

*Status: Point in time view as at 01/05/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Civil Jurisdiction and Judgments Act 1982, TITLE VIII. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 3C

#### TEXT OF THE LUGANO CONVENTION]

##### Textual Amendments

- F1** Sch. 3C inserted (1.5.1992) by Civil Jurisdiction and Judgments Act 1991 (c. 12, SIF 45:3), s. 1(3), Sch. 1 (with s. 4); S.I. 1992/745, art. 2

### TITLE VIII

#### FINAL PROVISIONS

##### *Article 60*

The following may be parties to this Convention:

- (a) States which, at the time of the opening of this Convention for signature, are members of the European Communities or of the European Free Trade Association;
- (b) States which, after the opening of this Convention for signature, become members of the European Communities or of the European Free Trade Association;
- (c) States invited to accede in accordance with Article 62(1)(b).

##### *Article 61*

- 1 This Convention shall be opened for signature by the States members of the European Communities or of the European Free Trade Association.
- 2 The Convention shall be submitted for ratification by the signatory States. The instruments of ratification shall be deposited with the Swiss Federal Council.
- 3 The Convention shall enter into force on the first day of the third month following the date on which two States, of which one is a member of the European Communities and the other a member of the European Free Trade Association, deposit their instruments of ratification.
- 4 The Convention shall take effect in relation to any other signatory State on the first day of the third month following the deposit of its instrument of ratification.

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### Article 62

- 1 After entering into force this Convention shall be open to accession by:
- (a) the States referred to in Article 60(b);
  - (b) other States which have been invited to accede upon a request made by one of the Contracting States to the depositary State. The depositary State shall invite the State concerned to accede only if, after having communicated the contents of the communications that this State intends to make in accordance with Article 63, it has obtained the unanimous agreement of the signatory States and the Contracting States referred to in Article 60(a) and (b).
- 2 If an acceding State wishes to furnish details for the purposes of Protocol No. 1, negotiations shall be entered into to that end. A negotiating conference shall be convened by the Swiss Federal Council.
- 3 In respect of an acceding State, the Convention shall take effect on the first day of the third month following the deposit of its instrument of accession.
- 4 However, in respect of an acceding State referred to in paragraph 1(a) or (b), the Convention shall take effect only in relations between the acceding State and the Contracting States which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

### Article 63

Each acceding State shall, when depositing its instrument of accession, communicate the information required for the application of Articles 3, 32, 37, 40, 41 and 55 of this Convention and furnish, if need be, the details prescribed during the negotiations for the purposes of Protocol No. 1.

### Article 64

- 1 This Convention is concluded for an initial period of five years from the date of its entry into force in accordance with Article 61(3), even in the case of States which ratify it or accede to it after that date.
- 2 At the end of the initial five-year period, the Convention shall be automatically renewed from year to year.
- 3 Upon the expiry of the initial five-year period, any Contracting State may, at any time, denounce the Convention by sending a notification to the Swiss Federal Council.

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- 4 The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Swiss Federal Council of the notification of denunciation.

#### *Article 65*

The following are annexed to this Convention:

- a Protocol No. 1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol No. 2, on the uniform interpretation of the Convention,
- a Protocol No. 3, on the application of Article 57.

These Protocols shall form an integral part of the Convention.

#### *Article 66*

Any Contracting State may request the revision of this Convention. To that end, the Swiss Federal Council shall issue invitations to a revision conference within a period of six months from the date of the request for revision.

#### *Article 67*

The Swiss Federal Council shall notify the States represented at the Diplomatic Conference of Lugano and the States who have later acceded to the Convention of:

- (a) the deposit of each instrument of ratification or accession;
- (b) the dates of entry into force of this Convention in respect of the Contracting States;
- (c) any denunciation received pursuant to Article 64;
- (d) any declaration received pursuant to Article Ia of Protocol No. 1;
- (e) any declaration received pursuant to Article Ib of Protocol No. 1;
- (f) any declaration received pursuant to Article IV of Protocol No. 1;
- (g) any communication made pursuant to Article VI of Protocol No. 1.

#### *Article 68*

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Irish, Italian, Norwegian, Portuguese, Spanish and Swedish languages, all fourteen texts being equally authentic, shall be deposited in the archives of the Swiss Federal Council. The Swiss Federal Council shall transmit a certified copy to the Government of each State represented at the Diplomatic Conference of Lugano and to the Government of each acceding State.

### **PROTOCOL NO. 1**

#### **ON CERTAIN QUESTIONS OF JURISDICTION, PROCEDURE AND ENFORCEMENT**

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

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### *Article I*

Any person domiciled in Luxembourg who is sued in a court of another Contracting State pursuant to Article 5(1) may refuse to submit to the jurisdiction of that court. If the defendant does not enter an appearance the court shall declare of its own motion that it has no jurisdiction.

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

### *Article Ia*

- 1 Switzerland reserves the right to declare, at the time of depositing its instrument of ratification, that a judgment given in another Contracting State shall be neither recognised nor enforced in Switzerland if the following conditions are met:
  - (a) the jurisdiction of the court which has given the judgment is based only on Article 5(1) of this Convention; and
  - (b) the defendant was domiciled in Switzerland at the time of the introduction of the proceedings; for the purposes of this Article, a company or other legal person is considered to be domiciled in Switzerland if it has its registered seat and the effective centre of activities in Switzerland; and
  - (c) the defendant raises an objection to the recognition or enforcement of the judgment in Switzerland, provided that he has not waived the benefit of the declaration foreseen under this paragraph.
- 2 This reservation shall not apply to the extent that at the time recognition or enforcement is sought a derogation has been granted from Article 59 of the Swiss Federal Constitution. The Swiss Government shall communicate such derogations to the signatory States and the acceding States.
- 3 This reservation shall cease to have effect on 31 December 1999. It may be withdrawn at any time.

### *Article Ib*

Any Contracting State may, by declaration made at the time of signing or of deposit of its instrument of ratification or of accession, reserve the right, notwithstanding the provisions of Article 28, not to recognise and enforce judgments given in the other Contracting States if the jurisdiction of the court of the State of origin is based, pursuant to Article 16(1)(b), exclusively on the domicile of the defendant in the State of origin, and the property is situated in the territory of the State which entered the reservation.

### *Article II*

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person.

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However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Contracting States.

### *Article III*

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

### *Article IV*

Judicial and extrajudicial documents drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State in which service is to take place objects by declaration to the Swiss Federal Council, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.

### *Article V*

The jurisdiction specified in Articles 6(2) and 10 in actions on a warranty or guarantee or in any other third party proceedings may not be resorted to in the Federal Republic of Germany, in Spain, in Austria and in Switzerland. Any person domiciled in another Contracting State may be sued in the courts:

- of the Federal Republic of Germany, pursuant to Articles 68, 72, 73 and 74 of the code of civil procedure (*Zivilprozeßordnung*) concerning third-party notices,
- of Spain, pursuant to Article 1482 of the civil code,
- of Austria, pursuant to Article 21 of the code of civil procedure (*Zivilprozeßordnung*) concerning third-party notices,
- of Switzerland, pursuant to the appropriate provisions concerning third-party notices of the cantonal codes of civil procedure.

Judgments given in the other Contracting States by virtue of Article 6(2) or Article 10 shall be recognised and enforced in the Federal Republic of Germany, in Spain, in Austria and in Switzerland in accordance with Title III. Any effects which judgments given in these States may have on third parties by application of the provisions in the preceding paragraph shall also be recognised in the other Contracting States.

### *Article Va*

In matters relating to maintenance, the expression “court” includes the Danish, Icelandic and Norwegian administrative authorities.

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In civil and commercial matters, the expression “court” includes the Finnish ulosotonhaltija/överexekutor.

*Article Vb*

In proceedings involving a dispute between the master and a member of the crew of a sea-going ship registered in Denmark, in Greece, in Ireland, in Iceland, in Norway, in Portugal or in Sweden concerning remuneration or other conditions of service, a court in a Contracting State shall establish whether the diplomatic or consular officer responsible for the ship has been notified of the dispute. It shall stay the proceedings so long as he has not been notified. It shall of its own motion decline jurisdiction if the officer, having been duly notified, has exercised the powers accorded to him in the matter by a consular convention, or in the absence of such a convention has, within the time allowed, raised any objection to the exercise of such jurisdiction.

*Article Vc*

*(None)*

*Article Vd*

Without prejudice to the jurisdiction 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 Contracting State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State which is not a Community patent by virtue of the provision of Article 86 of the Convention for the European patent for the common market, signed at Luxembourg on 15 December 1975.

*Article VI*

The Contracting States shall communicate to the Swiss Federal Council the text of any provisions of their laws which amend either those provisions of their laws mentioned in the Convention or the lists of courts specified in Section 2 of Title III.

**PROTOCOL NO. 2**

ON THE UNIFORM INTERPRETATION OF THE CONVENTION

*Preamble*

The High Contracting Parties,

Having regard to Article 65 of this Convention,

Considering the substantial link between this Convention and the Brussels Convention,

Considering that the Court of Justice of the European Communities by virtue of the Protocol of 3 June 1971 has jurisdiction to give rulings on the interpretation of the provisions of the Brussels Convention,

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Being aware of the rulings delivered by the Court of Justice of the European Communities on the interpretation of the Brussels Convention up to the time of signature of this Convention,

Considering that the negotiations which led to the conclusion of the Convention were based on the Brussels Convention in the light of these rulings,

Desiring to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of the Convention, and of these provisions and those of the Brussels Convention which are substantially reproduced in this Convention,

Have agreed as follows:

#### *Article 1*

The courts of each Contracting State shall, when applying and interpreting the provisions of the Convention, pay due account to the principles laid down by any relevant decision delivered by courts of the other Contracting States concerning provisions of this Convention.

#### *Article 2*

- 1 The Contracting Parties agree to set up a system of exchange of information concerning judgments delivered pursuant to this Convention as well as relevant judgments under the Brussels Convention. This system shall comprise:
  - transmission to a central body by the competent authorities of judgments delivered by courts of last instance and the Court of Justice of the European Communities as well as judgments of particular importance which have become final and have been delivered pursuant to this Convention or the Brussels Convention,
  - classification of these judgments by the central body including, as far as necessary, the drawing-up and publication of translations and abstracts,
  - communication by the central body of the relevant documents to the competent national authorities of all signatories and acceding States to the Convention and to the Commission of the European Communities.
- 2 The central body is the Registrar of the Court of Justice of the European Communities.

#### *Article 3*

- 1 A Standing Committee shall be set up for the purposes of this Protocol.
- 2 The Committee shall be composed of representatives appointed by each signatory and acceding State.

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- 3 The European Communities (Commission, Court of Justice and General Secretariat of the Council) and the European Free Trade Association may attend the meetings as observers.

#### *Article 4*

- 1 At the request of a Contracting Party, the depositary of the Convention shall convene meetings of the Committee for the purpose of exchanging views on the functioning of the Convention and in particular on:
- the development of the case-law as communicated under the first paragraph first indent of Article 2,
  - the application of Article 57 of the Convention.
- 2 The Committee, in the light of these exchanges, may also examine the appropriateness of starting on particular topics a revision of the Convention and make recommendations.

### **PROTOCOL NO. 3**

#### **ON THE APPLICATION OF ARTICLE 57**

The High Contracting Parties have agreed as follows:

- 1 For the purposes of the Convention, provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are, or will be, contained in acts of the institutions of the European Communities shall be treated in the same way as the conventions referred to in paragraph 1 of Article 57.
- 2 If one Contracting State is of the opinion that a provision contained in an act of the institutions of the European Communities is incompatible with the Convention, the Contracting States shall promptly consider amending the Convention pursuant to Article 66, without prejudice to the procedure established by Protocol No. 2.



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