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NOTE

from : General Secretariat of the Council

to : K.4 Committee

Subject: **Draft explanatory report on the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, and to the First and Second Protocols on its interpretation by the Court of Justice**

Delegations will find attached a draft explanatory report on the above accession Convention which has been prepared by the Austrian delegation.

The draft report has been amended in the light of delegations' comments. If the K.4 Committee approves its content, it will be submitted to Coreper and Council once it has been finalized by the Legal/Linguistic Experts.

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**Explanatory report on the Convention on the accession of the
Republic of Austria, the Republic of Finland and the
Kingdom of Sweden to the Convention
on the law applicable to contractual obligations,
opened for signature in Rome
on 19 June 1980, and to the First and Second Protocols
on its interpretation by the Court of Justice**

Introduction

The Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (Rome Convention), lays down uniform choice-of-law rules to apply within its specific area of application. It constitutes an important supplement to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 27 September 1968 (Brussels Convention). Pursuant to Article 28 of the Convention of 1980, that Convention may be signed (only) by States party to the Treaty establishing the European Economic Community.

In order that the new Member States which, in acceding to the European Union, undertook to accede also to the Convention of 1980, can be integrated into the uniform legal system achieved in this area, the Permanent Representatives Committee agreed on 1 February 1996 to set up a working party to prepare the accession of the three new Member States to the Brussels and Rome Conventions and the Protocols thereto as adapted and amended by subsequent accession conventions. Over two meetings, the Working Party drafted the technical amendments necessary for the accession of the three States.

A technical adjustment is also made to the First Protocol of 1988 on the interpretation of the Convention by the Court of Justice of the European Communities, listing the supreme courts in the acceding States.

The Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature on 19 June 1980, and the Protocol conferring on the Court of Justice of the European Communities certain powers to interpret that Convention, both signed on 19 December 1988 (commonly referred to as the "1988 interpretative protocols"), are designed to ensure uniform interpretation of the Convention of 1980. They have not yet entered into force.

Austria's proposal that the accession Convention be used as an opportunity to extend the consumer protection provisions in Article 5 of the Convention of 1980 aroused interest in the Working Party. However, it emerged that this was a rather complex issue that would require detailed consideration, and would therefore hold up completion of the proceedings. When adopting the accession Convention on 29 November 1996, the Conference of Governments of the Member States accordingly approved a declaration by the Austrian delegation advocating early consideration of this question. That declaration was annexed to the minutes of the Conference.

The accession Convention contains final provisions. Lastly, the accession Convention contains an adjustment to the Protocol annexed to the Convention of 1980 which, in addition to Denmark, now also allows Sweden and Finland to retain their national provisions concerning the law applicable to the carriage of goods by sea.

Title I

Article 1

General provisions

This provision expressly declares the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and specifies the three instruments acceded to: the Convention of 1980 and the two Protocols on the interpretation of the Convention of 1980 by the Court of Justice of the European Communities.

The Convention of 1980 was amended by two previous accession Conventions: the Convention signed in Luxembourg on 10 April 1984 on the accession of Greece and the Convention signed in Funchal on 18 May 1992 on the accession of Spain and Portugal. It is to this amended version of the Convention of 1980 that the three new Member States are acceding.

Title II

Article 2

Adjustments to the Protocol annexed to the Convention of 1980

Article 21 of the Convention of 1980 allows Member States to retain diverging national provisions if they are based on an international convention to which the State in question is a party. The Danish choice-of-law rules on the carriage of goods by sea diverge from the Convention of 1980 but accord with legislation in the other Scandinavian countries. However, the legal standardization achieved amongst the Scandinavian countries in this sphere was (in the customary manner) not based on an international convention, but secured through the simultaneous enactment of identically worded laws by those countries' parliaments, so that Article 21 does not apply in this case, although this type of legal standardization is very similar in effect to that resulting from an international convention. To enable Denmark to retain these common provisions, a Protocol to that effect was annexed to the Convention of 1980.

As Sweden and Finland took part in the Scandinavian countries' legal standardization, and should therefore be treated in the same manner as Denmark, Article 2 now extends this Protocol to Sweden and Finland, and the references to the relevant Danish provisions are updated.

However, the Member States thought it advisable to make a joint declaration, which is annexed to the Convention, in which they take note that Denmark, Finland and Sweden state their readiness to examine the extent to which they will be able to ensure that any future amendment concerning their national law applicable to questions relating to the carriage of goods by sea complies with the procedure provided for in Article 23 of the Convention of Rome of 1980.

Title III

Article 3

Adjustments to the First Protocol of 1988

Article 2(a) of the First Protocol lists the supreme courts in the Contracting States which may submit questions of interpretation to the Court of Justice for a preliminary ruling. The supreme courts in the new Member States are now added to that list.

Title IV

Final provisions

Articles 4 to 8

The final provisions, modelled on the Luxembourg and Funchal accession Conventions, give the Finnish and Swedish versions of the Convention and the Protocols the same legal status as the other language versions, stipulate the need for ratification by the Signatory States, contain provisions on the entry into force of the Convention, and specify that the Convention is equally authentic in all twelve official languages.

When the Convention was signed, the texts of the 1980 Convention, the Protocols thereto, and the amendments resulting from subsequent accessions, were drawn up in Finnish and Swedish.

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