.
- (14) The autonomy of the parties to a contract other than an employment, insurance or consumer contract to determine the courts having jurisdiction must be respected. Contractual clauses electing jurisdiction between parties with unequal negotiating strength must, however, be regulated.
- (15) The necessary flexibility must be provided for in the general rules of this Regulation in order to take account of the specific procedural rules of certain Member States. Certain provisions of the Protocol annexed to the Brussels Convention should be incorporated in this Regulation.
- (16) In the interests of the harmonious administration of justice in the Community, it is necessary to ensure that irreconcilable judgments will not be given in two Member States which have jurisdiction. There must be a clear and automatic mechanism for resolving cases of *lis pendens* and related actions and, to obviate problems flowing from national differences as to the determination of the date on which a case is regarded as pending, that date should be defined autonomously.
- (17) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.
- (18) By virtue of the same principle of mutual trust, the procedure for enforcement in one Member State of a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable must be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility of automatically raising any of the grounds for non-enforcement provided for by this Regulation.
- (19) However, respect for the rights of the defence means that the defendant must be able to seek redress, in an adversarial procedure, against the judgment given if he believes one of the grounds for non-recognition to be present. Redress procedures must also be available to the claimant where his application for a declaration of enforceability has been rejected.
- (20) Continuity between the Brussels Convention and this Regulation must be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of the Brussels Convention by the Court of Justice of the European Community⁵ and

⁵ See consolidated text in OJ C 27, 26.1.1998, p. 1 and p. 28.

the 1971 Protocol must remain applicable to cases already pending when this Regulation enters into force.

- (21) In accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and the position of Denmark⁶, those Member States are not taking part in the adoption of this Regulation. This Regulation is accordingly not binding on the United Kingdom, Ireland or Denmark and is not applicable to them.
- (22) Since the Brussels Convention remains in force in relations between the Member States that are bound by this Regulation and those that are not, there must be clear rules governing the relationship between this Regulation and the Brussels Convention.
- (23) Likewise for the sake of consistency, this Regulation should not affect rules governing jurisdiction and the recognition of judgments contained in specific Community instruments.
- (24) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.
- (25) No later than five years after the date of the entry into force of this Regulation, the Commission must review its application and propose such amendments as may appear necessary,

HAS ADOPTED THIS REGULATION:

CHAPTER I - SCOPE

Article 1

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

This Regulation 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.

⁶ OJ C 340, 10.11.1997, p. 99 and p. 101.

CHAPTER II - JURISDICTION

SECTION 1 - GENERAL PROVISIONS

Article 2

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

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

The domicile of a company or legal person shall be determined in accordance with Article 57.

The expression “Member State” means, unless otherwise provided, a Member State bound by this Regulation.

Article 3

Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7.

In particular the national rules of jurisdiction listed in Annex I shall not be applicable as against them.

Article 4

If the defendant is domiciled in a third country, the jurisdiction of the courts of each Member State shall, subject to the provisions of Articles 22 and 23, be determined by the law of that Member State.

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

If the defendant is domiciled in a Member State not bound by this Regulation, jurisdiction shall be governed by the Brussels Convention in the version in force in that Member State.

SECTION 2 - SPECIAL JURISDICTION

Article 5

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

- (1)
 - (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (b) unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered;
 - in the case of the provision of services, the place in a Member State where under the contract the services were provided or should have been provided;
 - (c) if point (b) does not apply, then point (a) applies;
- (2) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
- (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or there is a risk of it occurring;
- (4) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.

Without prejudice to more favourable national provisions, persons domiciled in a Member State who are prosecuted in a criminal court of a Member State of which they do not have the nationality for an offence committed involuntarily may be defended by persons empowered so to act, even if they do not enter an appearance in person. However, the court seised may order the defendant to appear in person; if he does not enter an appearance, recognition or enforcement of the judgment given on the civil action without the person concerned having the possibility of arranging for his defence may be refused in the other Member States;

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

- (6) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:
- (a) has been arrested to secure such payment, or
 - (b) could have been so arrested, but bail or other security has been given.

The first subparagraph shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a Member 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, provided that the claims 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;
- (2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case.

The jurisdiction conferred by the first subparagraph shall not be available in Germany or in Austria. A person domiciled in another Member State may be sued in the courts:

- of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,
 - of Austria, pursuant to Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices;
- (3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
 - (4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights *in rem* in immovable property, in the court of the Member State in which the property is situated.

Article 7

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

SECTION 3 - JURISDICTION IN MATTERS RELATING TO INSURANCE

Article 8

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

Article 9

An insurer domiciled in a Member State may be sued:

- (1) in the courts of the Member State where he is domiciled, or
- (2) in another Member State, in the case of actions brought by the policy-holder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled, or
- (3) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

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

Article 10

In respect of liability insurance or insurance of immovable property, the insurer may 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 11

In respect of liability insurance, the insurer may, if the law of the court permits it, be joined in proceedings which the injured party had brought against the insured.

The provisions of Articles 8, 9 and 10 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 court seised by virtue of the second subparagraph shall have jurisdiction over them.

The jurisdiction conferred by this Article shall not be available in Germany or in Austria. A person domiciled in another Member State may be sued in the courts:

- of Germany, pursuant to Articles 68, 72, 73 and 74 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices,
- of Austria, as provided by Article 21 of the Code of Civil Procedure (Zivilprozessordnung) concerning third-party notices.

Article 12

Without prejudice to the provisions of the third paragraph of Article 11, an insurer may bring proceedings only in the courts of the Member 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 13

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

- (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 at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State, or
- (4) which is concluded with a policy-holder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State, or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 14.

Article 14

The risks referred to in point 5 of Article 13 are the “large risks” within the meaning of Article 5(d) of Council Directive 73/239/EEC⁽⁷⁾ and any risk or interest connected therewith.

⁷ OJ L 228, 16.8.1973, p. 3.

SECTION 4 - JURISDICTION OVER CONSUMER CONTRACTS

Article 15

In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and Article 5(5), if:

- (1) it is a contract for the sale of goods on instalment credit terms; or
- (2) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (3) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several countries including that Member State, and the contract falls within the scope of such activities.

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

This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

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

The first and second paragraphs shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 17

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

- (1) which is entered into after the dispute has arisen; or
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

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

SECTION 5 - JURISDICTION OVER INDIVIDUAL CONTRACTS OF EMPLOYMENT

Article 18

In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and Article 5(5).

Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 19

An employer domiciled in a Member State may be sued:

- (1) in the courts of the Member State where he is domiciled; or
- (2) in another Member State:
 - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
 - (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

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

Article 21

The provisions of this Section may be departed from only by an agreement on jurisdiction which is entered into after the dispute has arisen, or which allows the employee to bring proceedings in courts other than those indicated in this Section.

SECTION 6 - EXCLUSIVE JURISDICTION

Article 22

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

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

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;

- (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 of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
- (3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;
- (4) in proceedings concerned with the registration or validity of patents, trade marks, designs and models, or other similar rights required to be deposited or registered, the courts of the Member 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;

Without prejudice to the powers of the European Patent Office under the Convention on the grant of European patents signed at Munich on 5 October 1973, the courts of each Member State shall have sole jurisdiction, irrespective of domicile, over the registration and validity of a European patent granted by that State;

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

SECTION 7 - PROROGATION OF JURISDICTION

Article 23

If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member 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 jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.

Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing; or
- (b) in a form which accords with practices which the parties have established between themselves; or
- (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Any communication by electronic means which can provide a durable record of the agreement shall be deemed to be in writing.

Where an agreement conferring jurisdiction is concluded by parties, none of whom is domiciled in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

Agreements conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13 and 17 or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

SECTION 8 - EXAMINATION AS TO JURISDICTION AND ADMISSIBILITY

Article 25

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

Where a defendant domiciled in one Member State is sued in a court of another Member 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 Regulation.

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 or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

National provisions transposing Council Directive [.../EC on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters]⁸ shall apply in place of the second paragraph if the document instituting the proceedings or an equivalent document had to be transmitted to another Member State in accordance with those provisions.

Until such time as national provisions transposing the Directive referred to in the third paragraph enter into force, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted to another Member State in accordance with that Convention.

SECTION 9 - LIS PENDENS - RELATED ACTIONS

Article 27

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

⁸ OJ

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 29

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

Article 30

For the purposes of this Section, a court shall be deemed to be seised:

- (1) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
- (2) if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

SECTION 10 - PROVISIONAL, INCLUDING PROTECTIVE, MEASURES

Article 31

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

CHAPTER III - RECOGNITION AND ENFORCEMENT

Article 32

For the purposes of this Regulation, “judgment” means any judgment given by a court or tribunal of a Member 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.

In Sweden, in summary proceedings for an injunction to pay (betalningsföreläggande) and assistance (handräckning), the words “judge”, “court” and “tribunal” shall include the public enforcement service (kronofogdemyndighet).

SECTION 1 - RECOGNITION

Article 33

A judgment given in a Member State shall be recognised in the other Member 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 Chapter, apply for a decision that the judgment is recognised.

If an incidental question of recognition is raised in a court of a Member State, that court shall have jurisdiction to rule on the existence of one of the grounds for non-recognition provided for by Articles 41 and 42.

SECTION 2 - ENFORCEMENT

Article 34

A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

Article 35

The application shall be submitted to the court or competent authority appearing in the list in Annex II.

The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought or to the place of enforcement.

Article 36

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

The applicant must give an address for service of process within the area of jurisdiction of the court or competent authority applied to. However, if the law of the Member 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 second paragraph shall not apply where the competent authority is an administrative authority.

The documents referred to in Article 50 shall be attached to the application.

Article 37

The judgment shall be declared enforceable immediately on completion of the formalities provided for in Article 50 without any review of the grounds of non-enforcement set out in Articles 41 and 42. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 38

The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

Article 39

The decision on the application for a declaration of enforceability may be appealed against by either party.

The appeal shall be lodged with the court appearing in the list in Annex III.

The appeal shall be dealt with in accordance with the rules governing procedure in adversarial proceedings.

If the party against whom enforcement is sought fails to appear before the court before which the appeal has been brought, Article 26 shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

An appeal against the declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the period 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 40

The judgment given on the appeal may be contested only by the proceedings referred to in Annex IV.

Article 41

The court with which an appeal is lodged under Article 39 or Article 40 shall give its decision without delay. It shall refuse or revoke a declaration of enforceability only on one of the following grounds:

- (1) if the declaration of enforceability is manifestly contrary to public policy in the Member State addressed;
- (2) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
- (3) if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State addressed;
- 4) if it is irreconcilable with an earlier judgment given in another Member State or in a third country involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

Under no circumstances may the judgment of the Member State of origin be reviewed as to its substance.

Article 42

The court with which an appeal is lodged under Article 39 or Article 40 shall refuse or revoke a declaration of enforceability if the provisions of Sections 3, 4 and 6 of Chapter II have been infringed.

In its examination of the grounds of jurisdiction referred to in the first paragraph, the court with which the appeal is lodged shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

Without prejudice to the first paragraph, the jurisdiction of the court of the Member State of origin may not be reviewed; the public-policy consideration referred to in Article 41(1) shall not affect the rules relating to jurisdiction.

Article 43

The court with which an appeal is lodged under Article 39 or Article 40 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin 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.

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

Article 44

When a judgment must be declared enforceable in accordance with this Regulation, the applicant may avail himself of provisional, including protective, measures in accordance with the law of the Member State addressed without a declaration of enforceability under Article 37 being required.

The declaration of enforceability shall carry with it the power to proceed to any protective measures.

During the time specified for an appeal pursuant to the fifth paragraph of Article 39 against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 45

Where a judgment has been given in the Member State of origin in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or the competent authority shall give it for one or more of them.

An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 46

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

Article 47

An applicant who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State addressed.

Article 48

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

Article 49

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

SECTION 3 - COMMON PROVISIONS

Article 50

A party seeking recognition or applying for a declaration of enforceability of a judgment shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

A party applying for a declaration of enforceability of a judgment shall also produce the certificate referred to in Article 51, without prejudice to Article 52.

Article 51

The court or competent authority of a Member State where the judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V.

Article 52

If the certificate provided for by Article 51 is not produced, the competent court or authority may specify a time for its production or accept equivalent documents or, if it considers that it has sufficient information before it, dispense with production thereof.

If the court or competent authority 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 Member States.

Article 53

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 50, or in respect of a document appointing a representative *ad litem*.

**CHAPTER IV - AUTHENTIC INSTRUMENTS AND
COURT SETTLEMENTS**

Article 54

A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Member State shall, in another Member State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 34 to 49. The court with which an appeal is lodged under Article 39 or 40

shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is contrary to public policy in the Member State addressed.

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

Section 3 of Title III shall apply as appropriate.

The competent authority of a Member State where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI.

Article 55

A settlement which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The competent court or authority of a Member State in which a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V.

Arrangements relating to maintenance obligations concluded before administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of the first paragraph of Article 54.

CHAPTER V - GENERAL PROVISIONS

Article 56

In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of the latter Member State.

Article 57

For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business.

CHAPTER VI - TRANSITIONAL PROVISIONS

Article 58

This Regulation 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 Regulation in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Chapter III if jurisdiction was founded upon rules which accorded with those provided for either in Chapter II, or in the Brussels Convention or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

CHAPTER VII - RELATIONS WITH OTHER INSTRUMENTS

Article 59

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments.

Article 60

This Regulation shall, as between the Member States, supersede the Brussels Convention of 1968.

However, the Brussels Convention shall always be applicable:

- (1) where the defendant is domiciled in a Member State not bound by this Regulation and Articles 16 and 17 of the Brussels Convention confer jurisdiction on the courts of that State;
- (2) in matters of *lis pendens* and related actions as referred to in Articles 21 and 22 of the Brussels Convention, where claims are made in a Member State not bound by this Regulation and a Member State that is so bound.

Judgments given in a Member State, whether or not bound by this Regulation, by a court which based its jurisdiction on the Brussels Convention shall be recognised and enforced in the Member States bound by this Regulation in accordance with Chapter III of this Regulation.

Article 61

Subject to Article 58, second paragraph, and Articles 62 and 63, this Regulation shall, as between Member States, supersede the following conventions and treaty 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 Belgium and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments relating to maintenance obligations, signed at Vienna on 25 October 1957,
- the Convention between Germany and 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 Netherlands and Italy on the recognition and enforcement of judgments in civil and commercial matters, signed at Rome on 17 April 1959,
- the Convention between Germany and Austria on the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed at Vienna on 6 June 1959,
- the Convention between Belgium and Austria on the reciprocal recognition and enforcement of judgments, arbitral awards and authentic instruments in civil and commercial matters, signed at Vienna on 16 June 1959,
- the Convention between Greece and Germany for the reciprocal recognition and enforcement of judgments, settlements and authentic instruments in civil and commercial matters, signed in Athens on 4 November 1961,
- the Convention between Belgium and Italy 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 Netherlands and Germany on the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed at The Hague on 30 August 1962,
- the Convention between the Netherlands and Austria on the reciprocal recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at The Hague on 6 February 1963,

- the Convention between France and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Vienna on 15 July 1966,
 - the Convention between Spain and France on the recognition and enforcement of judgment arbitration awards in civil and commercial matters, signed at Paris on 28 May 1969,
 - the Convention between Luxembourg and Austria on the recognition and enforcement of judgments and authentic instruments in civil and commercial matters, signed at Luxembourg on 29 July 1971,
 - the Convention between Italy and Austria on the recognition and enforcement of judgments in civil and commercial matters, of judicial settlements and of authentic instruments, signed at Rome on 16 November 1971,
 - the Convention between Spain and Italy regarding legal aid and the recognition and enforcement of judgments in civil and commercial matters, signed at Madrid on 22 May 1973,
 - the Convention between Finland, Iceland, Norway, Sweden and Denmark on the recognition and enforcement of judgments in civil matters, signed at Copenhagen on 11 October 1977,
 - the Convention between Austria and Sweden on the recognition and enforcement of judgments in civil matters, signed at Stockholm on 16 September 1982,
 - the Convention between Spain and the Federal Republic of Germany on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Bonn on 14 November 1983,
 - the Convention between Austria and Spain on the recognition and enforcement of judgments, settlements and enforceable authentic instruments in civil and commercial matters, signed at Vienna on 17 February 1984,
 - the Convention between Finland and Austria on the recognition and enforcement of judgments in civil matters, signed at Vienna on 17 November 1986,
- and
- the Treaty between Belgium, the Netherlands and Luxembourg in jurisdiction, bankruptcy, and the validity and enforcement of judgments, arbitration awards and authentic instruments, signed at Brussels on 24 November 1961, in so far as it is in force.

Article 62

The Treaty and the conventions referred to in Article 61 shall continue to have effect in relation to matters to which this Regulation 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 Regulation.

Article 63

This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. Those conventions are the following:

- Convention on the grant of European patents, signed at Munich on 5 October 1973;
- Warsaw Convention of

With a view to its uniform interpretation, the first paragraph shall be applied in the following manner:

- (1) this Regulation shall not prevent a court of a Member State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Regulation;
- (2) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.

Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation which concern the procedure for recognition and enforcement of judgments may be applied.

Article 64

This Regulation shall not affect agreements by which Member States undertook prior to the entry into force of this Regulation pursuant to Article 59 of the Brussels Convention, not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

CHAPTER VIII - FINAL PROVISIONS

Article 65

No later than five years after the entry into force of this Regulation, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, if need be, by proposals for adaptations to this Regulation.

Article 66

The Member States shall notify the Commission of the texts of their legislative provisions amending either the provisions of their legislation listed in Annex I or the courts or competent authorities indicated in Annexes II and III. The Commission shall adapt the annexes concerned accordingly.

Article 67

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX I

The rules of jurisdiction referred to in Article 3, second paragraph, (2) and 4(2) are the following:

- in Belgium: Article 15 of the Civil Code (Code civil - Burgerlijk Wetboek) and Article 638 of the Judicial Code (Code judiciaire - Gerechtelijk Wetboek);
- in the Federal Republic of Germany: Article 23 of the Code of Civil Procedure (Zivilprozeßordnung),
- in Greece, Article 40 of the Code of Civil Procedure (Κώδικας πολιτικής δικονομίας),
- in France: Articles 14 and 15 of the Civil Code (Code civil),
- in Italy: Articles 3 and 4 of Act 218 of 31 May 1995;
- in Luxembourg: Articles 14 and 15 of the Civil Code (Code civil);
- in Austria: Article 99 of the Court Jurisdiction Act (Jurisdiktionsnorm);
- in the Netherlands: Articles 126 (3) and 127 of the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering);
- in Portugal: Article 65 (1) (c), Article 65 (2) and Article 65A (c) of the Code of Civil Procedure (Código de Processo Civil) and Article 11 of the Code of Labour Procedure (Código de Processo de Trabalho),
- in Finland: the second, third and fourth sentences of the first paragraph of Section 1 of Chapter 10 of the Code of Judicial Procedure (oikeudenkäymiskaari/rättegångsbalken),
- in Sweden: the first sentence of the first paragraph of Section 3 of Chapter 10 of the Code of Judicial Procedure (rättegångsbalken).

ANNEX II

The courts or competent authorities to which the applications referred to in Article 35 may be addressed are the following:

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ANNEX III

The courts to which appeals referred to in Article 39 may be addressed are the following:

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ANNEX IV

The proceedings which may be brought pursuant to Article 40 are the following

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, an appeal in cassation,
- in Germany, a “Rechtsbeschwerde”,
- in Austria, a “Revisionsrekurs”,
- in Portugal, an appeal on a point of law,
- in Finland, an appeal to the “korkein oikeus/högsta domstolen”,
- in Sweden an appeal to the “Högsta domstolen”.

ANNEX V

Certificate referred to in Articles 51 and 55 of Council Regulation (EC) No

(English, Inglès, anglais)

- 1. Country of origin
- 2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel/Fax/E-mail
- 3. Court which delivered the judgment /approved the court settlement
 - 3.1. Type of court
 - 3.2. Place of court
- 4. Judgment/court settlement
 - 4.1. Date
 - 4.2. Reference number
 - 4.3. The Parties to the judgment/court settlement
 - 4.3.1. Name(s) of plaintiff(s)
 - 4.3.2. Name(s) of defendant(s)
 - 4.3.3. Name(s) of other party(ies), if any
 - 4.4. Judgment was given in default of appearance
 - 4.4.1. Date of service of the document instituting the proceedings
 - 4.5. Text of the order as annexed to this certificate
- 5. Names of parties to whom legal aid has been granted

The judgment/court settlement is enforceable in the State of origin (Articles 24 and 55 of the Regulation) against:

Name :

Done at....., date.....
Signature and/or stamp

ANNEX VI

Certificate referred to in Article 54 of Council Regulation (EC) No

(English, Inglès, anglais)

1. Country of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel/Fax/E-mail
3. Authority which has given authenticity to the instrument
 - 3.1. Authority involved in the drawing up of the authentic instrument (if applicable)
 - 3.1.1. Name and designation of authority
 - 3.1.2. Place of authority
 - 3.2. Authority which has registered the authentic instrument (if applicable)
 - 3.2.1. Type of authority
 - 3.2.2. Place of authority
4. Authentic instrument
 - 4.1. Description of the instrument
 - 4.2. Date
 - 4.2.1. on which the instrument was drawn up
 - 4.2.2. if different: on which the instrument was registered
 - 4.3. Reference number
 - 4.4. Parties to the instrument
 - 4.4.1. Name of the creditor
 - 4.4.2. Name of the debtor
5. Text of the enforceable obligation as annexed to this certificate.

The authentic instrument is enforceable against the debtor in the State of origin
(article 54 of the Regulation)

Name :

Done at, date
Signature and/or stamp