

Convention on the law applicable to contractual obligations (consolidated version)

First Protocol on the interpretation of the 1980 Convention by the Court of Justice
(consolidated version)

Second Protocol conferring on the Court of Justice powers to interpret the 1980 Convention
(consolidated version)

(98/C 27/02)

PRELIMINARY NOTE

The signing on 29 November 1996 of the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Rome Convention on the law applicable to contractual obligations and to the two Protocols on its interpretation by the Court of Justice has made it desirable to produce a consolidated version of the Rome convention and of those two Protocols.

These texts are accompanied by three Declarations, one made in 1980 with regard to the need for consistency between measures to be adopted on choice-of-law rules by the Community and those under the Convention, a

second, also made in 1980, on the interpretation of the Convention by the Court of Justice and a third, made in 1996, concerning compliance with the procedure provided for in Article 23 of the Rome Convention as regards carriage of goods by sea.

The text printed in this edition was drawn up by the General Secretariat of the Council, in whose archives the originals of the instruments concerned are deposited. It should be noted, however, that this text has no binding force. The official texts of the instruments consolidated are to be found in the following Official Journals.

Language version of the Official Journal	1980 Convention	1984 Accession	1988 First Protocol	1988 Second Protocol	1992 Accession Convention	1996 Accession Convention
German	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
English	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Danish	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
French	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Greek	L 146, 31. 5. 1984, p. 7	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Irish	Special Edition (L 266)	Special Edition (L 146)	Special Edition (L 48)	Special Edition (L 48)	Special Edition (L 333)	Special Edition (C 15)
Italian	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10

Language version of the Official Journal	1980 Convention	1984 Accession	1988 First Protocol	1988 Second Protocol	1992 Accession Convention	1996 Accession Convention
Dutch	L 266, 9. 10. 1980, p. 1	L 146, 31. 5. 1984, p. 1	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Spanish	Special Edition, Chapter 1, Volume 3, p. 36 (See also OJ L 333, p. 17)	Special Edition, Chapter 1, Volume 4, p. 36 (See also OJ L 333, p. 72)	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Portuguese	Special Edition, Chapter 1, Volume 3, p. 36 (See also OJ L 333, p. 7)	Special Edition, Chapter 1, Volume 4, p. 72 (See also OJ L 333, p. 74)	L 48, 20. 2. 1989, p. 1	L 48, 20. 2. 1989, p. 17	L 333, 18. 11. 1992, p. 1	C 15, 15. 1. 1997, p. 10
Finnish	C 15, 15. 1. 1997, p. 70	C 15, 15. 1. 1997, p. 66	C 15, 15. 1. 1997, p. 60	C 15, 15. 1. 1997, p. 64	C 15, 15. 1. 1997, p. 68	C 15, 15. 1. 1997, p. 53
Swedish	C 15, 15. 1. 1997, p. 70	C 15, 15. 1. 1997, p. 66	C 15, 15. 1. 1997, p. 60	C 15, 15. 1. 1997, p. 64	C 15, 15. 1. 1997, p. 68	C 15, 15. 1. 1997, p. 53

ANNEX

CONVENTION

on the law applicable to contractual obligations⁽¹⁾

opened for signature in Rome on 19 June 1980

PREAMBLE

THE HIGH CONTRACTING PARTIES to the Treaty establishing the European Economic Community,

ANXIOUS to continue in the field of private international law the work of unification of law which has already been done within the Community, in particular in the field of jurisdiction and enforcement of judgments,

WISHING to establish uniform rules concerning the law applicable to contractual obligations,

HAVE AGREED AS FOLLOWS:

TITLE I

SCOPE OF THE CONVENTION

Article 1

Scope of the Convention

1. The rules of this Convention shall apply to contractual obligations in any situation involving a choice between the laws of different countries.

2. They shall not apply to:

- (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 11;
- (b) contractual obligations relating to:
 - wills and succession,
 - rights in property arising out of a matrimonial relationship,

— rights and duties arising out of a family relationship, parentage, marriage or affinity, including maintenance obligations in respect of children who are not legitimate;

(c) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(d) arbitration agreements and agreements on the choice of court;

(c) questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organization or winding up of companies and other bodies corporate or unincorporate and the personal liability of officers and members as such for the obligations of the company or body;

(f) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party;

(g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(h) evidence and procedure, without prejudice to Article 14.

3. The rules of this Convention do not apply to contracts of insurance which cover risks situated in the territories of the Member States of the European

⁽¹⁾ Text as amended by the Convention of 10 April 1984 on the accession of the Hellenic Republic — hereafter referred to as the '1984 Accession Convention' —, by the Convention of 18 May 1992 on the accession of the Kingdom of Spain and the Portuguese Republic — hereafter referred to as the '1992 Accession Convention' — and by the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden — hereafter referred to as the '1996 Accession Convention'.

Economic Community. In order to determine whether a risk is situated in those territories the court shall apply its internal law.

4. The proceeding paragraph does not apply to contracts of re-insurance.

Article 2

Application of law of non-contracting States

Any law specified by this Convention shall be applied whether or not it is the law of a Contracting State.

TITLE II

UNIFORM RULES

Article 3

Freedom of choice

1. A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties.

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law at the country which cannot be derogated from by contract, hereinafter called 'mandatory rules'.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.

Article 4

Applicable law in the absence of choice

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the

contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a separable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.

Article 5

Certain consumer contracts

1. This Article applies to a contract the object of which is the supply of goods or services to a person ('the consumer') for a purpose which can be regarded as being outside his trade or profession, or a contract for the provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection

afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

- if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or
- if the other party or his agent received the consumer's order in that country, or
- if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer's journey was arranged by the seller for the purpose of inducing the consumer to buy.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to:

- (a) a contract of carriage;
- (b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

5. Notwithstanding the provisions of paragraph 4, this Article shall apply to a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 6

Individual employment contracts

1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

- (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or

- (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

Article 7

Mandatory rules

1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

Article 8

Material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Convention if the contract or term were valid.

2. Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph.

Article 9

Formal validity

1. A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of the country where it is concluded.

2. A contract concluded between persons who are in different countries is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of one of those countries.

3. Where a contract is concluded by an agent, the country in which the agent acts is the relevant country for the purposes of paragraphs 1 and 2.

4. An act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which under this Convention governs or would govern the contract or of the law of the country where the act was done.

5. The provisions of the preceding paragraphs shall not apply to a contract to which Article 5 applies, concluded in the circumstances described in paragraph 2 of Article 5. The formal validity of such a contract is governed by the law of the country in which the consumer has his habitual residence.

6. Notwithstanding paragraphs 1 to 4 of this Article, a contract the subject matter of which is a right in immovable property or a right to use immovable property shall be subject to the mandatory requirements of form of the law of the country where the property is situated if by that law those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract.

Article 10

Scope of applicable law

1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

- (a) interpretation;
- (b) performance;
- (c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages in so far as it is governed by rules of law;
- (d) the various ways of extinguishing obligations, and prescription and limitation of actions;
- (e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

Article 11

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law only if the other party to the contract was aware of this incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 12

Voluntary assignment

1. The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person ('the debtor') shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.

2. The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

Article 13

Subrogation

1. Where a person ('the creditor') has a contractual claim upon another ('the debtor'), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.

2. The same rule applies where several persons are subject to the same contractual claim and one of them has satisfied the creditor.

Article 14

Burden of proof, etc.

1. The law governing the contract under this Convention applies to the extent that it contains, in the law of contract, rules which raise presumptions of law or determine the burden of proof.

2. A contract or an act intended to have legal effect may be proved by any mode of proof recognized by the law of the forum or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

*Article 15***Exclusion of convoi**

The application of the law of any country specified by this Convention means the application of the rules of law in force in that country other than its rules of private international law.

*Article 16***'Ordre public'**

The application of a rule of the law of any country specified by this Convention may be refused only if such application is manifestly incompatible with the public policy ('ordre public') of the forum.

*Article 17***No retrospective effect**

This Convention shall apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State.

*Article 18***Uniform interpretation**

In the interpretation and application of the preceding uniform rules, regard shall be had to their international character and to the desirability of achieving uniformity in their interpretation and application.

*Article 19***States with more than one legal system**

1. Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Convention.

2. A State within which different territorial units have their own rules of law in respect of contractual obligations shall not be bound to apply this Convention to conflicts solely between the laws of such units.

*Article 20***Precedence of Community law**

This Convention shall not affect the application of provisions which, in relation to particular matters, lay down choice of law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts.

*Article 21***Relationship with other conventions**

This Convention shall not prejudice the application of international conventions to which a Contracting State is, or becomes, a party.

*Article 22***Reservations**

1. Any Contracting State may, at the time of signature, ratification, acceptance or approval, reserve the right not to apply:

- (a) the provisions of Article 7 (1);
- (b) the provisions of Article 10 (1) (e).

2. ...⁽¹⁾

3. Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

TITLE III

FINAL PROVISIONS

Article 23

1. If, after the date on which this Convention has entered into force for a Contracting State, that State wishes to adopt any new choice of law rule in regard to any particular category of contract within the scope of this Convention, it shall communicate its intention to the other signatory States through the Secretary-General of the Council of the European Communities.

2. Any signatory State may, within six months from the date of the communication made to the Secretary-General, request him to arrange consultations between signatory States in order to reach agreement.

3. If no signatory State has requested consultations within this period or if within two years following the communication made to the Secretary-General no agreement is reached in the course of consultations, the Contracting State concerned may amend its law in the manner indicated. The measures taken by that State shall be brought to the knowledge of the other signatory States through the Secretary-General of the Council of the European Communities.

⁽¹⁾ Paragraph deleted by Article 2 (1) of the 1992 Accession Convention.

Article 24

1. If, after the date on which this Convention has entered into force with respect to a Contracting State, that State wishes to become a party to a multilateral convention whose principal aim or one of whose principal aims is to lay down rules of private international law concerning any of the matters governed by this Convention, the procedure set out in Article 23 shall apply. However, the period of two years, referred to in paragraph 3 of that Article, shall be reduced to one year.

2. The procedure referred to in the preceding paragraph need not be followed if a Contracting State or one of the European Communities is already a party to the multilateral convention, or if its object is to revise a convention to which the State concerned is already a party, or if it is a convention concluded within the framework of the Treaties establishing the European Communities.

Article 25

If a Contracting State considers that the unification achieved by this Convention is prejudiced by the conclusion of agreements not covered by Article 24 (1), that State may request the Secretary-General of the Council of the European Communities to arrange consultations between the signatory States of this Convention.

Article 26

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

*Article 27⁽¹⁾**Article 28*

1. This Convention shall be open from 19 June 1980 for signature by the States party to the Treaty establishing the European Economic Community.

2. This Convention shall be subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall

⁽¹⁾ Article deleted by Article 2 (1) of the 1992 Accession Convention.

be deposited with the Secretary-General of the Council of the European Communities⁽²⁾.

Article 29⁽³⁾

1. This Convention shall enter into force on the first day of the third month following the deposit of the seventh instrument of ratification, acceptance or approval.

2. This Convention shall enter into force for each signatory State ratifying, accepting or approving at a later date on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

⁽²⁾ Ratification of the Accession Conventions is governed by the following provisions of those conventions:

- as regards the 1984 Accession Convention, by Article 3 of that Convention, which reads as follows:

'Article 3

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

- as regards the 1992 Accession Convention, by Article 4 of that Convention, which reads as follows:

'Article 4

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

- as regards the 1996 Accession Convention, by Article 5 of that Convention, which reads as follows:

'Article 5

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

⁽³⁾ The entry into force of the Accession Conventions is governed by the following provisions of those Conventions:

- as regards the 1984 Accession Convention, by Article 4 of that Convention, which reads as follows:

'Article 4

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and seven States which have ratified the Convention on the law applicable to contractual obligations.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.'

- as regards the 1992 Accession Convention, by Article 5 of that Convention which reads as follows:

'Article 5

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Kingdom of Spain or the Portuguese Republic and by one State which has ratified the Convention on the law applicable to contractual obligations.

Article 30

1. This Convention shall remain in force for 10 years from the date of its entry into force in accordance with Article 29 (1), even for States for which it enters into force at a later date.

2. If there has been no denunciation it shall be renewed tacitly every five years.

3. A Contracting State which wishes to denounce shall, not less than six months before the expiration of the period of 10 or five years, as the case may be, give notice to the Secretary-General of the Council of the European Communities. Denunciation may be limited to any territory to which the Convention has been extended by a declaration under Article 27 (2)⁽¹⁾.

4. The denunciation shall have effect only in relation to the State which has notified it. The Convention will remain in force as between all other Contracting States.

Article 31⁽²⁾

The Secretary-General of the Council of the European Communities shall notify the States party to the Treaty establishing the European Economic Community of:

- (a) the signatures;
- (b) deposit of each instrument of ratification, acceptance or approval;
- (c) the date of entry into force of this Convention;
- (d) communications made in pursuance of Articles 23, 24, 25, 26 and 30⁽³⁾;
- (e) the reservations and withdrawals of reservations referred to in Article 22.

Article 32

The Protocol annexed to this Convention shall form an integral part thereof.

Article 33⁽⁴⁾

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, these texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy thereof to the Government of each signatory State.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.’

- as regards the 1996 Accession Convention, by Article 6 of that Convention, which reads as follows:

‘Article 6

1. This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Republic of Austria, the Republic of Finland or the Kingdom of Sweden and by one Contracting State which has ratified the Convention on the law applicable to contractual obligations.

2. This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.’

⁽¹⁾ Phrase deleted by the 1992 Accession Convention.

⁽²⁾ Notification concerning the Accession Convention is governed by the following provisions of those Conventions:

- as regards the 1984 Accession Convention, by Article 5 of that Convention, which reads as follows:

‘Article 5

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

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.’

- as regards the 1992 Accession Convention, by Article 6 of that Convention, which reads as follows:

‘Article 6

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

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.’

- as regards the 1996 Accession Convention, by Article 7 of that Convention, which reads as follows:

‘Article 7

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

- (a) the deposit of each instrument of ratification;
- (b) the dates of entry into force of this Convention for the Contracting States.’

⁽³⁾ Point (d) as amended by the 1992 Accession Convention.

⁽⁴⁾ An indication of the authentic texts of the Accession Convention is to be found in the following provisions:

- as regards the 1984 Accession Convention, in Articles 2 and 6 of that Convention, which reads as follows:

‘Article 2

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Irish and Italian languages to the Government of the Hellenic Republic.

The text of the Convention on the law applicable to contractual obligations in the Greek language is annexed hereto. The text in the Greek language shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.’

In witness whereof the undersigned, being duly authorized thereto, having signed this Convention.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the plenipotentiaries]

'Article 6

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages, all eight texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.'

- as regards the 1992 Accession Convention, in Articles 3 and 7 of that Convention, which read as follows:

'Article 3

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages to the Governments of the Kingdom of Spain and the Portuguese Republic.

The text of the Convention on the law applicable to contractual obligations in the Portuguese and Spanish languages is set out in Annexes I and II to this Convention. The texts drawn up in the Portuguese and Spanish languages shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.'

'Article 7

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European

Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.'

- as regards the 1996 Accession Convention, in Articles 4 and 8 of that Convention, which read as follows:

'Article 4

1. The Secretary-General of the Council of the European Union shall transmit a certified copy of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992 in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Spanish and Portuguese languages to the Governments of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

2. The text of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992 in the Finnish and Swedish languages shall be authentic under the same conditions as the other texts of the Convention of 1980, the Convention of 1984, the First Protocol of 1988, the Second Protocol of 1988 and the Convention of 1992.'

'Article 8

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all 12 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Government of each signatory State.'

PROTOCOL⁽¹⁾

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

‘Notwithstanding the provisions of the Convention, Denmark, Sweden and Finland may retain national provisions concerning the law applicable to questions relating to the carriage of goods by sea and may amend such provisions without following the procedure provided for in Article 23 of the Convention of Rome. The national provisions applicable in this respect are the following:

- in Denmark, paragraphs 252 and 321 (3) and (4) of the “Solov” (maritime law),
- in Sweden, Chapter 13, Article 2 (1) and (2), and Chapter 14, Article 1 (3), of “sjölagen” (maritime law),
- in Finland, Chapter 13, Article 2 (1) and (2), and Chapter 14, Article 1 (3), of “merilaki”/“sjölagen” (maritime law).’

In witness whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

⁽¹⁾ Text as amended by the 1996 Accession Convention.

JOINT DECLARATION

At the time of the signature of the Convention on the law applicable to contractual obligations, the Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland,

- I. anxious to avoid, as far as possible, dispersion of choice of law rules among several instruments and differences between these rules, express the wish that the institutions of the European Communities, in the exercise of their powers under the Treaties by which they were established, will, where the need arises, endeavour to adopt choice of law rules which are as far as possible consistent with those of this Convention;
- II. declare their intention as from the date of signature of this Convention until becoming bound by Article 24, to consult with each other if any one of the signatory States wishes to become a party to any convention to which the procedure referred to in Article 24 would apply;
- III. having regard to the contribution of the Convention on the law applicable to contractual obligations to the unification of choice of law rules within the European Communities, express the view that any State which becomes a member of the European Communities should accede to this Convention.

In witness whereof the undersigned, being duly authorized thereto, have signed this Joint Declaration.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland,

On signing the Convention on the law applicable to contractual obligations;

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

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

Declare themselves ready:

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

In witness whereof the undersigned, being duly authorized thereto, have signed this Joint Declaration.

Done at Rome on the nineteenth day of June in the year one thousand nine hundred and eighty.

[Signatures of the Plenipotentiaries]

FIRST PROTOCOL⁽¹⁾

on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

HAVING REGARD to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

HAVE DECIDED to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

[Plenipotentiaries designated by the Member States]

WHO, meeting within the Council of the European Communities, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of:

- (a) the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as 'the Rome Convention';
- (b) the Convention on accession to the Rome Convention by the States which have become Members of the European Communities since the date on which it was opened for signature;
- (c) this Protocol.

Article 2

Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

- (a) — in Belgium:
'la Cour de cassation' ('het Hof van Cassatie') and 'le Conseil d'État' ('de Raad van State'),

- in Denmark:
'Højesteret',
- in the Federal Republic of Germany:
'die obersten Gerichtshöfe des Bundes',
- in Greece:
'Τα ανώτατα Δικαστήρια',
- in Spain:
'el Tribunal Supremo',
- in France:
'la Cour de cassation' and 'le Conseil d'État',
- in Ireland:
the Supreme Court,
- in Italy:
'la Corte suprema di cassazione' and 'il Consiglio di Stato',
- in Luxembourg:
'la Cour Supérieure de Justice', when sitting as 'Cour de cassation',
- in Austria:
the 'Oberste Gerichtshof', the 'Verwaltungsgerichtshof' and the 'Verfassungsgerichtshof',
- in the Netherlands:
'de Hoge Raad',
- in Portugal:
'o Supremo Tribunal de Justiça' and 'o Supremo Tribunal Administrativo',

⁽¹⁾ Text as amended by the 1996 Accession Convention.

— in Finland:

‘korkein oikeus/högsta domstolen’, ‘korkein hallinto-oikeus/högsta förvaltningsdomstolen’, ‘markkinatuomioistuin/marknadsdomstolen’ and ‘työtuomioistuin/arbetsdomstolen’,

— in Sweden:

‘Högsta domstolen’, ‘Regeringsrätten’, ‘Arbetsdomstolen’ and ‘Marknadsdomstolen’,

— in the United Kingdom:

the House of Lords and other courts from which no further appeal is possible;

(b) the courts of the Contracting States when acting as appeal courts.

Article 3

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the provisions contained in the instruments referred to in Article 1 if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 2. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.

2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.

3. The Procurators-General of the Supreme Courts of Appeal of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1.

4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Communities; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.

5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 4

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the instruments referred to in Article 1.

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

Article 5⁽¹⁾

This Protocol shall be subject to ratification by the Signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 6⁽²⁾

1. To enter into force, this Protocol must be ratified by seven States in respect of which the Rome Convention is in force. This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last such State to take this step. If, however, the Second Protocol conferring on the Court of Justice of the European Communities certain powers to interpret the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988⁽³⁾ enters into force on a later date, this Protocol shall enter into force on the date of entry into force of the Second Protocol.

2. Any ratification subsequent to the entry into force of this Protocol shall take effect on the first day of the third month following the deposit of the instrument of ratification, provided that the ratification, acceptance or approval of the Rome Convention by the State in question has become effective.

Article 7⁽⁴⁾

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

- (a) the deposit of each instrument of ratification;
- (b) the date of entry into force of this Protocol;
- (c) any designation communicated pursuant to Article 3 (3);
- (d) any communication made pursuant to Article 8.

Article 8

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2 (a).

⁽¹⁾ See footnote 2 on page 41.

⁽²⁾ See footnote 3 on page 41.

⁽³⁾ See page 44.

⁽⁴⁾ See footnote 2 on page 42.

Article 9

This Protocol shall have effect for as long as the Rome Convention remains in force under the conditions laid down in Article 30 of that Convention.

Article 10

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

Article 11 ⁽¹⁾

This Protocol, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Protocol.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

⁽¹⁾ See footnote 4 on page 42.

JOINT DECLARATIONS

Joint Declaration

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland,

On signing the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

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

Declare themselves ready to organize, in cooperation with the Court of Justice of the European Communities, an exchange of information on judgments which have become *res judicata* and have been handed down pursuant to the Convention on the law applicable to contractual obligations by the courts referred to in Article 2 of the said Protocol. The exchange of information will comprise:

- the forwarding to the Court of Justice by the competent national authorities of judgments handed down by the courts referred to in Article 2 (a) and significant judgments handed down by the courts referred to in Article 2 (b),
- the classification and the documentary exploitation of these judgments by the Court of Justice including, as far as necessary, the drawing up of abstracts and translations, and the publication of judgments of particular importance,
- the communication by the Court of Justice of the documentary material to the competent national authorities of the States parties to the Protocol and to the Commission and the Council of the European Communities.

In witness whereof, the undersigned Plenipotentiaries have affixed their signature below this Joint Declaration.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

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Joint Declaration

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland,

On signing the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

Having regard to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations,

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

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

Express the view that any State which becomes a member of the European Communities should accede to this Protocol.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Joint Declaration.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]

SECOND PROTOCOL

conferring on the Court of Justice of the European Communities certain powers to interpret the Convention on the law applicable to contractual obligations; opened for signature in Rome on 19 June 1980

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY,

WHEREAS the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as 'the Rome Convention', will enter into force after the deposit of the seventh instrument of ratification, acceptance or approval;

WHEREAS the uniform application of the rules laid down in the Rome Convention requires that machinery to ensure uniform interpretation be set up and whereas to that end appropriate powers should be conferred upon the Court of Justice of the European Communities, even before the Rome Convention enters into force with respect to all the Member States of the European Economic Community,

HAVE DECIDED to conclude this Protocol and to this end have designated as their Plenipotentiaries:

[Plenipotentiaries designated by the Member States]

WHO, meeting within the Council of the European Communities, having exchanged their full powers; found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

1. The Court of Justice of the European Communities shall, with respect to the Rome Convention, have the jurisdiction conferred upon it by the First Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988⁽¹⁾. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of the Court of Justice shall apply.

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

Article 2⁽²⁾

This Protocol shall be subject to ratification by the Signatory States. The instruments of ratification shall be

deposited with the Secretary-General of the Council of the European Communities.

Article 3⁽³⁾

This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification of the last Signatory State to complete that formality.

Article 4⁽⁴⁾

This Protocol, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities. The Secretary-General shall transmit a certified copy to the Government of each signatory.

⁽¹⁾ See page 34.

⁽²⁾ See footnote 2 on page 41.

⁽³⁾ See footnote 3 on page 41.

⁽⁴⁾ See footnote 4 on page 42.

In witness whereof, the undersigned Plenipotentiaries have affixed their signature below this Protocol.

Done at Brussels on the nineteenth day of December in the year one thousand nine hundred and eighty-eight.

[Signatures of the Plenipotentiaries]
