

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL ACT

of 28 May 1998

drawing up, on basis of Article K.3 of the Treaty on European Union, the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters

(98/C 221/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the laying down of rules on jurisdiction, recognition and enforcement of judgments in proceedings relating to divorce, legal separation and marriage annulment, and those relating to parental responsibility over the children of both spouses on the occasion of matrimonial proceedings, as matters of common interest falling within the scope of judicial cooperation in civil matters provided for in Title VI of the Treaty;

Having examined the views of the European Parliament⁽¹⁾ following the consultation conducted by the Presidency in accordance with Article K.6 of the Treaty,

HAS DECIDED that the Convention, the text of which is given in the Annex and which has been signed today by the representatives of the Governments of the Member States, is hereby drawn up,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels, 28 May 1998.

For the Council
The President
J. STRAW

⁽¹⁾ Opinion delivered on 30 April 1998 (OJ C 152, 18.5.1998).

ANNEX

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act of 28 May 1998 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters,

DESIROUS of laying down rules determining the jurisdiction of Member States' courts with regard to proceedings relating to divorce, legal separation and marriage annulment,

AWARE of the importance of laying down rules of jurisdiction concerning parental responsibility over the children of both spouses on the occasion of proceedings to dissolve or loosen the marriage bond,

WISHING to ensure simplification of the formalities governing the recognition and enforcement of such judgments in the European area,

BEARING IN MIND the principles on which the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Brussels on 27 September 1968, is based,

WHEREAS Article K.3(2)(c) of the Treaty on European Union provides that conventions drawn up on the basis of Article K.3 of that Treaty may stipulate that the Court of Justice of the European Communities shall have jurisdiction to interpret their provisions, in accordance with such arrangements as they may lay down,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

TITLE I

SCOPE

Article 1

1. This Convention 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.

TITLE 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 is 'domiciled' there;
- b) of nationality of both spouses or of 'domicile of both spouses' established on a long-term settled basis.

2. Each Member State shall stipulate in a declaration made when giving the notification referred to in Article 47(2) whether it will be applying the criterion of nationality or of 'domicile' referred to in paragraph 1.

3. For the purpose of this Convention, '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 Convention.

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 who has his or her 'domicile' in the territory of a Member State within the meaning of Article 2(2),

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 or does not have his 'domicile' within the territory of a Member State within the meaning of Article 2(2), 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 Convention and over which a court of another Member State has jurisdiction by virtue of this Convention, it shall declare of its own motion that it has no jurisdiction.

Article 10

Examination as to admissibility

1. Where a respondent 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. The provisions of Article 19 of the Convention of 26 May 1997 on the Service in the Member States of the European Union of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall be applied instead of the provisions in paragraph 1 if the document instituting the proceedings had to be transmitted abroad in accordance with 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.

SECTION 4

PROVISIONAL AND PROTECTIVE MEASURES

Article 12

In urgent cases, the provisions of this Convention 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 Convention, the court of another Member State has jurisdiction as to the substance of the matter.

TITLE III

RECOGNITION AND ENFORCEMENT

Article 13

Meaning of judgment

1. For the purposes of this Convention, '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 Title shall also apply to the determination of the amount of costs and expenses of proceedings under this Convention and to the enforcement of any order concerning such costs and expenses.

3. For the purposes of implementing this Convention, 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 Title, 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 duly served with the document which instituted the proceedings or with an equivalent document in sufficient time 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;
- (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 duly served with the document which instituted the proceedings or with an equivalent document in sufficient time 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

Non-recognition and findings of fact

1. Moreover, a judgment shall not be recognised in a case provided for in Article 43.
2. In its examination of the grounds of jurisdiction in the case referred to in paragraph 1, the court applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.
3. Without prejudice to paragraph 1, 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 17

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 18

Non-review as to substance

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

Article 19

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 20

Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child of both parties given in a Member State and enforceable in that Member State 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 21

Jurisdiction of local courts

1. The application shall be submitted:
 - in Belgium, to the 'Tribunal de première instance' or the 'Rechtbank van eerste aanleg' or the 'erstinstanzliche Gericht',
 - in Denmark, to the 'byret (fogedret)',
 - in the Federal Republic of Germany, to the 'Familiengericht',
 - in Greece, to the 'Μονομελές Πρωτοδικείο',
 - in Spain, to the 'Juzgado de Primera Instancia',
 - in France, to the presiding Judge of the 'Tribunal de grande instance',
 - in Ireland, to the High Court,
 - in Italy, to the 'Corte d'appello',
 - in Luxembourg, to the presiding Judge of the 'Tribunal d'arrondissement',
 - in the Netherlands, to the presiding Judge of the 'arrondissementsrechtbank',
 - in Austria, to the 'Bezirksgericht',
 - in Portugal, to the 'Tribunal de Comarca' or 'Tribunal de Família',
 - in Finland, to the 'käräjäoikeus/tingsrätt',
 - in Sweden, to the 'Svea hovrätt',
 - in the United Kingdom,
 - (a) in England and Wales, to the High Court of Justice;
 - (b) in Scotland, to the Court of Session;
 - (c) in Northern Ireland, to the High Court of Justice.

2. (a) The jurisdiction of local courts in relation to an application for enforcement 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 place of habitual residence of any child to whom the application relates;

(b) Where neither of the places referred to in (a) can be found in the Member State where enforcement is sought, the jurisdiction of local courts is determined by reference to the place of enforcement.

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

Article 22

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 33 and 34 shall be attached to the application.

Article 23

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 and 16.

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

Article 24

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 25

Appeal against the enforcement decision

1. If enforcement is authorised, the person against whom enforcement is sought may appeal against the decision within one month of service thereof.

2. If that person is habitually resident in a Member State other than that in which the decision authorising enforcement 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 26

Courts of appeal and means of contest

1. An appeal against the judgment authorising enforcement shall be lodged, in accordance with the rules governing procedure in contradictory matters:

— in Belgium, with the 'Tribunal de première instance' or the 'Rechtbank van eerste aanleg' or the 'erstinstanzliche Gericht',

— in Denmark, with the 'landsret',

— in the Federal Republic of Germany, with the 'Oberlandesgericht',

— in Greece, with the 'Εφετείο',

— in Spain, with the 'Audiencia Provincial',

— in France, with the 'Cour d'appel',

— in Ireland, with the High Court,

— in Italy, with the 'Corte d'appello',

— in Luxembourg, with the 'Cour d'appel',

— in the Netherlands, with the 'arrondissementsrechtbank',

— in Austria, with the 'Bezirksgericht',

— in Portugal, with the 'Tribunal da Relação',

— in Finland, with the 'Hovioikeus/Hovrätt',

— in Sweden, with the 'Svea hovrätt',

— in the United Kingdom,

(a) in England and Wales, with the High Court of Justice;

(b) in Scotland, with the Court of Session;

(c) in Northern Ireland, with the High Court of Justice.

2. The judgment given on appeal may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands by an appeal in cassation,
- in Denmark, by an appeal to the 'Højesteret', with leave of the 'Procesbevillingsnævnet',
- in the Federal Republic of 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.

Article 27

Stay of proceedings

1. The court with which the appeal is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such 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 28

Court of appeal against a judgment refusing enforcement

1. If the application for enforcement is refused, the applicant may appeal:

- in Belgium, to the 'Cour d'appel' or the 'hof van beroep',
- in Denmark, to the 'Landsret',
- in the Federal Republic of Germany, to the 'Oberlandesgericht',
- in Greece, to the 'Εφετείο',
- in Spain, to the 'Audiencia Provincial',
- in France, to the 'Cour d'appel',

- in Ireland, to the High Court,
- in Italy, to the 'Corte d'appello',
- in Luxembourg, to the 'Cour d'appel',
- in the Netherlands, to the 'gerechtshof',
- in Austria, to the 'Bezirksgericht',
- in Portugal, to the 'Tribunal da Relação',
- in Finland, to 'Hovioikeus/Hovrätten',
- in Sweden, to the 'Svea hovrätt',
- in the United Kingdom,
 - (a) in England and Wales, to the High Court of Justice;
 - (b) in Scotland, to the Court of Session;
 - (c) in Northern Ireland, to the High Court of Justice.

2. The person 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.

Article 29

Contest of the appeal decision

A judgment given on appeal provided for in Article 28 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in Denmark, by an appeal to the 'Højesteret' with leave of the 'Procesbevillingsnævnet',
- in the Federal Republic of 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 the '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.

Article 30

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 31

Legal aid

1. 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 21 to 24, 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.

2. An applicant who requests the enforcement of a judgment given by an administrative authority in Denmark may, in the Member State addressed, be eligible for the provisions of paragraph 1 if he presents a statement from the Danish Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 32

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 ground that he or she is a foreign national or that he or she is not 'domiciled' or habitually resident in the Member State in which enforcement is sought.

SECTION 3

COMMON PROVISIONS

Article 33

Documents

1. A party seeking or contesting recognition or applying for enforcement of a judgment shall produce:

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

(b) where appropriate, a document showing that the applicant is in receipt of legal aid in the Member State of origin.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for enforcement 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.

3. A person requiring the updating of the civil-status records of a Member State, as referred to in Article 14(2), shall also produce a document indicating that the judgment is no longer subject to a further appeal under the law of the Member State where the judgment was given.

Article 34

Other documents

A party applying for enforcement shall also produce documents of whatever nature which establish that, according to the law of the Member State of origin, the judgment is enforceable and has been served.

Article 35

Absence of documents

1. If the documents specified in Article 33(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.

Article 36

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 33, 34 and 35(2) or in respect of a document appointing a representative *ad litem*.

TITLE IV

TRANSITIONAL PROVISIONS

Article 37

1. The provisions of this Convention 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 in the Member State of origin and, where recognition or enforcement of a judgment or authentic instruments is sought, in the Member State addressed.

2. However, judgments given after the date of entry into force of this Convention between the Member State of origin and the Member State addressed in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Title III if jurisdiction was founded on rules which accorded with those provided for either in Title II of this Convention 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.

TITLE V

GENERAL PROVISIONS

Article 38

Relation with other Conventions

1. Subject to the provisions of Articles 37, 40 and paragraph 2 of this Article, this Convention shall, for the Member States which are parties to it, supersede conventions existing at the time of entry into force of this Convention which have been concluded between two or more Member States and relate to matters governed by this Convention.

2. (a) At the time of the notification referred to in Article 47, Denmark, 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 Convention. This declaration may be withdrawn, in whole or in part, at any moment;

(b) the principle of non-discrimination on the grounds of nationality between citizens of the

Union shall be respected and monitored by the Court of Justice, in accordance with the procedures laid down in the Protocol on the interpretation by the Court of Justice of this Convention;

(c) the rules of jurisdiction in any future Agreement to be concluded between the Member States referred to in (a) and which relate to matters governed by this Convention shall be in line with those laid down in this Convention;

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

3. After entry into force of this Convention, Member States may not conclude or apply agreements between themselves except in order to supplement the provisions of the Convention or to facilitate application of the principles contained therein.

4. Member States shall send to the depositary of this Convention:

(a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraphs 2(a) and (c) and 3;

(b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 39

Relation with certain multilateral conventions

In relations between the Member States which are parties to it, this Convention shall take precedence over the following Conventions in so far as they concern matters governed by this Convention:

— 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 40

Extent of effects

1. The agreements and conventions referred to in Articles 38 and 39 shall continue to have effect in relation to matters to which this Convention 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 Convention.

Article 41

Agreements between Member States

Without prejudice to the grounds for non-recognition provided for in Title III, judgments given pursuant to the agreements referred to in Article 38(3) shall be recognised and enforced in Member States which are not parties to those agreements provided that those judgments were given in a forum consistent with a forum provided for in Title II.

Article 42

Treaties with the Holy See

1. This Convention shall apply without prejudice to the International Treaty (Concordat) between The Holy See and the Portuguese Republic, signed at 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 Title III of this Convention.

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

— *Concordato lateranense* of 11 February 1929 between the Italian Republic and the Holy See, modified by the agreement, with additional Protocol signed in Rome on 18 February 1984,

— Agreement between the Holy See and the Spanish State on legal affairs of 3 January 1979.

4. Member States shall send to the depositary of this Convention:

(a) a copy of the Treaties referred to in paragraphs 1 and 3;

(b) any denunciations of or amendments to those Treaties.

Article 43

Non-recognition and non-enforcement of judgments based on Article 8

This Convention shall not prevent a Member State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a non-Member State not to 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 44

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 Convention 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 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.

TITLE VI

COURT OF JUSTICE

Article 45

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of this Convention, in accordance with the provisions of the Protocol drawn up by the Council Act of 28 May 1998.

TITLE VII

FINAL PROVISIONS

Article 46

Declarations and reservations

1. Without prejudice to Article 38(2) and 42, this Convention may not be subject to any reservation.
2. Notwithstanding paragraph 1, this Convention shall operate subject to the declarations made by Ireland and Italy annexed to this Convention.
3. The Member State concerned may at any moment withdraw such a declaration in whole or in part. Any such declaration shall cease to have effect 90 days after the notification to the depositary of the withdrawal.

Article 47

Adoption and entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional rules.
2. Member States shall notify the depositary of the completion of the constitutional rules for the adoption of this Convention.
3. This Convention and any amendment to it referred to in Article 49(2) shall enter into force 90 days after the notification referred to in paragraph 2 by the State which, being a member of the European Union at the time the Council adopts the Act drawing up this Convention, is the last to complete that formality.
4. Until this Convention enters into force, any Member State, may, when giving the notification referred to in paragraph 2 or at any later date, declare that as far as it is concerned the Convention, with the exception of Article 45, shall apply to its relations with Member States that have made the same declaration. Such declarations shall apply 90 days after the date of deposit.

Article 48

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language or languages of the acceding Member State, as drawn up by the Council, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any Member State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period of 90 days.

5. Where this Convention is not in force at the time of the deposit of their instrument of accession, Article 47(4) shall apply to acceding Member States.

Article 49

Amendments

1. Amendments to this Convention may be proposed by any Member State or by the Commission. Any proposal for amendment shall be forwarded to the depositary, who shall communicate it to the Council.
2. Amendments shall be drawn up by the Council, which shall recommend their adoption by the Member States in accordance with their respective constitutional rules. Amendments thus adopted shall enter into force in accordance with Article 47(3).
3. However, at the request of the Member State concerned, the naming of the courts or means of appeal referred to in Articles 21(1), 26(1) and (2), 28(1) and 29 may be amended by decision of the Council.

Article 50

Depositary and publication

1. The Secretary-General of the Council shall act as depositary of this Convention.
2. The depositary shall publish in the *Official Journal of the European Communities*:
 - (a) the adoptions and accessions;
 - (b) the date on which the Convention enters into force;
 - (c) declarations referred to in Articles 2(2), 38(2), 46, 47(4) and 48(5), as well as the modifications or withdrawals of such declarations;
 - (d) amendments to this Convention referred to in Article 49(2) and (3).

DECLARATION BY IRELAND, TO BE ANNEXED TO THE CONVENTION

Notwithstanding the provisions of this Convention, Ireland may maintain the jurisdiction which it has to refuse to recognise a divorce obtained in another Member State where that divorce has been obtained as a result of the party, or parties, deliberately misleading a court of the State in question in relation to its jurisdictional requirements such that recognition of the divorce would not be compatible with the Constitution of Ireland.

This declaration will apply for a period of five years. It will be renewable every five years.

DECLARATION, TO BE ANNEXED TO THE CONVENTION BY ANY OF THE NORDIC MEMBER STATES ENTITLED TO MAKE A DECLARATION WITHIN THE MEANING OF ARTICLE 38(2)

The application of 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, is in line with Article K.7 of the Treaty in that the Convention does not prevent the establishment of closer cooperation between two or more Member States in so far as such cooperation does not conflict with, or impede, that provided for in the Convention.

They undertake no longer to apply Article 7(2) of the 1931 Nordic Agreement in their mutual relations and to review at an early date the rules of jurisdiction applicable in the framework of that Agreement in the light of the principle set out in Article 38(2)(b) of the Convention.

The grounds for refusal used in the context of the uniform laws are in practice applied in a manner consistent with those laid down in Title III of this Convention.

DECLARATION BY THE ITALIAN DELEGATION, TO BE ANNEXED TO THE CONVENTION

With regard to Article 42 of the Convention, Italy reserves the right, in respect of judgments by Portuguese ecclesiastical courts, to adopt the procedures and carry out the checks provided for in its own legal system in respect of similar judgments by ecclesiastical courts, on the basis of the agreements it has concluded with the Holy See.

Declaration, annexed to the minutes of the Council, adopted during the Justice and Home Affairs Council on 28 and 29 May 1998 when drawing up the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters

(98/C 221/02)

The Council, conscious of the adverse effect which the length of proceedings on requests before the Court of Justice of the European Communities might have in the field of family law, stresses the need for an examination as soon as possible of possible ways of reducing the length of such proceedings; the Council proposes that this examination be carried out by the Competent body within the Council, together with the Court of Justice.
