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## Legislation

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Contents

I *Acts whose publication is obligatory*

- ★ **Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings** ..... 1
- ★ **Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses** ..... 19
- ★ **Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters** ..... 37

2

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

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## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1346/2000****of 29 May 2000****on insolvency proceedings**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67(1) thereof,

Having regard to the initiative of the Federal Republic of Germany and the Republic of Finland,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas:

- (1) The European Union has set out the aim of establishing an area of freedom, security and justice.
- (2) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively and this Regulation needs to be adopted in order to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the Treaty.
- (3) The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.

- (4) It is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping).
- (5) These objectives cannot be achieved to a sufficient degree at national level and action at Community level is therefore justified.
- (6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.
- (7) Insolvency proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from the scope of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters<sup>(3)</sup>, as amended by the Conventions on Accession to this Convention<sup>(4)</sup>.
- (8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Community law measure which is binding and directly applicable in Member States.

<sup>(1)</sup> Opinion delivered on 2 March 2000 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion delivered on 26 January 2000 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 299, 31.12.1972, p. 32.

<sup>(4)</sup> OJ L 204, 2.8.1975, p. 28; OJ L 304, 30.10.1978, p. 1; OJ L 388, 31.12.1982, p. 1; OJ L 285, 3.10.1989, p. 1; OJ C 15, 15.1.1997, p. 1.

- (9) This Regulation should apply to insolvency proceedings, whether the debtor is a natural person or a legal person, a trader or an individual. The insolvency proceedings to which this Regulation applies are listed in the Annexes. Insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings holding funds or securities for third parties and collective investment undertakings should be excluded from the scope of this Regulation. Such undertakings should not be covered by this Regulation since they are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention.
- (10) Insolvency proceedings do not necessarily involve the intervention of a judicial authority; the expression 'court' in this Regulation should be given a broad meaning and include a person or body empowered by national law to open insolvency proceedings. In order for this Regulation to apply, proceedings (comprising acts and formalities set down in law) should not only have to comply with the provisions of this Regulation, but they should also be officially recognised and legally effective in the Member State in which the insolvency proceedings are opened and should be collective insolvency proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator.
- (11) This Regulation acknowledges the fact that as a result of widely differing substantive laws it is not practical to introduce insolvency proceedings with universal scope in the entire Community. The application without exception of the law of the State of opening of proceedings would, against this background, frequently lead to difficulties. This applies, for example, to the widely differing laws on security interests to be found in the Community. Furthermore, the preferential rights enjoyed by some creditors in the insolvency proceedings are, in some cases, completely different. This Regulation should take account of this in two different ways. On the one hand, provision should be made for special rules on applicable law in the case of particularly significant rights and legal relationships (e.g. rights in rem and contracts of employment). On the other hand, national proceedings covering only assets situated in the State of opening should also be allowed alongside main insolvency proceedings with universal scope.
- (12) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main proceedings satisfy the need for unity in the Community.
- (13) The 'centre of main interests' should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.
- (14) This Regulation applies only to proceedings where the centre of the debtor's main interests is located in the Community.
- (15) The rules of jurisdiction set out in this Regulation establish only international jurisdiction, that is to say, they designate the Member State the courts of which may open insolvency proceedings. Territorial jurisdiction within that Member State must be established by the national law of the Member State concerned.
- (16) The court having jurisdiction to open the main insolvency proceedings should be enabled to order provisional and protective measures from the time of the request to open proceedings. Preservation measures both prior to and after the commencement of the insolvency proceedings are very important to guarantee the effectiveness of the insolvency proceedings. In that connection this Regulation should afford different possibilities. On the one hand, the court competent for the main insolvency proceedings should be able also to order provisional protective measures covering assets situated in the territory of other Member States. On the other hand, a liquidator temporarily appointed prior to the opening of the main insolvency proceedings should be able, in the Member States in which an establishment belonging to the debtor is to be found, to apply for the preservation measures which are possible under the law of those States.
- (17) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and creditors of the local establishment or to cases where main proceedings cannot be opened under the law of the Member State where the debtor has the centre of his main interest. The reason for this restriction is that cases where territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary. If the main insolvency proceedings are opened, the territorial proceedings become secondary.

- (18) Following the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment is not restricted by this Regulation. The liquidator in the main proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.
- (19) Secondary insolvency proceedings may serve different purposes, besides the protection of local interests. Cases may arise where the estate of the debtor is too complex to administer as a unit or where differences in the legal systems concerned are so great that difficulties may arise from the extension of effects deriving from the law of the State of the opening to the other States where the assets are located. For this reason the liquidator in the main proceedings may request the opening of secondary proceedings when the efficient administration of the estate so requires.
- (20) Main insolvency proceedings and secondary proceedings can, however, contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators must cooperate closely, in particular by exchanging a sufficient amount of information. In order to ensure the dominant role of the main insolvency proceedings, the liquidator in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. For example, he should be able to propose a restructuring plan or composition or apply for realisation of the assets in the secondary insolvency proceedings to be suspended.
- (21) Every creditor, who has his habitual residence, domicile or registered office in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This should also apply to tax authorities and social insurance institutions. However, in order to ensure equal treatment of creditors, the distribution of proceeds must be coordinated. Every creditor should be able to keep what he has received in the course of insolvency proceedings but should be entitled only to participate in the distribution of total assets in other proceedings if creditors with the same standing have obtained the same proportion of their claims.
- (22) This Regulation should provide for immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which come within its scope and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the State in which the proceedings were opened extend to all other Member States. Recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise the court's decision.
- (23) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.
- (24) Automatic recognition of insolvency proceedings to which the law of the opening State normally applies may interfere with the rules under which transactions are carried out in other Member States. To protect legitimate expectations and the certainty of transactions in Member States other than that in which proceedings are opened, provisions should be made for a number of exceptions to the general rule.
- (25) There is a particular need for a special reference diverging from the law of the opening State in the case of rights in rem, since these are of considerable importance for the granting of credit. The basis, validity and extent of such a right in rem should therefore normally be determined according to the *lex situs* and not be affected by the opening of insolvency proceedings. The proprietor of the right in rem should therefore be able to continue to assert his right to segregation or separate settlement of the collateral security. Where assets are subject to rights in rem under the *lex situs* in one Member State but the main proceedings are being carried out in another Member State, the liquidator in the main proceedings should be able to request the opening of secondary proceedings in the jurisdiction where the rights in rem arise if the debtor has an establishment there. If a secondary proceeding is not opened, the surplus on sale of the asset covered by rights in rem must be paid to the liquidator in the main proceedings.

- (26) If a set-off is not permitted under the law of the opening State, a creditor should nevertheless be entitled to the set-off if it is possible under the law applicable to the claim of the insolvent debtor. In this way, set-off will acquire a kind of guarantee function based on legal provisions on which the creditor concerned can rely at the time when the claim arises.
- (27) There is also a need for special protection in the case of payment systems and financial markets. This applies for example to the position-closing agreements and netting agreements to be found in such systems as well as to the sale of securities and to the guarantees provided for such transactions as governed in particular by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems<sup>(1)</sup>. For such transactions, the only law which is material should thus be that applicable to the system or market concerned. This provision is intended to prevent the possibility of mechanisms for the payment and settlement of transactions provided for in the payment and set-off systems or on the regulated financial markets of the Member States being altered in the case of insolvency of a business partner. Directive 98/26/EC contains special provisions which should take precedence over the general rules in this Regulation.
- (28) In order to protect employees and jobs, the effects of insolvency proceedings on the continuation or termination of employment and on the rights and obligations of all parties to such employment must be determined by the law applicable to the agreement in accordance with the general rules on conflict of law. Any other insolvency-law questions, such as whether the employees' claims are protected by preferential rights and what status such preferential rights may have, should be determined by the law of the opening State.
- (29) For business considerations, the main content of the decision opening the proceedings should be published in the other Member States at the request of the liquidator. If there is an establishment in the Member State concerned, there may be a requirement that publication is compulsory. In neither case, however, should publication be a prior condition for recognition of the foreign proceedings.
- (30) It may be the case that some of the persons concerned are not in fact aware that proceedings have been opened
- and act in good faith in a way that conflicts with the new situation. In order to protect such persons who make a payment to the debtor because they are unaware that foreign proceedings have been opened when they should in fact have made the payment to the foreign liquidator, it should be provided that such a payment is to have a debt-discharging effect.
- (31) This Regulation should include Annexes relating to the organisation of insolvency proceedings. As these Annexes relate exclusively to the legislation of Member States, there are specific and substantiated reasons for the Council to reserve the right to amend these Annexes in order to take account of any amendments to the domestic law of the Member States.
- (32) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (33) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Scope

1. This Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator.
2. This Regulation shall not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

<sup>(1)</sup> OJ L 166, 11.6.1998, p. 45.

## Article 2

**Definitions**

For the purposes of this Regulation:

- (a) 'insolvency proceedings' shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A;
- (b) 'liquidator' shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C;
- (c) 'winding-up proceedings' shall mean insolvency proceedings within the meaning of point (a) involving realising the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by reason of the insufficiency of the assets. Those proceedings are listed in Annex B;
- (d) 'court' shall mean the judicial body or any other competent body of a Member State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;
- (e) 'judgment' in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;
- (f) 'the time of the opening of proceedings' shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;
- (g) 'the Member State in which assets are situated' shall mean, in the case of:
  - tangible property, the Member State within the territory of which the property is situated,
  - property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,
  - claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (h) 'establishment' shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

## Article 3

**International jurisdiction**

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.
2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.
3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.
4. Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:
  - (a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or
  - (b) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

## Article 4

**Law applicable**

1. Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the 'State of the opening of proceedings'.

2. The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure. It shall determine in particular:

- (a) against which debtors insolvency proceedings may be brought on account of their capacity;
- (b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
- (c) the respective powers of the debtor and the liquidator;
- (d) the conditions under which set-offs may be invoked;
- (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
- (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
- (g) the claims which are to be lodged against the debtor's estate and the treatment of claims arising after the opening of insolvency proceedings;
- (h) the rules governing the lodging, verification and admission of claims;
- (i) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;
- (j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

#### Article 5

#### Third parties' rights in rem

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- (c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- (d) a right in rem to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

#### Article 6

#### Set-off

1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

#### Article 7

#### Reservation of title

1. The opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where at the time of the opening of proceedings the asset is situated within the territory of a Member State other than the State of opening of proceedings.

2. The opening of insolvency proceedings against the seller of an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of proceedings the asset sold is situated within the territory of a Member State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).

*Article 8*

**Contracts relating to immovable property**

The effects of insolvency proceedings on a contract conferring the right to acquire or make use of immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.

*Article 9*

**Payment systems and financial markets**

1. Without prejudice to Article 5, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market.

2. Paragraph 1 shall not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under the law applicable to the relevant payment system or financial market.

*Article 10*

**Contracts of employment**

The effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

*Article 11*

**Effects on rights subject to registration**

The effects of insolvency proceedings on the rights of the debtor in immovable property, a ship or an aircraft subject to registration in a public register shall be determined by the law of the Member State under the authority of which the register is kept.

*Article 12*

**Community patents and trade marks**

For the purposes of this Regulation, a Community patent, a Community trade mark or any other similar right established by Community law may be included only in the proceedings referred to in Article 3(1).

*Article 13*

**Detrimental acts**

Article 4(2)(m) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that:

- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and
- that law does not allow any means of challenging that act in the relevant case.

*Article 14*

**Protection of third-party purchasers**

Where, by an act concluded after the opening of insolvency proceedings, the debtor disposes, for consideration, of:

- an immovable asset, or
- a ship or an aircraft subject to registration in a public register, or
- securities whose existence presupposes registration in a register laid down by law,

the validity of that act shall be governed by the law of the State within the territory of which the immovable asset is situated or under the authority of which the register is kept.

*Article 15*

**Effects of insolvency proceedings on lawsuits pending**

The effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending.

CHAPTER II

**RECOGNITION OF INSOLVENCY PROCEEDINGS**

*Article 16*

**Principle**

1. Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States.

2. Recognition of the proceedings referred to in Article 3(1) shall not preclude the opening of the proceedings referred to in Article 3(2) by a court in another Member State. The latter proceedings shall be secondary insolvency proceedings within the meaning of Chapter III.

#### Article 17

### Effects of recognition

1. The judgment opening the proceedings referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State.

2. The effects of the proceedings referred to in Article 3(2) may not be challenged in other Member States. Any restriction of the creditors' rights, in particular a stay or discharge, shall produce effects vis-à-vis assets situated within the territory of another Member State only in the case of those creditors who have given their consent.

#### Article 18

### Powers of the liquidator

1. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(1) may exercise all the powers conferred on him by the law of the State of the opening of proceedings in another Member State, as long as no other insolvency proceedings have been opened there nor any preservation measure to the contrary has been taken there further to a request for the opening of insolvency proceedings in that State. He may in particular remove the debtor's assets from the territory of the Member State in which they are situated, subject to Articles 5 and 7.

2. The liquidator appointed by a court which has jurisdiction pursuant to Article 3(2) may in any other Member State claim through the courts or out of court that moveable property was removed from the territory of the State of the opening of proceedings to the territory of that other Member State after the opening of the insolvency proceedings. He may also bring any action to set aside which is in the interests of the creditors.

3. In exercising his powers, the liquidator shall comply with the law of the Member State within the territory of which he intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures or the right to rule on legal proceedings or disputes.

#### Article 19

### Proof of the liquidator's appointment

The liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the court which has jurisdiction.

A translation into the official language or one of the official languages of the Member State within the territory of which he intends to act may be required. No legalisation or other similar formality shall be required.

#### Article 20

### Return and imputation

1. A creditor who, after the opening of the proceedings referred to in Article 3(1) obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the liquidator, subject to Articles 5 and 7.

2. In order to ensure equal treatment of creditors a creditor who has, in the course of insolvency proceedings, obtained a dividend on his claim shall share in distributions made in other proceedings only where creditors of the same ranking or category have, in those other proceedings, obtained an equivalent dividend.

#### Article 21

### Publication

1. The liquidator may request that notice of the judgment opening insolvency proceedings and, where appropriate, the decision appointing him, be published in any other Member State in accordance with the publication procedures provided for in that State. Such publication shall also specify the liquidator appointed and whether the jurisdiction rule applied is that pursuant to Article 3(1) or Article 3(2).

2. However, any Member State within the territory of which the debtor has an establishment may require mandatory publication. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) are opened shall take all necessary measures to ensure such publication.

#### Article 22

### Registration in a public register

1. The liquidator may request that the judgment opening the proceedings referred to in Article 3(1) be registered in the land register, the trade register and any other public register kept in the other Member States.

2. However, any Member State may require mandatory registration. In such cases, the liquidator or any authority empowered to that effect in the Member State where the proceedings referred to in Article 3(1) have been opened shall take all necessary measures to ensure such registration.

#### Article 23

### Costs

The costs of the publication and registration provided for in Articles 21 and 22 shall be regarded as costs and expenses incurred in the proceedings.

#### Article 24

### Honouring of an obligation to a debtor

1. Where an obligation has been honoured in a Member State for the benefit of a debtor who is subject to insolvency proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings.

2. Where such an obligation is honoured before the publication provided for in Article 21 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of insolvency proceedings; where the obligation is honoured after such publication has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

#### Article 25

### Recognition and enforceability of other judgments

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in

accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51, with the exception of Article 34(2), of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Conventions of Accession to this Convention.

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

The first subparagraph shall also apply to judgments relating to preservation measures taken after the request for the opening of insolvency proceedings.

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Convention referred to in paragraph 1, provided that that Convention is applicable.

3. The Member States shall not be obliged to recognise or enforce a judgment referred to in paragraph 1 which might result in a limitation of personal freedom or postal secrecy.

#### Article 26<sup>(1)</sup>

### Public policy

Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual.

#### CHAPTER III

### SECONDARY INSOLVENCY PROCEEDINGS

#### Article 27

### Opening of proceedings

The opening of the proceedings referred to in Article 3(1) by a court of a Member State and which is recognised in another Member State (main proceedings) shall permit the opening in that other Member State, a court of which has jurisdiction pursuant to Article 3(2), of secondary insolvency proceedings without the debtor's insolvency being examined in that other State. These latter proceedings must be among the proceedings listed in Annex B. Their effects shall be restricted to the assets of the debtor situated within the territory of that other Member State.

<sup>(1)</sup> Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

*Article 28***Applicable law**

Save as otherwise provided in this Regulation, the law applicable to secondary proceedings shall be that of the Member State within the territory of which the secondary proceedings are opened.

*Article 29***Right to request the opening of proceedings**

The opening of secondary proceedings may be requested by:

- (a) the liquidator in the main proceedings;
- (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested.

*Article 30***Advance payment of costs and expenses**

Where the law of the Member State in which the opening of secondary proceedings is requested requires that the debtor's assets be sufficient to cover in whole or in part the costs and expenses of the proceedings, the court may, when it receives such a request, require the applicant to make an advance payment of costs or to provide appropriate security.

*Article 31***Duty to cooperate and communicate information**

1. Subject to the rules restricting the communication of information, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to communicate information to each other. They shall immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.

2. Subject to the rules applicable to each of the proceedings, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to cooperate with each other.

3. The liquidator in the secondary proceedings shall give the liquidator in the main proceedings an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings.

*Article 32***Exercise of creditors' rights**

1. Any creditor may lodge his claim in the main proceedings and in any secondary proceedings.

2. The liquidators in the main and any secondary proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides.

3. The liquidator in the main or secondary proceedings shall be empowered to participate in other proceedings on the same basis as a creditor, in particular by attending creditors' meetings.

*Article 33***Stay of liquidation**

1. The court, which opened the secondary proceedings, shall stay the process of liquidation in whole or in part on receipt of a request from the liquidator in the main proceedings, provided that in that event it may require the liquidator in the main proceedings to take any suitable measure to guarantee the interests of the creditors in the secondary proceedings and of individual classes of creditors. Such a request from the liquidator may be rejected only if it is manifestly of no interest to the creditors in the main proceedings. Such a stay of the process of liquidation may be ordered for up to three months. It may be continued or renewed for similar periods.

2. The court referred to in paragraph 1 shall terminate the stay of the process of liquidation:

- at the request of the liquidator in the main proceedings,
- of its own motion, at the request of a creditor or at the request of the liquidator in the secondary proceedings if that measure no longer appears justified, in particular, by the interests of creditors in the main proceedings or in the secondary proceedings.

*Article 34***Measures ending secondary insolvency proceedings**

1. Where the law applicable to secondary proceedings allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the liquidator in the main proceedings shall be empowered to propose such a measure himself.

Closure of the secondary proceedings by a measure referred to in the first subparagraph shall not become final without the consent of the liquidator in the main proceedings; failing his agreement, however, it may become final if the financial interests of the creditors in the main proceedings are not affected by the measure proposed.

2. Any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest.

3. During a stay of the process of liquidation ordered pursuant to Article 33, only the liquidator in the main proceedings or the debtor, with the former's consent, may propose measures laid down in paragraph 1 of this Article in the secondary proceedings; no other proposal for such a measure shall be put to the vote or approved.

*Article 35***Assets remaining in the secondary proceedings**

If by the liquidation of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the liquidator appointed in those proceedings shall immediately transfer any assets remaining to the liquidator in the main proceedings.

*Article 36***Subsequent opening of the main proceedings**

Where the proceedings referred to in Article 3(1) are opened following the opening of the proceedings referred to in Article 3(2) in another Member State, Articles 31 to 35 shall apply to those opened first, in so far as the progress of those proceedings so permits.

*Article 37<sup>(1)</sup>***Conversion of earlier proceedings**

The liquidator in the main proceedings may request that proceedings listed in Annex A previously opened in another Member State be converted into winding-up proceedings if this proves to be in the interests of the creditors in the main proceedings.

The court with jurisdiction under Article 3(2) shall order conversion into one of the proceedings listed in Annex B.

*Article 38***Preservation measures**

Where the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings.

## CHAPTER IV

**PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS***Article 39***Right to lodge claims**

Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States, shall have the right to lodge claims in the insolvency proceedings in writing.

*Article 40***Duty to inform creditors**

1. As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.

<sup>(1)</sup> Note the Declaration by Portugal concerning the application of Articles 26 and 37 (OJ C 183, 30.6.2000, p. 1).

2. That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need lodge their claims.

#### Article 41

### Content of the lodgement of a claim

A creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in rem or a reservation of title in respect of the claim and what assets are covered by the guarantee he is invoking.

#### Article 42

### Languages

1. The information provided for in Article 40 shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading 'Invitation to lodge a claim. Time limits to be observed' in all the official languages of the institutions of the European Union.

2. Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that other State. In that event, however, the lodgement of his claim shall bear the heading 'Lodgement of claim' in the official language or one of the official languages of the State of the opening of proceedings. In addition, he may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings.

#### CHAPTER V

### TRANSITIONAL AND FINAL PROVISIONS

#### Article 43

### Applicability in time

The provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into force. Acts done by a debtor before the entry into force of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done.

#### Article 44

### Relationship to Conventions

1. After its entry into force, this Regulation replaces, in respect of the matters referred to therein, in the relations between Member States, the Conventions concluded between two or more Member States, in particular:

- (a) 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;
- (b) the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
- (c) the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Brussels on 28 March 1925;
- (d) the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
- (e) the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
- (f) the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- (g) the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
- (h) the Convention between the Kingdom of the Netherlands and the Federal Republic of 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;
- (i) the Convention between the United Kingdom and the Kingdom of Belgium providing for the Reciprocal Enforcement of Judgments in Civil and Commercial Matters, with Protocol, signed at Brussels on 2 May 1934;
- (j) the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 7 November 1933;
- (k) the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990.

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of this Regulation.

3. This Regulation shall not apply:

*Article 45*

#### **Amendment of the Annexes**

The Council, acting by qualified majority on the initiative of one of its members or on a proposal from the Commission, may amend the Annexes.

*Article 46*

#### **Reports**

No later than 1 June 2012, and every five years thereafter, 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 a proposal for adaptation of this Regulation.

*Article 47*

#### **Entry into force**

This Regulation shall enter into force on 31 May 2002.

(a) in any Member State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from a convention concluded by that State with one or more third countries before the entry into force of this Regulation;

(b) in the United Kingdom of Great Britain and Northern Ireland, to the extent that is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time this Regulation enters into force.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 29 May 2000.

*For the Council*

*The President*

A. COSTA

## ANNEX A

**Insolvency proceedings referred to in Article 2(a)**

## BELGIË—BELGIQUE

- Het faillissement/La faillite
- Het gerechtelijk akkoord/Le concordat judiciaire
- De collectieve schuldenregeling/Le règlement collectif de dettes

## DEUTSCHLAND

- Das Konkursverfahren
- Das gerichtliche Vergleichsverfahren
- Das Gesamtvollstreckungsverfahren
- Das Insolvenzverfahren

## ΕΛΛΑΣ

- Πτώχευση
- Η ειδική εκκαθάριση
- Η προσωρινή διαχείριση εταιρίας. Η διοίκηση και η διαχείριση των πιστωτών
- Η υπαγωγή επιχείρησης υπό επίτροπο με σκοπό τη σύναψη συμβιβασμού με τους πιστωτές

## ESPAÑA

- Concurso de acreedores
- Quiebra
- Suspensión de pagos

## FRANCE

- Liquidation judiciaire
- Redressement judiciaire avec nomination d'un administrateur

## IRELAND

- Compulsory winding up by the court
- Bankruptcy
- The administration in bankruptcy of the estate of persons dying insolvent
- Winding-up in bankruptcy of partnerships
- Creditors' voluntary winding up (with confirmation of a Court)

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution

— Company examinership

## ITALIA

- Fallimento
- Concordato preventivo
- Liquidazione coatta amministrativa
- Amministrazione straordinaria
- Amministrazione controllata

## LUXEMBOURG

- Faillite
- Gestion contrôlée
- Concordat préventif de faillite (par abandon d'actif)
- Régime spécial de liquidation du notariat

## NEDERLAND

- Het faillissement
- De surséance van betaling
- De schuldsaneringsregeling natuurlijke personen

## ÖSTERREICH

- Das Konkursverfahren
- Das Ausgleichsverfahren

## PORTUGAL

- O processo de falência
- Os processos especiais de recuperação de empresa, ou seja:
  - A concordata
  - A reconstituição empresarial
  - A reestruturação financeira
  - A gestão controlada

## SUOMI—FINLAND

- Konkurssi/konkurs
- Yrityssaneeraus/företagssanering

## SVERIGE

- Konkurs
- Företagsrekonstruktion

## UNITED KINGDOM

- Winding up by or subject to the supervision of the court
  - Creditors' voluntary winding up (with confirmation by the court)
  - Administration
  - Voluntary arrangements under insolvency legislation
  - Bankruptcy or sequestration
-

## ANNEX B

**Winding up proceedings referred to in Article 2(c)**

BELGIË—BELGIQUE	— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution
— Het faillissement/La faillite	
DEUTSCHLAND	ITALIA
— Das Konkursverfahren	— Fallimento
— Das Gesamtvollstreckungsverfahren	— Liquidazione coatta amministrativa
— Das Insolvenzverfahren	LUXEMBOURG
	— Faillite
ΕΛΛΑΣ	— Régime spécial de liquidation du notariat
— Πτώχευση	NEDERLAND
— Η ειδική εκκαθάριση	— Het faillissement
ESPAÑA	— De schuldsaneringsregeling natuurlijke personen
— Concurso de acreedores	ÖSTERREICH
— Quiebra	— Das Konkursverfahren
— Suspensión de pagos basada en la insolvencia definitiva	PORTUGAL
FRANCE	— O processo de falência
— Liquidation judiciaire	SUOMI—FINLAND
IRELAND	— Konkurssi/konkurs
— Compulsory winding up	SVERIGE
— Bankruptcy	— Konkurs
— The administration in bankruptcy of the estate of persons dying insolvent	UNITED KINGDOM
— Winding-up in bankruptcy of partnerships	— Winding up by or subject to the supervision of the court
— Creditors' voluntary winding up (with confirmation of a court)	— Creditors' voluntary winding up (with confirmation by the court)
	— Bankruptcy or sequestration

## ANNEX C

**Liquidators referred to in Article 2(b)**

## BELGIË—BELGIQUE

- De curator/Le curateur
- De commissaris inzake opschorting/Le commissaire au sursis
- De schuldbemiddelaar/Le médiateur de dettes

## DEUTSCHLAND

- Konkursverwalter
- Vergleichsverwalter
- Sachwalter (nach der Vergleichsordnung)
- Verwalter
- Insolvenzverwalter
- Sachwalter (nach der Insolvenzordnung)
- Treuhänder
- Vorläufiger Insolvenzverwalter

## ΕΛΛΑΣ

- Ο σύνδικος
- Ο προσωρινός διαχειριστής. Η διοικούσα επιτροπή των πιστωτών
- Ο ειδικός εκκαθαριστής
- Ο επίτροπος

## ESPAÑA

- Depositario-administrador
- Interventor o Interventores
- Síndicos
- Comisario

## FRANCE

- Représentant des créanciers
- Mandataire liquidateur
- Administrateur judiciaire
- Commissaire à l'exécution de plan

## IRELAND

- Liquidator
- Official Assignee
- Trustee in bankruptcy
- Provisional Liquidator
- Examiner

## ITALIA

- Curatore
- Commissario

## LUXEMBOURG

- Le curateur
- Le commissaire
- Le liquidateur
- Le conseil de gérance de la section d'assainissement du notariat

## NEDERLAND

- De curator in het faillissement
- De bewindvoerder in de surséance van betaling
- De bewindvoerder in de schuldsaneringsregeling natuurlijke personen

## ÖSTERREICH

- Masseverwalter
- Ausgleichsverwalter
- Sachwalter
- Treuhänder
- Besondere Verwalter
- Vorläufiger Verwalter
- Konkursgericht

## PORTUGAL

- Gestor judicial
- Liquidatário judicial
- Comissão de credores

## SUOMI—FINLAND

- Pesänhoitaja/boförvaltare
- Selvittäjä/utredare

## SVERIGE

- Förvaltare
- God man
- Rekonstruktör

## UNITED KINGDOM

- Liquidator
  - Supervisor of a voluntary arrangement
  - Administrator
  - Official Receiver
  - Trustee
  - Judicial factor
-

**COUNCIL REGULATION (EC) No 1347/2000****of 29 May 2000****on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas:

- (1) The Member States have 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. To establish such an area, the Community is to adopt, among others, the measures in the field of judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (2) The proper functioning of the internal market entails the need to improve and simplify the free movement of judgments in civil matters.
- (3) This is a subject now falling within the ambit of Article 65 of the Treaty.
- (4) Differences between certain national rules governing jurisdiction and enforcement hamper the free movement of persons and the sound operation of the internal market. There are accordingly grounds for enacting provisions to unify the rules of conflict of jurisdiction in matrimonial matters and in matters of parental responsibility so as to simplify the formalities for rapid and automatic recognition and enforcement of judgments.

(5) 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 be better achieved by the Community. This Regulation does not go beyond what is necessary to achieve those objectives.

(6) The Council, by an Act<sup>(4)</sup> dated 28 May 1998, drew up a Convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and recommended it for adoption by the Member States in accordance with their respective constitutional rules. Continuity in the results of the negotiations for conclusion of the Convention should be ensured. The content of this Regulation is substantially taken over from the Convention, but this Regulation contains a number of new provisions not in the Convention in order to secure consistency with certain provisions of the proposed regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

(7) In order to attain the objective of free movement of judgments in matrimonial matters and in matters of parental responsibility within the Community, it is necessary and appropriate that the cross-border recognition of jurisdiction and judgments in relation to the dissolution of matrimonial ties and to parental responsibility for the children of both spouses be governed by a mandatory, and directly applicable, Community legal instrument.

(8) The measures laid down in this Regulation should be consistent and uniform, to enable people to move as widely as possible. Accordingly, it should also apply to nationals of non-member States whose links with the territory of a Member State are sufficiently close, in keeping with the grounds of jurisdiction laid down in the Regulation.

<sup>(1)</sup> OJ C 247, 31.8.1999, p. 1.

<sup>(2)</sup> Opinion delivered on 17 November 1999 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 368, 20.12.1999, p. 23.

<sup>(4)</sup> OJ C 221, 16.7.1998; p. 1. On the same day as the Convention was drawn up, the Council took note of the explanatory report to the Convention, as prepared by Prof. Alegría Borrás. This explanatory report is set out on page 27 of the aforementioned Official Journal.

- (9) The scope of this Regulation should cover civil proceedings and non-judicial proceedings in matrimonial matters in certain States, and exclude purely religious procedures. It should therefore be provided that the reference to 'courts' includes all the authorities, judicial or otherwise, with jurisdiction in matrimonial matters.
- (10) This Regulation should be confined to proceedings relating to divorce, legal separation or marriage annulment. The recognition of divorce and annulment rulings affects only the dissolution of matrimonial ties; despite the fact that they may be interrelated, the Regulation does not affect issues such as the fault of the spouses, property consequences of the marriage, the maintenance obligation or any other ancillary measures.
- (11) This Regulation covers parental responsibility for children of both spouses on issues that are closely linked to proceedings for divorce, legal separation or marriage annulment.
- (12) The grounds of jurisdiction accepted in this Regulation are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction; the decision to include certain grounds corresponds to the fact that they exist in different national legal systems and are accepted by the other Member States.
- (13) One of the risks to be considered in relation to the protection of the children of both spouses in a marital crisis is that one of the parents will take the child to another country. The fundamental interests of the children must therefore be protected, in accordance with, in particular, the Hague Convention of 25 October 1980 on the Civil Aspects of the International Abduction of Children. The lawful habitual residence is accordingly maintained as the grounds of jurisdiction in cases where, because the child has been moved or has not been returned without lawful reason, there has been a de facto change in the habitual residence.
- (14) This Regulation does not prevent the courts of a Member State from taking provisional, including protective, measures, in urgent cases, with regard to persons or property situated in that State.
- (15) The word 'judgment' refers only to decisions that lead to divorce, legal separation or marriage annulment. Those documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State are treated as equivalent to such 'judgments'.
- (16) The recognition and enforcement of judgments given in a Member State are based on the principle of mutual trust. The grounds for non-recognition are kept to the minimum required. Those proceedings should incorporate provisions to ensure observance of public policy in the State addressed and to safeguard the rights of the defence and those of the parties, including the individual rights of any child involved, and so as to withhold recognition of irreconcilable judgments.
- (17) The State addressed should review neither the jurisdiction of the State of origin nor the findings of fact.
- (18) No procedures may be required for the updating of civil-status documents in one Member State on the basis of a final judgment given in another Member State.
- (19) The Convention concluded by the Nordic States in 1931 should be capable of application within the limits set by this Regulation.
- (20) Spain, Italy and Portugal had concluded Concordats before the matters covered by this Regulation were brought within the ambit of the Treaty: It is necessary to ensure that these States do not breach their international commitments in relation to the Holy See.
- (21) The Member States should remain free to agree among themselves on practical measures for the application of the Regulation as long as no Community measures have been taken to that end.
- (22) Annexes I to III relating to the courts and redress procedures should be amended by the Commission on the basis of amendments transmitted by the Member State concerned. Amendments to Annexes IV and V should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(1)</sup>.
- (23) No later than five years after the date of the entry into force of this Regulation, the Commission is to review its application and propose such amendments as may appear necessary.
- (24) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

(25) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### SCOPE

#### Article 1

1. This Regulation shall apply to:
  - (a) civil proceedings relating to divorce, legal separation or marriage annulment;
  - (b) civil proceedings relating to parental responsibility for the children of both spouses on the occasion of the matrimonial proceedings referred to in (a).
2. Other proceedings officially recognised in a Member State shall be regarded as equivalent to judicial proceedings. The term 'court' shall cover all the authorities with jurisdiction in these matters in the Member States.
3. In this Regulation, the term 'Member State' shall mean all Member States with the exception of Denmark.

## CHAPTER II

### JURISDICTION

#### Section 1

#### *General provisions*

#### Article 2

#### **Divorce, legal separation and marriage annulment**

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:
  - (a) in whose territory:
    - the spouses are habitually resident, or

- the spouses were last habitually resident, in so far as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his 'domicile' there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the 'domicile' of both spouses.

2. For the purpose of this Regulation, 'domicile' shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

#### Article 3

#### **Parental responsibility**

1. The Courts of a Member State exercising jurisdiction by virtue of Article 2 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in a matter relating to parental responsibility over a child of both spouses where the child is habitually resident in that Member State.
2. Where the child is not habitually resident in the Member State referred to in paragraph 1, the courts of that State shall have jurisdiction in such a matter if the child is habitually resident in one of the Member States and:
  - (a) at least one of the spouses has parental responsibility in relation to the child;

and

  - (b) the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.

3. The jurisdiction conferred by paragraphs 1 and 2 shall cease as soon as:

- (a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

or

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

or

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

#### Article 4

### Child abduction

The courts with jurisdiction within the meaning of Article 3 shall exercise their jurisdiction in conformity with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, and in particular Articles 3 and 16 thereof.

#### Article 5

### Counterclaim

The court in which proceedings are pending on the basis of Articles 2 to 4 shall also have jurisdiction to examine a counterclaim, in so far as the latter comes within the scope of this Regulation.

#### Article 6

### Conversion of legal separation into divorce

Without prejudice to Article 2, a court of a Member State which has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

#### Article 7

### Exclusive nature of jurisdiction under Articles 2 to 6

A spouse who:

(a) is habitually resident in the territory of a Member State;

or

(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her 'domicile' in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 2 to 6.

#### Article 8

### Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 2 to 6, jurisdiction shall be determined, in each Member State, by the laws of that State.

2. As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his 'domicile' within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

#### Section 2

### Examination as to jurisdiction and admissibility

#### Article 9

### Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

#### Article 10

### Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent 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.

2. Article 19 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>(1)</sup>, shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

<sup>(1)</sup> See p. 37 of this Official Journal.

3. Where the provisions of Council Regulation (EC) No 1348/2000 are not applicable, Article 15 of 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 abroad pursuant to that Convention.

### Section 3

#### **Lis pendens and dependent actions**

##### Article 11

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

2. Where proceedings for divorce, legal separation or marriage annulment not involving the same cause of action and between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

4. For the purposes of this Article, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) 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 applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

### Section 4

#### **Provisional, including protective, measures**

##### Article 12

In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

### CHAPTER III

#### **RECOGNITION AND ENFORCEMENT**

##### Article 13

#### **Meaning of 'judgment'**

1. For the purposes of this Regulation, 'judgment' means a divorce, legal separation or marriage annulment pronounced by a court of a Member State, as well as a judgment relating to the parental responsibility of the spouses given on the occasion of such matrimonial proceedings, whatever the judgment may be called, including a decree, order or decision.

2. The provisions of this chapter shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

3. For the purposes of implementing this Regulation, documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also settlements which have been approved by a court in the course of proceedings and are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as the judgments referred to in paragraph 1.

### Section 1

#### **Recognition**

##### Article 14

#### **Recognition of a judgment**

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for up-dating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another member State, and against which no further appeal lies under the law of that Member State.

3. Any interested party may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be or not be recognised.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

#### Article 15

##### Grounds of non-recognition

1. A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the respondent 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 the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;
- (c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought;

or

- (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

2. A judgment relating to the parental responsibility of the spouses given on the occasion of matrimonial proceedings as referred to in Article 13 shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
- (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

- (c) where it was given in default of appearance if the person in default 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 that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;

- (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;

- (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;

or

- (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

#### Article 16

##### Agreement with third States

A court of a Member State may, on the basis of an agreement on the recognition and enforcement of judgments, not recognise a judgment given in another Member State where, in cases provided for in Article 8, the judgment could only be founded on grounds of jurisdiction other than those specified in Articles 2 to 7.

#### Article 17

##### Prohibition of review of jurisdiction of court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Article 15(1)(a) and (2)(a) may not be applied to the rules relating to jurisdiction set out in Articles 2 to 8.

#### Article 18

##### Differences in applicable law

The recognition of a judgment relating to a divorce, legal separation or a marriage annulment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

## Article 19

**Non-review as to substance**

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

## Article 20

**Stay of proceedings**

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

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

## Section 2

**Enforcement**

## Article 21

**Enforceable judgments**

1. A judgment on the exercise of parental responsibility in respect of a child of both parties given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

## Article 22

**Jurisdiction of local courts**

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list in Annex I.

2. The local jurisdiction shall be determined by reference to the place of the habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State where enforcement is sought, the local jurisdiction shall be determined by reference to the place of enforcement.

3. In relation to procedures referred to in Article 14(3), the local jurisdiction shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

## Article 23

**Procedure for enforcement**

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

2. The applicant must give an address for service within the area of jurisdiction of the court 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*.

3. The documents referred to in Articles 32 and 33 shall be attached to the application.

## Article 24

**Decision of the court**

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

2. The application may be refused only for one of the reasons specified in Articles 15, 16 and 17.

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

## Article 25

**Notice of the decision**

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

*Article 26***Appeal against the enforcement decision**

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

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

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 10 shall apply.

5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

*Article 27***Courts of appeal and means of contest**

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

*Article 28***Stay of proceedings**

1. The court with which the appeal is lodged under Articles 26 or 27 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

*Article 29***Partial enforcement**

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

2. An applicant may request partial enforcement of a judgment.

*Article 30***Legal aid**

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 22 to 25, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State addressed.

*Article 31***Security, bond or deposit**

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 following grounds:

- (a) that he or she is not habitually resident in the Member State in which enforcement is sought; or
- (b) that he or she is either a foreign national or, where enforcement is sought in either the United Kingdom or Ireland, does not have his or her 'domicile' in either of those Member States.

## Section 3

## Article 35

**Common provisions****Legalisation or other similar formality**

## Article 32

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 32, 33 and 34(2) or in respect of a document appointing a representative *ad litem*.

**Documents**

## CHAPTER IV

**GENERAL PROVISIONS**

## Article 36

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) a certificate referred to in Article 33.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:

(a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document;

or

(b) any document indicating that the defendant has accepted the judgment unequivocally.

## Article 33

**Other documents**

The competent court or authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex IV (judgments in matrimonial matters) or Annex V (judgments on parental responsibility).

## Article 34

**Absence of documents**

1. If the documents specified in Article 32(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

2. If the Court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

**Relation with other instruments**

1. Subject to the provisions of Articles 38, 42 and paragraph 2 of this Article, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.

(2) (a) Finland and Sweden shall have the option of declaring that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of this Regulation. Such declarations shall be annexed to this Regulation and published in the *Official Journal of the European Communities*. They may be withdrawn, in whole or in part, at any moment by the said Member States<sup>(1)</sup>.

(b) The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

(c) The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in subparagraph (a) which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

(d) Judgments handed down in any of the Nordic States which have made the declaration provided for in subparagraph (a) under a forum of jurisdiction corresponding to one of those laid down in Chapter II, shall be recognised and enforced in the other Member States under the rules laid down in Chapter III.

<sup>(1)</sup> None of these Member States made this statement when the Regulation was adopted.

3. Member States shall send to the Commission:
- (a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraphs 2(a) and (c);
  - (b) any denunciations of, or amendments to, those agreements or uniform laws.

*Article 37*

**Relations with certain multilateral conventions**

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

- the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors,
- the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages,
- the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations,
- the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children,
- the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, provided that the child concerned is habitually resident in a Member State.

*Article 38*

**Extent of effects**

1. The agreements and conventions referred to in Articles 36(1) and 37 shall continue to have effect in relation to matters to which this Regulation does not apply.
2. They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic before the entry into force of this Regulation.

*Article 39*

**Agreements between Member States**

1. Two or more Member States may conclude agreements or arrangements to amplify this Regulation or to facilitate its application.

Member States shall send to the Commission:

- (a) a copy of the draft agreements;  
and
- (b) any denunciations of, or amendments to, these agreements.

2. In no circumstances may the agreements or arrangements derogate from Chapters II or III.

*Article 40*

**Treaties with the Holy See**

1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on 7 May 1940.

2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in Chapter III.

3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties (Concordats) with the Holy See:

- (a) Concordato lateranense of 11 February 1929 between Italy and the Holy See, modified by the agreement, with additional Protocol signed in Rome on 18 February 1984;
- (b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979.

4. Recognition of the decisions provided for in paragraph 2 may, in Italy or in Spain, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.

5. Member States shall send to the Commission:

- (a) a copy of the Treaties referred to in paragraphs 1 and 3;
- (b) any denunciations of or amendments to those Treaties.

*Article 41*

**Member States with two or more legal systems**

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;

- (b) any reference to nationality, or in the case of the United Kingdom 'domicile', shall refer to the territorial unit designated by the law of that State;
- (c) any reference to the authority of a Member State having received an application for divorce or legal separation or for marriage annulment shall refer to the authority of a territorial unit which has received such an application;
- (d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

## CHAPTER V

**TRANSITIONAL PROVISIONS***Article 42*

1. The provisions of this Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to settlements which have been approved by a court in the course of proceedings after its entry into force.
2. 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 on rules which accorded with those provided for either in Chapter II of this Regulation or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 29 May 2000.

## CHAPTER VI

**FINAL PROVISIONS***Article 43***Review**

No later than 1 March 2006, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, and in particular Articles 36, 39 and 40(2) thereof. The report shall be accompanied if need be by proposals for adaptations.

*Article 44***Amendment to lists of courts and redress procedures**

1. Member States shall notify the Commission of the texts amending the lists of courts and redress procedures set out in Annexes I to III. The Commission shall adapt the Annexes concerned accordingly.
2. The updating or making of technical amendments to the standard forms set out in Annexes IV and V shall be adopted in accordance with the advisory procedure set out in Article 45(2).

*Article 45*

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468 EC shall apply.
3. The committee shall adopt its rules of procedure.

*Article 46***Entry into force**

This Regulation shall enter into force on 1 March 2001

*For the Council*

*The President*

A. COSTA

## ANNEX I

The applications provided for by Article 22 shall be submitted to the following courts:

- in Belgium, the 'tribunal de première instance'/'rechtbank van eerste aanleg'/'erstinstanzliches Gericht',
  - in Germany:
    - in the district of the 'Kammergericht' (Berlin), the 'Familiengericht Pankow/Weissensee',
    - in the districts of the remaining 'Oberlandesgerichte' to the 'Familiengericht' located at the seat of the respective 'Oberlandesgericht'
  - in Greece, the 'Μονομελές Πρωτοδικείο',
  - in Spain, the 'Juzgado de Primera Instancia',
  - in France, the presiding Judge of the 'tribunal de grande instance',
  - in Ireland, the High Court,
  - in Italy, the 'Corte d'appello',
  - in Luxembourg, the presiding Judge of the 'Tribunal d'arrondissement',
  - in the Netherlands, the presiding Judge of the 'arrondissementsrechtbank',
  - in Austria, the 'Bezirksgericht',
  - in Portugal, the 'Tribunal de Comarca' or 'Tribunal de Familia',
  - in Finland, the 'käräjäoikeus'/'tingsrätt',
  - in Sweden, the 'Svea hovrätt',
  - in the United Kingdom:
    - (a) in England and Wales, the High Court of Justice;
    - (b) in Scotland, the Court of Session;
    - (c) in Northern Ireland, the High Court of Justice;
    - (d) in Gibraltar, the Supreme Court.
-

## ANNEX II

The appeal provided for by Article 26 shall be lodged with the courts listed below:

- in Belgium:
    - (a) a person applying for a declaration of enforceability may lodge an appeal with the 'cour d'appel' or the 'hof van beroep';
    - (b) the person against whom enforcement is sought may lodge opposition with the 'tribunal de première instance'/'rechtbank van eerste aanleg'/'erstinstanzliches Gericht',
  - in Germany, the 'Oberlandesgericht',
  - in Greece, the 'Εφετείο',
  - in Spain, the 'Audiencia Provincial',
  - in France, the 'Cour d'appel',
  - in Ireland, the High Court,
  - in Italy, the 'Corte d'appello',
  - Luxembourg, the 'Cour d'appel',
  - in the Netherlands:
    - (a) if the applicant or the respondent who has appeared lodges the appeal: with the 'gerechtshof';
    - (b) if the respondent who has been granted leave not to appear lodges the appeal: with the 'arrondissementsrechtbank',
  - in Austria, the 'Bezirksgericht',
  - in Portugal, the 'Tribunal da Relação',
  - in Finland, the 'hovioikeus'/'hovrätt',
  - in Sweden, the 'Svea hovrätt',
  - in the United Kingdom:
    - (a) in England and Wales, the High Court of Justice;
    - (b) in Scotland, the Court of Session;
    - (c) in Northern Ireland, the High Court of Justice;
    - (d) in Gibraltar, the Court of Appeal.
-

## ANNEX III

The appeals provided for by Article 27 may be brought only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
  - in Germany, by a 'Rechtsbeschwerde',
  - in Ireland, by an appeal on a point of law to the Supreme Court,
  - in Austria, by a 'Revisionsrekurs',
  - in Portugal, by a 'recurso restrito à matéria de direito',
  - in Finland, by an appeal to 'korkein oikeus'/'högsta domstolen',
  - in Sweden, by an appeal to the 'Högsta domstolen',
  - in the United Kingdom, by a single further appeal on a point of law.
-

## ANNEX IV

Certificate referred to in Article 33 concerning judgments in matrimonial matters

1. Country of origin \_\_\_\_\_
2. Court or authority issuing the certificate
  - 2.1. Name \_\_\_\_\_
  - 2.2. Address \_\_\_\_\_
  - 2.3. Tel./fax/E-mail \_\_\_\_\_
3. Marriage
  - 3.1. Wife
    - 3.1.1. Full name \_\_\_\_\_
    - 3.1.2. Country and place of birth \_\_\_\_\_
    - 3.1.3. Date of birth \_\_\_\_\_
  - 3.2. Husband
    - 3.2.1. Full name \_\_\_\_\_
    - 3.2.2. Country and place of birth \_\_\_\_\_
    - 3.2.3. Date of birth \_\_\_\_\_
  - 3.3. Country, place (where available) and date of marriage
    - 3.3.1. Country of marriage \_\_\_\_\_
    - 3.3.2. Place of marriage (where available) \_\_\_\_\_
    - 3.3.3. Date of marriage \_\_\_\_\_
4. Court which delivered the judgment
  - 4.1. Name of Court \_\_\_\_\_
  - 4.2. Place of Court \_\_\_\_\_
5. Judgment
  - 5.1. Date \_\_\_\_\_

5.2. Reference number \_\_\_\_\_

5.3. Type of judgment

5.3.1. Divorce

5.3.2. Marriage annulment

5.3.3. Legal separation

5.4. Was the judgment given in default of appearance?

5.4.1. no

5.4.2. yes <sup>(1)</sup>

6. Names of parties to whom legal aid has been granted \_\_\_\_\_

7. Is the judgment subject to further appeal under the law of the Member State of origin?

7.1. No

7.2. Yes

8. Date of legal effect in the Member State where the judgment was given

8.1. Divorce \_\_\_\_\_

8.2. Legal separation \_\_\_\_\_

Done at \_\_\_\_\_, date \_\_\_\_\_

Signature and/or stamp

\_\_\_\_\_

<sup>(1)</sup> Documents referred to in Article 32(2) must be attached.

## ANNEX V

Certificate referred to in Article 33 concerning judgments on parental responsibility

1. Country of origin \_\_\_\_\_
2. Court or authority issuing the certificate
  - 2.1. Name \_\_\_\_\_
  - 2.2. Address \_\_\_\_\_
  - 2.3. Tel./Fax/E-mail \_\_\_\_\_
3. Parents
  - 3.1. Mother
    - 3.1.1. Full name \_\_\_\_\_
    - 3.2.2. Date and place of birth \_\_\_\_\_
  - 3.2. Father
    - 3.2.1. Full name \_\_\_\_\_
    - 3.2.2. Date and place of birth \_\_\_\_\_
4. Court which delivered the judgment
  - 4.1. Name of Court \_\_\_\_\_
  - 4.2. Place of Court \_\_\_\_\_
5. Judgment
  - 5.1. Date \_\_\_\_\_
  - 5.2. Reference number \_\_\_\_\_
  - 5.3. Was the judgment given in default of appearance?
    - 5.3.1. No
    - 5.3.2. Yes <sup>(1)</sup>

<sup>(1)</sup> Documents referred to in Article 32(2) must be attached.

6. Children who are covered by the judgment <sup>(1)</sup>

6.1. Full name and date of birth \_\_\_\_\_

6.2. Full name and date of birth \_\_\_\_\_

6.3. Full name and date of birth \_\_\_\_\_

6.4. Full name and date of birth \_\_\_\_\_

7. Names of parties to whom legal aid has been granted \_\_\_\_\_

## 8. Attestation of enforceability and service

8.1. Is the judgment enforceable according to the law of the Member State of origin?

8.1.1. Yes 8.1.2. No 

8.2. Has the judgment been served on the party against whom enforcement is sought?

8.2.1. Yes 

8.2.1.1. Full name of the party \_\_\_\_\_

8.2.1.2. Date of service \_\_\_\_\_

8.2.2. No 

Done at \_\_\_\_\_, date \_\_\_\_\_

Signature and/or stamp

\_\_\_\_\_

<sup>(1)</sup> If more than four children are covered, use a second form.

**COUNCIL REGULATION (EC) No 1348/2000****of 29 May 2000****on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas:

- (1) The Union has set itself 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. To establish such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (2) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.
- (3) This is a subject now falling within the ambit 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 be better achieved by the Community. This Regulation does not go beyond what is necessary to achieve those objectives.
- (5) The Council, by an Act dated 26 May 1997<sup>(4)</sup>, drew up a Convention on the service in the Member States of the

European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective constitutional rules. That Convention has not entered into force. Continuity in the results of the negotiations for conclusion of the Convention should be ensured. The main content of this Regulation is substantially taken over from it.

- (6) Efficiency and speed in judicial procedures in civil matters means that the transmission of judicial and extrajudicial documents is to be made direct and by rapid means between local bodies designated by the Member States. However, the Member States may indicate their intention of designating only one transmitting or receiving agency or one agency to perform both functions for a period of five years. This designation may, however, be renewed every five years.
- (7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a pre-printed form, to be completed in the language of the place where service is to be effected, or in another language accepted by the Member State in question.
- (8) To secure the effectiveness of this Regulation, the possibility of refusing service of documents is confined to exceptional situations.
- (9) Speed of transmission warrants documents being served within days of reception of the document. However, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency. The expiry of this period should not imply that the request be returned to the transmitting agency where it is clear that service is feasible within a reasonable period.

<sup>(1)</sup> OJ C 247 E, 31.8.1999, p. 11.

<sup>(2)</sup> Opinion of 17 November 1999 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 368, 20.12.1999, p. 47.

<sup>(4)</sup> OJ C 261, 27.8.1997, p. 1. On the same day as the Convention was drawn up the Council took note of the explanatory report on the Convention which is set out on page 26 of the aforementioned Official Journal.

- (10) For the protection of the addressee's interests, service should be effected in the official language or one of the official languages of the place where it is to be effected or in another language of the originating Member State which the addressee understands.
- (11) Given the differences between the Member States as regards their rules of procedure, the material date for the purposes of service varies from one Member State to another. Having regard to such situations and the possible difficulties that may arise, this Regulation should provide for a system where it is the law of the receiving Member State which determines the date of service. However, if the relevant documents in the context of proceedings to be brought or pending in the Member State of origin are to be served within a specified period, the date to be taken into consideration with respect to the applicant shall be that determined according to the law of the Member State of origin. A Member State is, however, authorised to derogate from the aforementioned provisions for a transitional period of five years, for appropriate reasons. Such a derogation may be renewed by a Member State at five-year intervals due to reasons related to its legal system.
- (12) This Regulation prevails over the provisions contained in bilateral or multilateral agreements or arrangements having the same scope, concluded by the Member States, and in particular the Protocol annexed to the Brussels Convention of 27 September 1968<sup>(1)</sup> and the Hague Convention of 15 November 1965 in relations between the Member States party thereto. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to expedite or simplify the transmission of documents, provided that they are compatible with the Regulation.
- (13) The information transmitted pursuant to this Regulation should enjoy suitable protection. This matter falls within the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(2)</sup>, and of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>(3)</sup>.
- (14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(4)</sup>.
- (15) These measures also include drawing up and updating the manual using appropriate modern means.
- (16) No later than three years after the date of entry into force of this Regulation, the Commission should review its application and propose such amendments as may appear necessary.
- (17) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.
- (18) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Scope

1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

<sup>(1)</sup> Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ L 299, 13.12.1972, p. 32; consolidated version, OJ C 27, 26.1.1998, p. 1).

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(3)</sup> OJ L 24, 30.1.1998, p. 1.

<sup>(4)</sup> OJ L 184, 17.7.1999, p. 23.

*Article 2***Transmitting and receiving agencies**

1. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as 'transmitting agencies', competent for the transmission of judicial or extrajudicial documents to be served in another Member State.

2. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as 'receiving agencies', competent for the receipt of judicial or extrajudicial documents from another Member State.

3. A Member State may designate one transmitting agency and one receiving agency or one agency to perform both functions. A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one such agency. The designation shall have effect for a period of five years and may be renewed at five-year intervals.

4. Each Member State shall provide the Commission with the following information:

- (a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;
- (b) the geographical areas in which they have jurisdiction;
- (c) the means of receipt of documents available to them; and
- (d) the languages that may be used for the completion of the standard form in the Annex.

Member States shall notify the Commission of any subsequent modification of such information.

*Article 3***Central body**

Each Member State shall designate a central body responsible for:

- (a) supplying information to the transmitting agencies;
- (b) seeking solutions to any difficulties which may arise during transmission of documents for service;
- (c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.

## CHAPTER II

**JUDICIAL DOCUMENTS**

## Section 1

***Transmission and service of judicial documents****Article 4***Transmission of documents**

1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated on the basis of Article 2.

2. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.

3. The document to be transmitted shall be accompanied by a request drawn up using the standard form in the Annex. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the European Union other than its own which is or are acceptable to it for completion of the form.

4. The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.

5. When the transmitting agency wishes a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.

*Article 5***Translation of documents**

1. The applicant shall be advised by the transmitting agency to which he or she forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.

2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

#### Article 6

##### **Receipt of documents by receiving agency**

1. On receipt of a document, a receiving agency shall, as soon as possible and in any event within seven days of receipt, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form in the Annex.

2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.

3. If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return in the standard form in the Annex.

4. A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, to the receiving agency having territorial jurisdiction in the same Member State if the request complies with the conditions laid down in Article 4(3) and shall inform the transmitting agency accordingly, using the standard form in the Annex. That receiving agency shall inform the transmitting agency when it receives the document, in the manner provided for in paragraph 1.

#### Article 7

##### **Service of documents**

1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular form requested by the transmitting agency, unless such a method is incompatible with the law of that Member State.

2. All steps required for service of the document shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency by means of the certificate in the standard form in the Annex, which shall be drawn up under the conditions referred to in Article 10(2). The period shall be calculated in accordance with the law of the Member State addressed.

#### Article 8

##### **Refusal to accept a document**

1. The receiving agency shall inform the addressee that he or she may refuse to accept the document to be served if it is in a language other than either of the following languages:

- (a) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected; or
- (b) a language of the Member State of transmission which the addressee understands.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

#### Article 9

##### **Date of service**

1. Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed.

2. However, where a document shall be served within a particular period in the context of proceedings to be brought or pending in the Member State of origin, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.

3. A Member State shall be authorised to derogate from the provisions of paragraphs 1 and 2 for a transitional period of five years, for appropriate reasons.

This transitional period may be renewed by a Member State at five-yearly intervals due to reasons related to its legal system. That Member State shall inform the Commission of the content of such a derogation and the circumstances of the case.

#### Article 10

##### **Certificate of service and copy of the document served**

1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form in the Annex and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.

2. The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the European Union other than its own which is or are acceptable to it for completion of the form.

#### Article 11

##### Costs of service

1. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.

2. The applicant shall pay or reimburse the costs occasioned by:

- (a) the employment of a judicial officer or of a person competent under the law of the Member State addressed;
- (b) the use of a particular method of service.

#### Section 2

##### *Other means of transmission and service of judicial documents*

#### Article 12

##### Transmission by consular or diplomatic channels

Each Member State shall be free, in exceptional circumstances, to use consular or diplomatic channels to forward judicial documents, for the purpose of service, to those agencies of another Member State which are designated pursuant to Article 2 or 3.

#### Article 13

##### Service by diplomatic or consular agents

1. Each Member State shall be free to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents.

2. Any Member State may make it known, in accordance with Article 23(1), that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.

#### Article 14

##### Service by post

1. Each Member State shall be free to effect service of judicial documents directly by post to persons residing in another Member State.

2. Any Member State may specify, in accordance with Article 23(1), the conditions under which it will accept service of judicial documents by post.

#### Article 15

##### Direct service

1. This Regulation shall not interfere with the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed.

2. Any Member State may make it known, in accordance with Article 23(1), that it is opposed to the service of judicial documents in its territory pursuant to paragraph 1.

#### CHAPTER III

##### EXTRAJUDICIAL DOCUMENTS

#### Article 16

##### Transmission

Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation.

#### CHAPTER IV

##### FINAL PROVISIONS

#### Article 17

##### Implementing rules

The measures necessary for the implementation of this Regulation relating to the matters referred to below shall be adopted in accordance with the advisory procedure referred to in Article 18(2):

- (a) drawing up and annually updating a manual containing the information provided by Member States in accordance with Article 2(4);

- (b) drawing up a glossary in the official languages of the European Union of documents which may be served under this Regulation;
- (c) updating or making technical amendments to the standard form set out in the Annex.

#### Article 18

#### Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its rules of procedure.

#### Article 19

#### Defendant not entering an appearance

1. Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service, under the provisions of this Regulation, and the defendant has not appeared, judgment shall not be given until it is established that:

- (a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

2. Each Member State shall be free to make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- (a) the document was transmitted by one of the methods provided for in this Regulation;
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.

3. Notwithstanding paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.

4. When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service, under the provisions of this Regulation, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled:

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
- (b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiration of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.

5. Paragraph 4 shall not apply to judgments concerning status or capacity of persons.

#### Article 20

#### Relationship with agreements or arrangements to which Member States are Parties

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 and the Hague Convention of 15 November 1965.

2. This Regulation shall not preclude individual Member States from maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible with this Regulation.

3. Member States shall send to the Commission:

- (a) a copy of the agreements or arrangements referred to in paragraph 2 concluded between the Member States as well as drafts of such agreements or arrangements which they intend to adopt;

and

(b) any denunciation of, or amendments to, these agreements or arrangements.

*Article 21*

**Legal aid**

This Regulation shall not affect the application of Article 23 of the Convention on Civil Procedure of 17 July 1905, Article 24 of the Convention on Civil Procedure of 1 March 1954 or Article 13 of the Convention on International Access to Justice of 25 October 1980 between the Member States Parties to these Conventions.

*Article 22*

**Protection of information transmitted**

1. Information, including in particular personal data, transmitted under this Regulation shall be used by the receiving agency only for the purpose for which it was transmitted.
2. Receiving agencies shall ensure the confidentiality of such information, in accordance with their national law.
3. Paragraphs 1 and 2 shall not affect national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 29 May 2000.

4. This Regulation shall be without prejudice to Directives 95/46/EC and 97/66/EC.

*Article 23*

**Communication and publication**

1. Member States shall communicate to the Commission the information referred to in Articles 2, 3, 4, 9, 10, 13, 14, 15, 17(a) and 19.
2. The Commission shall publish in the *Official Journal of the European Communities* the information referred to in paragraph 1.

*Article 24*

**Review**

No later than 1 June 2004, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, paying special attention to the effectiveness of the bodies designated pursuant to Article 2 and to the practical application of point (c) of Article 3 and Article 9. The report shall be accompanied if need be by proposals for adaptations of this Regulation in line with the evolution of notification systems.

*Article 25*

**Entry into force**

This Regulation shall enter into force on 31 May 2001.

*For the Council*

*The President*

A. COSTA

## ANNEX

## REQUEST FOR SERVICE OF DOCUMENTS

**(Article 4(3) of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>(1)</sup>)**

Reference No: ....

## 1. TRANSMITTING AGENCY

1.1. Identity:

1.2. Address:

1.2.1. Street and number/PO box:

1.2.2. Place and code:

1.2.3. Country:

1.3. Tel:

1.4. Fax (\*):

1.5. E-mail (\*)

## 2. RECEIVING AGENCY

2.1. Identity:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and code:

2.2.3. Country:

2.3. Tel:

2.4. Fax (\*):

2.5. E-mail (\*):

<sup>(1)</sup> OJ L 160, 30.6.2000, p. 37.

(\*) This item is optional.

## 3. APPLICANT

3.1. Identity:

3.2. Address:

3.2.1. Street and number/PO box:

3.2.2. Place and code:

3.2.3. Country:

3.3. Tel (\*):

3.4. Fax (\*):

3.5. E-mail (\*):

## 4. ADDRESSEE

4.1. Identity:

4.2. Address:

4.2.1. Street and number/PO box:

4.2.2. Place and code:

4.2.3. Country:

4.3. Tel (\*):

4.4. Fax (\*):

4.5. E-mail (\*):

4.6. Identification number/social security number/organisation number/or equivalent (\*):

## 5. METHOD OF SERVICE

5.1. In accordance with the law of the Member State addressed

5.2. By the following particular method:

5.2.1. If this method is incompatible with the law of the Member State addressed, the document(s) should be served in accordance with the law:

5.2.1.1. yes

5.2.1.2. no

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(\*) This item is optional.

## 6. DOCUMENT TO BE SERVED

## (a) 6.1. Nature of the document

## 6.1.1. judicial

## 6.1.1.1. writ of summons

## 6.1.1.2. judgment

## 6.1.1.3. appeal

## 6.1.1.4. other

## 6.1.2. extrajudicial

## (b) 6.2. Date or time limit stated in the document (\*):

## (c) 6.3. Language of document:

6.3.1. original DE, EN, DK, EL, FI, FR, GR, IT, NL, PT, SV, others:

6.3.2. translation (\*) DE, EN, DK, ES, FI, FR, EL, IT, NL, PT, SV, others:

## 6.4. Number of enclosures:

## 7. A COPY OF DOCUMENT TO BE RETURNED WITH THE CERTIFICATE OF SERVICE (Article 4(5) of the Regulation)

7.1. Yes (in this case send two copies of the document to be served)

7.2. No

1. You are required by Article 7(2) of the Regulation to effect all steps required for service of the document as soon as possible. In any event, if it is not possible for you to effect service within one month of receipt, you must inform this agency by means of the certificate provided for in point 13.
2. If you cannot fulfil this request for service on the basis of the information or documents transmitted, you are required by Article 6(2) of the Regulation to contact this agency by the swiftest possible means in order to secure the missing information or document.

Done at:

Date:

Signature and/or stamp:

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(\*) This item is optional.

Reference No of the receiving agency:

ACKNOWLEDGEMENT OF RECEIPT  
**(Article 6(1) of Council Regulation (EC) No 1348/2000)**

This acknowledgement must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.

8. DATE OF RECEIPT:

Done at:

Date:

Signature and/or stamp:

NOTICE OF RETURN OF REQUEST AND DOCUMENT  
**(Article 6(3) of Council Regulation (EC) No 1348/2000)**

The request and document must be returned on receipt.

9. REASON FOR RETURN:

9.1. The request is manifestly outside the scope of the Regulation:

9.1.1. the document is not civil or commercial

9.1.2. the service is not from one Member State to another Member State

9.2. Non-compliance with formal conditions required makes service impossible:

9.2.1. the document is not easily legible

9.2.2. the language used to complete the form is incorrect

9.2.3. the document received is not a true and faithful copy

9.2.4. other (please give details):

9.3. The method of service is incompatible with the law of that Member State (Article 7(1) of the Regulation)

Done at:

Date:

Signature and/or stamp:

## NOTICE OF RETRANSMISSION OF REQUEST AND DOCUMENT TO THE APPROPRIATE RECEIVING AGENCY

**(Article 6(4) of Council Regulation (EC) No 1348/2000)**

The request and document were forwarded on to the following receiving agency, which has territorial jurisdiction to serve it:

10.1. Identity:

10.2. Address:

10.2.1. Street and number/PO box:

10.2.2. Place and code:

10.2.3. Country:

10.3. Tel:

10.4. Fax (\*):

10.5. E-mail (\*):

Done at:

Date:

Signature and/or stamp:

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(\*) This item is optional.

Reference No of the appropriate receiving agency:

NOTICE OF RECEIPT BY THE APPROPRIATE RECEIVING AGENCY HAVING TERRITORIAL JURISDICTION TO THE TRANSMITTING AGENCY

**(Article 6(4) of Council Regulation (EC) No 1348/2000)**

This notice must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.

11. DATE OF RECEIPT:

Done at:

Date:

Signature and/or stamp:

## CERTIFICATE OF SERVICE OR NON-SERVICE OF DOCUMENTS

**(Article 10 of Council Regulation (EC) No 1348/2000)**

The service shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency (according to Article 7(2) of the Regulation)

## 12. COMPLETION OF SERVICE

(a) 12.1. Date and address of service:

(b) 12.2. The document was

(A) 12.2.1. served in accordance with the law of the Member State addressed, namely

12.2.1.1. handed to

12.2.1.1.1. the addressee in person

12.2.1.1.2. another person

12.2.1.1.2.1. Name:

12.2.1.1.2.2. Address:

12.2.1.1.2.2.1. Street and number/PO box:

12.2.1.1.2.2.2. Place and code:

12.2.1.1.2.2.3. Country:

12.2.1.1.2.3. Relation to the addressee:

family

employee

others

12.2.1.1.3. the addressee's address

12.2.1.2. served by post

12.2.1.2.1. without acknowledgement of receipt

12.2.1.2.2. with the enclosed acknowledgement of receipt

12.2.1.2.2.1. from the addressee

12.2.1.2.2.2. another person

12.2.1.2.2.2.1. Name:

12.2.1.2.2.2.2. Address:

12.2.1.2.2.2.2.1. Street and number/PO box:

12.2.1.2.2.2.2. Place and code:

12.2.1.2.2.2.2.3. Country:

12.2.1.2.2.2.3. Relation to the addressee:

family

employee

others

12.2.1.3. other method (please say how):

(B) 12.2.2. served by the following particular method (please say how):

(c) 12.3. The addressee of the document was informed (orally) (in writing) that he or she may refuse to accept it if it was not in an official language of the place of service or in an official language of the state of transmission which he or she understands.

### 13. INFORMATION IN ACCORDANCE WITH ARTICLE 7(2)

It was not possible to effect service within one month of receipt.

### 14. REFUSAL OF DOCUMENT

The addressee refused to accept the document on account of the language used. The documents are annexed to this certificate.

### 15. REASON FOR NON-SERVICE OF DOCUMENT

15.1. Address unknown

15.2. Addressee cannot be located

15.3. Document could not be served before the date or time limit stated in point 6.2.

15.4. Others (please specify):

The documents are annexed to this certificate.

Done at:

Date:

Signature and/or stamp:

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