The Recognition of Judgments in the European Community: The Twenty-Fifth Anniversary of the Brussels Convention

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THE RECOGNITION OF JUDGMENTS IN THE EUROPEAN COMMUNITY: THE TWENTY-FIFTH ANNIVERSARY OF THE BRUSSELS CONVENTION

Robert C. Reuland*

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INTRODUCTION

The original six Member States of the European Community (EC) signed the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention) in Brussels on September 27, 1968. Thus was laid the foundation of a uniquely European body of procedural law. The Brussels Convention is a


The Brussels Convention is ancillary to the Treaty of Rome, which established the European Community, and therefore is not directly enforceable under the doctrine of direct applicability set out in article 189 of the Treaty of Rome. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY], art. 189. Accordingly, Member States of the European Community must take whatever steps are necessary under their domestic laws to ratify and implement the Brussels Convention.


The rapporteurs of a later convention of accession to the Brussels Convention note that the Convention regime is “a genuine European legal area” that is “destined to extend well beyond the relations between the Member States of the European Communities.” Report by Martinho de Almeida Cruz et al. on the Convention on the Accession of the Kingdom of Spain and the Portuguese Republic to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and to the Protocol on Its Interpretations by the Court of Justice with the Adjustments Made to Them by the Convention on the Accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland and the Adjustments Made to Them by the Convention on the Accession of the Hellenic Republic, 1990 O.J. (C 189) 35, 38, reprinted in 29 I.L.M. 1471, 1472 [hereinafter 1990 Cruz Report].

These words have proved prescient, since the entry into force of the Brussels Convention foreshadowed not merely the beginning of a European Community law of procedure but also of a European law of procedure. As European States have become members of the EC, they likewise have become members of the Convention. Moreover, the Member States of the Community in 1988 signed an agreement with the Member States of the European Free Trade Association (EFTA) setting out jurisdictional rules and rules relating to the enforcement of judgments among members of the EC and the EFTA. See discussion infra part I.D. This 1988 agreement, known as the Lugano Convention, mirrors the Brussels Convention and establishes a body of procedural law applicable not merely to the EC but to all of Western Europe. One writer observes that with the final accession convention and the agreement with the EFTA,

[a] most important result has thus been obtained, i.e. the realization of a uniform text effective for the 12 States of the EEC and the 6 EFTA States (and therefore effective
tremendous accomplishment in EC law. It has radically altered the manner in which judgments may be recognized and enforced in the EC, wholly replacing the convoluted system of bilateral recognition and enforcement treaties existing between Member States. Under the

in the whole of Western Europe). . . . The area for the “free circulation of judicial decisions” in civil and commercial matters has therefore become extremely great; it is probable that in the coming years there will be further extensions towards the Eastern European countries.


3. Kohler, supra note 2, at 563. Kohler observes:
The practical significance of the [Brussels] Convention for the Contracting States in everyday legal terms can hardly be overestimated if one considers that it covers, both as regards jurisdiction and as regards the recognition and enforcement of foreign judgments, the majority of all civil actions which involve connections with other Contracting States; when it was estimated . . . that the Convention would be relevant in approximately 20,000 cases each year, that figure was probably not put too high. Id. at 564.

4. The Brussels Convention is a “double” convention in the sense that it deals with both jurisdiction and the recognition and enforcement of foreign judgments. Kurt H. Nadelmann, Jurisdictionally Improper Fora in Treaties on Recognition of Judgments: The Common Market Draft, 67 COLUM. L. REV. 995, 998 (1967). Insofar as it is possible, however, this article is confined to the latter aspect of the treaty.

The two aspects of the convention—jurisdiction and enforcement—are not unrelated. The rapporteurs of a later accession convention note that the aim of the Brussels Convention is to simplify the formalities needed for mutual recognition and enforcement of court decisions. For this reason the Convention begins by specifying the rules of jurisdiction regarding the courts before which proceedings are to be brought in civil and commercial matters relating to property. The Convention goes on to lay down a procedure for the enforcement of judgments given in another Member State which is simpler than traditional arrangements and swift because the initial stages are non-adversarial.


5. Author Christian Kohler writes:
The entry into force [of the Brussels Convention] . . . placed international legal relations in the six original Contracting States on an entirely new footing. . . . [R]ules
Brussels Convention, a judgment rendered in one Member State is automatically recognized and enforceable in all other Member States, with some limited exceptions. For this reason, the Convention has been described as the European equivalent of the United States Constitution's Full Faith and Credit Clause.6

This year will mark the twenty-fifth anniversary of the signing of the Brussels Convention and the twentieth year since the Convention entered into force among the original EC Member States. Since 1968, six new European States have become members of the EC and signatories of the Brussels Convention,7 and the twelve Member States of the EC have signed a parallel judgments convention with the Member States of the EFTA.8 The Brussels Convention regime, as modified and amended by these later treaties, will soon enter into force among all twelve Member States of the EC and among all six members of the EFTA — comprising the whole of Western Europe.9 The significance of this accomplishment cannot be overestimated.

This article is directed at two objectives. It will first provide, in Part I, an outline of the history of the Brussels Convention from its inception to the present day. It will examine the growth of the Convention from

7. See infra part I.C.
8. See infra part I.D.
9. The 1989 San Sebastian Convention, which is the latest convention of accession to the Brussels Convention, is in force among eight of the twelve members of the EC: France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. Council Communication, 1992 O.J. (C 144) 1. The remaining members — Belgium, Denmark, Germany, and Ireland — have not yet ratified the 1989 San Sebastian Convention but nevertheless remain bound by earlier versions of the Brussels Convention. The Council of the EC is the official depository of the 1989 San Sebastian Convention, and current ratification information may be obtained from it. On the 1989 San Sebastian Convention and the other conventions of accession to the Brussels Convention, see infra part I.C.

The 1988 Lugano Convention among the Member States of the EC and the EFTA entered into force on January 1, 1992 for France, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, and the United Kingdom. The following States have not yet ratified the treaty: Austria, Finland, Iceland, Greece, Germany, Denmark, and Belgium. Spain and Ireland have not signed the treaty. Current ratification information may be obtained from the Swiss Federal Council, which is the official depository of the 1988 Lugano Convention. On the 1988 Lugano Convention, see infra part I.D.
a vague undertaking of the six original Member States of the EC, through various treaties of accession and the 1988 Lugano Convention with the EFTA, and finally to the text currently in force. Part II will discuss the nature of the Convention and the philosophy behind it.

The second purpose of this article is a more pragmatic one: to provide the practitioner with a working understanding of the way in which a judgment rendered in one European State may be recognized and enforced in another. In Part III, the article covers the general considerations applicable to the recognition and enforcement of judgments under the Convention, the subjects to which the Convention applies, and the four matters to which it does not apply.

Part IV is devoted to the recognition of judgments, which is the first step toward enforcement. This discussion sets out the general rule that a judgment rendered in one Member State is to be given "automatic" recognition in all other Member States. This rule, however, is subject to the qualification that a State need not recognize a judgment if, among other things, the judgment is: (1) contrary to the public policy of the State, (2) rendered in default of appearance without adequate notice being served, or (3) irreconcilable with a judgment rendered by the State in a dispute between the same parties. Part IV then sets forth the procedural steps necessary to obtain recognition of a judgment amenable to the automatic rule. A discussion of the enforcement of judgments is contained in Part V. This portion of the article provides a practical discussion of the method by which a judgment, once recognized, may be given legal effect.

Finally, note that under the 1971 Interpretation Protocol, the European Court of Justice has jurisdiction to issue interpretive rulings in matters brought before it under the Brussels Convention. Where these rulings are relevant, an attempt has been made to incorporate them into the discussion.

I. THE BRUSSELS CONVENTION IN ITS CURRENT FORM

Because the text of the Brussels Convention has been substantially modified since it was originally signed in 1968, it is appropriate to trace the history of the Convention to its present state.

A. The 1968 Brussels Convention

The Brussels Convention was drafted pursuant to article 220 of the
Treaty of Rome, the treaty which established the EC. Article 220 provides in pertinent part: "Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals . . . the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards." In 1959, pursuant to article 220, the Committee of Permanent Representatives of the Member States selected a Committee of Experts to draw up a draft convention. The Committee of Experts met for the first time on July 11, 1960. More than four years later, the Committee produced a preliminary draft convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the enforcement of authentic instruments. This draft, which was to become the Brussels

10. Brussels Convention, supra note 1, pmbl. (citing EEC Treaty, art. 220); see also 1990 Cruz Report, supra note 2, at 38, reprinted in 29 I.L.M. at 1472; Byrne, supra note 4, at 1-2. It has been observed that an alternative to the Brussels Convention might have been for the Member States to amend the existing network of bilateral treaties already in force. See Kurt H. Nadelmann, The Outer World and the Common Market Experts' Draft of a Convention on Recognition of Judgments, 5 Common Mkt. L. Rev. 409, 411 (1968); Bartlett, supra note 6, at 45. The Convention expressly supersedes these pre-existing agreements. Brussels Convention, supra note 1, art. 55; see also Byrne, supra note 4, at 1-2.

11. Commentators observed, even before the draft convention was opened for signature, that any European convention for the recognition of judgments should not be constrained by the limited and somewhat ill-advised language of article 220. Professor Nadelmann of Harvard noted that the language of article 220 "suggests that the draftsmen were not expert in the judgments field. The difficulties between member states over recognition of judgments do not arise from insistence on compliance with formalities but are due to substantive rules adverse to recognition of foreign judgments." Nadelmann, supra note 4, at 996.

Fortunately, the Brussels Convention is not constrained by the terms of article 220. Hartley notes that "[i]n spite of the wording of the Article, the Convention is not limited to those cases where the judgment is in favour of a Community national; arbitration awards, on the other hand, are excluded." T.C. Hartley, The Recognition of Foreign Judgments in England Under the Jurisdiction and Judgments Convention, in Harmonisation of Private International Law by the E.E.C. 103, 103 (K. Lipstein ed., 1978).

12. Although article 220 does not expressly mandate such a treaty as the Brussels Convention, "it has always been assumed that the reference to 'negotiations' carries the necessary implication that treaties, rather than regulations or directives, are the appropriate method for Member States to discharge their article 220 obligations. Elizabeth Freeman, The EEC Convention on Jurisdiction and Enforcement of Civil and Commercial Judgments, 3 Nw. J. Int'l L. & Bus. 496, 496-97 (1981).


14. Id.

15. COM(64)14371/IV; see also Mendes, supra note 4, at 76-77 n.8. Meanwhile,
Convention, was circulated for comment and was eventually adopted by the Committee of Experts in 1966. The Convention was signed in Brussels on September 27, 1968 and on February 1, 1973, the Convention entered into force with respect to the original Member States of the Community — Belgium, West Germany, France, Italy, Luxembourg, and the Netherlands.

B. The 1971 Interpretation Protocol

In 1971, the original Member States of the EC signed a protocol granting the European Court of Justice the competence to interpret the Brussels Convention. By providing for objective review of Convention terms, the signatories sought to eliminate the problem of varying interpretations of the Convention — a significant issue in light of the diverse legal traditions of the several Member States.

The members of the Hague Conference on Private International Law were busy on a draft judgments convention of their own. The first meeting of the conference took place in 1964 after publication of the Committee of Experts' preliminary draft. Twenty-three members, including six members of the Community, were present at the 1964 session. See Kurt H. Nadelmann & Willis L.M. Reese, The Tenth Session of the Hague Conference on Private International Law, 13 AM. J. COMP. L. 612 (1964). This work resulted in the Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, reprinted in 15 AM. J. COMP. L. 361 (1967) (English text as it appears in the Final Act of the Extraordinary Session). The Hague draft has never entered into force. See Landay, supra note 6, at 33–36.


17. See supra note 1.


The original text of the Brussels Convention does not specifically address the subject of interpretation, although a joint declaration appended to the Convention stipulates that the parties would examine the possibility of conferring interpretive authority upon the Court of Justice. See Brussels Convention, supra note 1, joint declaration. The signatories effected this obligation by signing the 1971 Interpretation Protocol.


19. Rasmussen, supra note 18, at 249–50. The difficulty in interpreting the Brussels Convention was exacerbated by the fact that the Convention was produced in four official
Protocol circumvents any question as to whether, under the Brussels Convention, the European Court could interpret the provisions of the Convention. Under the Protocol, which entered into force on September 1, 1975, the courts of Member States may ask the European Court to issue interpretive rulings on the Brussels Convention and its various attendant treaties and agreements.

The 1971 Protocol is a singular event in the continuing history of legal, social, and political integration in Europe. The European Court of Justice is the first international court to be afforded jurisdiction over a private international law convention. One writer observes that this aspect must be particularly stressed because of the important role played in recent times by the European Court in promoting a more intensive integration between the member States and in asserting the primacy of European law over national laws. Therefore the Court has been given an opportunity of solving, in a unitary European perspective, the problems of interpretation arising from the 1968 Convention.

The Court of Justice has certainly availed itself of this opportunity and has, on several occasions, interpreted disputed Convention terms by adopting a Community definition instead of a definition favored by a particular Member State. The Court rendered its first interpretive


Moreover, curiously absent from the Convention text is any provision for interpretation. Andrea Giardina notes:

If the Brussels Convention is compared to other international instruments, one is struck by the absence of a general clause giving national judges some guidelines designed to overcome difficulties of interpretation and application. . . .

The reasons for the lack of general clauses in the Convention imposing harmonising interpretations are understandable. Because the Convention interferes profoundly and intensively in national systems, its negotiation and subsequent ratification by the EEC States might have met with even greater obstacles if such a clause had been provided for. Moreover, the preliminary interpretation of the Convention by the Court in Luxembourg was certainly envisaged by the draftsmen at the outset, eventual harmonisation being envisaged by other means.


21. For numerous reasons, the Court of Justice is without authority to interpret the Lugano Convention, the 1988 agreement signed by the Member States of the EC and the EFTA. See infra part I.D. The Lugano Convention, however, provides for another mechanism to ensure the uniform interpretation of the text. See infra note 56.

22. Giardina, supra note 19, at 265.

23. In particular, see the discussion of the Eurocontrol decision infra part III.A.1. See also infra note 76.
rulings under the Protocol in October 1976.24

C. The 1978, 1982, and 1989 Accession Conventions

One of the fundamental principles of the Brussels Convention is that "any State which becomes a member of the European Economic Community is required to accept the Convention as a basis for the negotiations necessary to ensure the implementation of Article 220 of the Treaty of Rome."25 Since 1968, when the Brussels Convention was first signed by the original Member States of the Community, several European States have become members of the EC and have duly acceded to the Brussels Convention.

When the United Kingdom, Ireland, and Denmark became members of the EC in 1973,26 they agreed in a separate act of accession to enter into negotiations with a view toward accession to the Brussels Convention.27 The Committee of Permanent Representatives to the Community set up a working party to negotiate the accession of the new Member States to the Brussels Convention.28 Lengthy negotiations followed, resulting in a 1978 convention of accession which also modified and amended the Brussels Convention.29 The Convention entered into force


26. Treaty Concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community (and to the European Atomic Energy Community), Jan. 22, 1972, 1972 O.J. SPEC. ED. (L 73) 5.

27. Act Concerning the Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community (and to the European Atomic Energy Community), Jan. 22, 1972, 1972 O.J. SPEC. ED. (L 73) 5. The Act obligated new Member States to undertake to accede to the conventions provided for in Article 220 of the [EEC Treaty, including a fortiori the Brussels Convention], and to the protocols on the interpretation of those conventions by the Court of Justice, signed by the original member States, and to this end they undertake to enter into negotiations with the original Member States in order to make the necessary adjustments thereto. Id. art. 3. The Brussels Convention itself requires new Member States to accede, Brussels Convention, supra note 1, art. 63, as does the Interpretation Protocol, 1971 Interpretation Protocol, supra note 18, art. 9.


on June 1, 1988 among the six original Member States, the United Kingdom, Ireland, and Denmark.\textsuperscript{30} The 1978 Accession Convention amended the Brussels Convention on numerous points necessary to accommodate the interests of the new Member States,\textsuperscript{31} but without altering the fundamental principles of the original agreement.\textsuperscript{32}

In 1982, following its accession to the Treaty of Rome, Greece also acceded to the Brussels Convention.\textsuperscript{33} The Convention which entered into force between Greece and the other parties on October 1, 1989\textsuperscript{34} provided purely technical amendments to the Brussels Convention.\textsuperscript{35}

Spain and Portugal signed a convention of accession to the Brussels Convention in 1989, after their accession to the EC.\textsuperscript{36} This treaty, known
as the San Sebastian Convention, makes certain technical adjustments\textsuperscript{37} to the Brussels Convention and conforms the basic text of the Brussels Convention to the 1988 Lugano Convention with the Member States of the EFTA,\textsuperscript{38} discussed below.\textsuperscript{39} The agreement provides that it will enter into force when ratified by two signatory States, one of which is Spain or Portugal.\textsuperscript{40} The 1989 San Sebastian Convention is presently in force among eight members of the EC.\textsuperscript{41}

D. The 1988 Lugano Convention

In 1988, the Member States of the EC and the Member States of the EFTA\textsuperscript{42} concluded a convention in Lugano, Switzerland on jurisdiction and the enforcement of judgments in civil and commercial matters.\textsuperscript{43} Known as the Lugano Convention, the agreement was intended to ensure the free movement of judgments among Member States of the EC and the EFTA.\textsuperscript{44} The Convention rapporteurs note:

Because of the magnitude of trade between the EEC Member States and

\begin{enumerate}
\item See generally Tony Hunter-Tilney, *The San Sebastian Convention*, in *The Lugano and San Sebastian Conventions*, supra note 2, at 61.
\item See 1990 Cruz Report, supra note 2, at 42-44, reprinted in 29 I.L.M. at 1474-75.
\item See id. at 44-49, reprinted in 29 I.L.M. at 1475-77.
\item See infra part I.D.
\item 1989 San Sebastian Convention, supra note 36, art. 32. The rapporteurs note: An accelerated entry into force of the Convention has been intentionally sought after. This intention was confirmed by the Declaration annexed to the Convention, which establishes a link between the Brussels Convention and the completion of the internal market and urges the States to adopt appropriate measures for ratification as soon as possible and, if possible, by 31 December 1992. 1990 Cruz Report, supra note 2, at 51, reprinted in 29 I.L.M. at 1478. The 1992 deadline, however, has come and gone. See supra note 9.
\item These are France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. See supra note 9.
\item The Member States of the EFTA are Austria, Finland, Iceland, Norway, Sweden, and Switzerland. The 1988 Lugano Convention is presently in force among France, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, and the United Kingdom. See supra note 9.
\item 1990 Jenard Report, supra note 4, at 61, reprinted in 29 I.L.M. at 1482. The Lugano Convention — like the Brussels Convention — also addresses jurisdiction, a subject not covered by this article. See generally Michael Carpenter, *The Lugano Convention and the European Community*, in *The Lugano and San Sebastian Conventions*, supra note 2, at 19.
\end{enumerate}
EFTA, it was to be expected that the need would arise for a judgment given in a Community Member State to be enforced in an EFTA country, or for a judgment given in an EFTA member country to be enforced in a Member State of the European Communities.\textsuperscript{45} 

The Lugano Convention therefore has the remarkable effect of establishing a basic text on jurisdiction and the recognition of foreign judgments applicable in the whole of Western Europe.

The history of the Lugano Convention begins in 1973 when Sweden first indicated its interest in some form of agreement with the EC for the recognition of judgments.\textsuperscript{46} Little happened until 1981 when Switzerland expressed similar interest.\textsuperscript{47} A draft convention was produced relatively quickly after preparatory proceedings commenced in 1985,\textsuperscript{48} and the Convention was opened for signature following a diplomatic conference held in Lugano between September 12 and September 16, 1988.\textsuperscript{49}

The Lugano Convention is based substantially on the Brussels Convention, and the two conventions share many identical provisions.\textsuperscript{50}

\begin{itemize}
  \item \textsuperscript{45} 1990 Jenard Report, supra note 4, at 64, reprinted in 29 I.L.M. at 1484.
  \item \textsuperscript{46} Id., reprinted in 29 I.L.M. at 1484.
  \item \textsuperscript{47} Id., reprinted in 29 I.L.M. at 1484.
  \item \textsuperscript{48} Id. at 64–65, reprinted in 29 I.L.M. at 1484. Among other things, the working party considered the possibility that instead of producing a new agreement, the Member States of the EFTA could simply accede to the Brussels Convention. The rapporteurs note, however, as follows: This possibility was not followed up because, being based on Article 220 of the Treaty of Rome and being the subject of the Protocol of 3 June 1971 which entrusted the Court of Justice of the European Communities with the power to interpret the Convention, the Brussels Convention is a Community instrument and it would have been difficult to ask non-Member States to become signatories. Id. at 65, reprinted in 29 I.L.M. at 1484.
  \item \textsuperscript{49} Id., reprinted in 29 I.L.M. at 1484.
  \item \textsuperscript{50} The rapporteurs note that “the structure of the two Conventions is identical and they contain a great number of comparable provisions.” Id. at 67, reprinted in 29 I.L.M. at 1485; see also 1990 Cruz Report, supra note 2, at 39, reprinted in 29 I.L.M. at 1472; Byrne, supra note 4, at 8.

In connection with the recognition and enforcement of judgments, the official report on the agreement observes that The two Conventions are based on identical fundamental principles which can be summarized as follows:

\begin{itemize}
  \item \textsuperscript{6} Sixth Principle: Grounds for refusing recognition and enforcement are limited. Pursuant to the first paragraph of Article 26 of both Conventions, judgments given in a Contracting State must be recognized in the other Contracting States without any special procedure being required. In other words, judgments are entitled to automatic recognition: the Conventions establish the presumption in favour of recognition and the only grounds for refusal are those listed in Articles 27 and 28.
  \item \textsuperscript{7} Seventh Principle: The enforcement procedure is unified and simplified. It is unified in that, in every Contracting State, the procedure is initiated by submission
The agreements nevertheless "remain separate Conventions,"\(^{51}\) and application of the Lugano Convention is limited by its terms to specific situations.\(^{52}\) Article 54B of the Lugano Convention addresses the interrelationship between that Convention and the Brussels Convention.\(^{53}\) Article 54B notes that the Lugano Convention "shall not prejudice the application" of the Brussels Convention,\(^{54}\) but that it shall apply "in matters of recognition and enforcement, where either the State of origin or the State addressed is not a member of the European Communities."\(^{55}\) A protocol annexed to the Lugano Convention establishes a system designed to ensure the uniform interpretation of the agreement.\(^{56}\) The operation of the Lugano Convention is discussed below in conjunction of an application.

It is simplified in particular with reference to the appeals procedure.

The Lugano Convention makes a number of technical adjustments as against the 1968 Convention . . . .


51. \(Id.\) at 67, \(reprinted\) in 29 I.L.M. at 1485. Despite the similarity of the two agreements, there are a number of provisions that distinguish the two. \(Id.\) at 69–70, \(reprinted\) in 29 I.L.M. at 1486–87. Perhaps the most important feature of the Brussels Convention regime not shared by the Lugano Convention is that the Brussels Convention, in accordance with the 1971 Interpretation Protocol, is subject to the interpretation of the European Court of Justice. \(See\) discussion \(infra\) note 56.

52. Lugano Convention, \(supra\) note 43, art. 54B.

53. \(See\) 1990 Jenard Report, \(supra\) note 4, at 67–69, \(reprinted\) in 29 I.L.M. at 1485–86.

54. Lugano Convention, \(supra\) note 43, art. 54B(1).

55. \(Id.\) art. 54B(2).

56. The drafters of the Lugano Convention were confronted with the danger that the courts of EFTA Member States might interpret the Lugano text differently than the Brussels Convention had been interpreted in the EC. It was also conceivable that courts of EFTA Member States might disagree among themselves over the interpretations of various terms. The Convention rapporteurs noted that

\[\text{without uniform interpretation, the unifying force of the Lugano Convention would be considerably reduced. In addition, a considerable number, if not the majority, of its provisions are reproduced from the Brussels Convention, which posed a further problem. As we know, in order to avoid such differences of interpretation, the Community Member States concluded a Protocol on 3 June 1971 giving jurisdiction to the Court of Justice of the European Communities to rule on the interpretation of the Brussels Convention. . . .} \]

However, the Court of Justice could not be assigned jurisdiction to interpret the Lugano Convention which is not a source of Community law. Furthermore, the EFTA Member States could not have accepted a solution according to which an institution of the Communities would, as a court of last resort, rule on the Lugano Convention.

1990 Jenard Report, \(supra\) note 4, at 89, \(reprinted\) in 29 I.L.M. at 1496.

In response to these potential problems, the signatories of the Lugano Convention agreed on a protocol designed to ensure the uniform interpretation of the treaty. Lugano Convention, \(supra\) note 43, Protocol 2 (on the Uniform Interpretation of the Convention). Under this interpretation protocol, judgments delivered under the Brussels and Lugano Conventions are to be communicated to central authorities in each signatory State. Moreover, meetings are to be held from time to time in which representatives of the various signatory States shall exchange their views on the functioning of the Lugano Convention.

1990 Jenard Report, \(supra\) note 4, at 89–93, \(reprinted\) in 29 I.L.M. at 1496–98.
with the discussion of the operation of the Brussels Convention.

E. The Present Text

The 1968 text of the Brussels Convention has been substantially altered by the subsequent treaties and agreements discussed above, rendering a coherent reading of the current Convention text somewhat difficult.\textsuperscript{57} Recognizing this difficulty, the Secretariat of the Council of Europe in 1990 produced a consolidated and updated version of the Brussels Convention.\textsuperscript{58} A consolidated version of the 1971 Protocol was also produced.\textsuperscript{59} These texts incorporate amendments and revisions to the 1968 text as a result of the 1978, 1982, and 1989 accession conventions and the 1988 Lugano Convention. The revised texts, however, have "no binding effect" and were produced solely for the benefit of legal practitioners.\textsuperscript{60}

II. THE NATURE OF THE CONVENION

The Convention is fully consistent with the Treaty of Rome's stated objective of creating a European "common market."\textsuperscript{61} As the economic ties between Member States expand, so too will the need for a coherent and uniform set of rules concerning the enforcement of judgments rendered in other Member States. The Commission of the EC recognized this need early on, observing in a note sent to Member States on October 22, 1959 that a "true internal market between the [Member] States will be achieved only if adequate legal protection can be secured."\textsuperscript{62}

\footnotesize
57. For a general discussion of the history of amendments to the Brussels Convention that have culminated in the present text, see Pieri, \textit{supra} note 2.
60. Convention Consolidated Text, \textit{supra} note 1 (preliminary note).
61. EEC TREATY, art. 2.
62. 1979 Jenard Report, \textit{supra} note 13, at 3. The note continues: The economic life of the Community may be subject to disturbances and difficulties unless it is possible, where necessary by judicial means, to ensure the recognition and enforcement of the various rights arising from the existence of a multiplicity of legal relationships. As jurisdiction in both civil and commercial matters is derived from the sovereignty of Member States, and since the effect of judicial acts is confined to each national territory, legal protection and, hence, legal certainty in the common market are essentially dependent on the adoption by the Member States of a satisfactory solution to the problem of recognition and enforcement of judgments. \textit{Id.; see also} Bartlett, \textit{supra} note 6, at 44 ("The drafters of the Rome Treaty . . . recognised that the development of a stable economic union would be seriously hampered if enforcement of claims arising from economic transactions were uncertain, time-consuming
The Brussels Convention ensures that judgments may move as freely as goods, workers, and capital in the common market of Europe. The hallmark of the EC system is the virtual elimination of national boundaries for purposes of trade; customs duties are eliminated, workers may move freely throughout the Community, and entrepreneurs of one State may establish business enterprises freely in neighboring Member States. Coextensive with the economic unification of Europe is the consolidation of legal rules governing the reciprocal recognition and enforcement of judgments. The drafters of the Brussels Convention effectuated the observation of the Commission that "legal certainty in the common market [is] essentially dependent on the adoption by the Member States of a satisfactory solution to the problem of recognition and enforcement of judgments." The Brussels Convention affords Member States this legal certainty.

The genius of the Brussels Convention is that it does not merely simplify the "formalities governing the mutual recognition and enforcement of judgments," which would not have added much to the existing structure of bilateral recognition treaties already in force between Member States. Instead, the Brussels Convention introduces a novel and streamlined body of laws applicable to the recognition and enforcement of judgments in Europe. Peter Kaye, the author of an invaluable treatise on the enforcement of foreign judgments, observes that the Committee of Experts responsible for drafting the Convention recognized that the real obstacle to easy and effective enforcement was complexity and diversity of national law conditions therefor, and that consequently, what was required was facilitation, simplification and unification of such recognition and enforcement conditions and procedure; existing bilateral enforcement treaties between individual Member States were divergent and incomplete; adoption of an indirect, recognition and enforcement convention would have led to retention of discrimination against Member States' nationals.
Accordingly, the Committee eschewed the old system of "indirect" enforcement applicable under pre-existing treaties in favor of "direct" enforcement, whereby the judgments of one Member State would be enforceable *per se* in the courts of another Member State. This approach ensures legal certainty in the EC, which was a primary goal of the Committee. Kaye writes:

The system used by the Convention's drafters, therefore, was to replace all existing bilateral enforcement treaties by a single multinational Convention within the latter's sphere and to secure agreement of Member States to reduction of national law restraints on recognition and enforcement and to introduction of a uniform and expeditious enforcement procedure.

Furthermore, the Convention limits the possible grounds for refusing to recognize or enforce a foreign judgment. This limitation was provided "in the interests of ensuring the greatest possible freedom of movement of judgments in the Community."

71. 1979 Jenard Report, *supra* note 13, at 7. Jenard, the rapporteur of the Committee of Experts, observed:

[T]he Committee of experts . . . felt that within the EEC a convention based on rules of direct jurisdiction as a result of the adoption of common rules of jurisdiction would allow increased harmonization of laws, provide greater legal certainty, avoid discrimination and facilitate the "free movement" of judgments, which is after all the ultimate objective.

Conventions based on direct jurisdiction lay down common rules of jurisdiction, thus bringing about the harmonization of laws, whereas under those based on indirect jurisdiction, national provisions apply, without restriction, in determining international jurisdiction in each State.

Legal certainty is most effectively secured by conventions based on direct jurisdiction since, under them, judgments are given by courts deriving their jurisdiction from the conventions themselves; however, in the case of conventions based on indirect jurisdiction, certain judgments cannot be recognized and enforced abroad unless national rules of jurisdiction coincide with the rules of the convention.

Id.; see also Bartlett, *supra* note 6, at 45–46.


73. 1990 Cruz Report, *supra* note 2, at 38, *reprinted in* 29 I.L.M. at 1472. The Cruz Report lists the fundamental principles upon which the Brussels Convention is based:

- it applies only to matters relating to property,
- it lays down rules of direct jurisdiction, i.e. applying from the beginning of the proceedings,
- the defendant's domicile, and not his nationality, is considered to be the basic rule for determining the jurisdiction of the courts,
- no derogation from this rule is allowed, unless expressly provided for in the Convention,
- the defendant's rights must have been respected in the State of origin,
- the grounds for refusing recognition and enforcement are limited in the interests of ensuring the greatest possible freedom of movement of judgments in the Community,
- the *exequatur* procedure is unified and simplified,
- any State which becomes a member of the European Economic Community is required to accept the Convention as a basis for the negotiations necessary to ensure the implementation of Article 220 of the Treaty of Rome; however, the necessary adjustments may be the subject of special conventions.
The European Court of Justice, under authority of the 1971 Interpretation Protocol, has read the Convention in such a way as to promote Community interests over those of particular Member States. In the *Tessili* case, the Court’s first interpretive ruling under the Protocol, the Court determined that the Convention must be read in connection with the principles and objectives of the agreement. The Court, however, did not consider it necessary to determine whether particular Convention terms should be defined independent of Member State law or whether reference should be made to Member State law in defining such terms; instead, the Court ruled that either option should be applied to ensure that the Convention is effective. In the *Eurocontrol* decision, however, the Court determined that the Convention terms were to be given an independent Community definition, writing that “reference must not be made to the law of one of the States concerned but, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.”

*Id.* at 38–39, *reprinted in* 29 I.L.M. at 1472.

Similarly, in his earlier report, Jenard summarizes the characteristic aspects of the Brussels Convention as follows:

1. the criterion of domicile replaces that of nationality;
2. the principle of equality of treatment is extended to any person domiciled in the Community, whatever his nationality;
3. rules of exclusive jurisdiction are precisely defined;
4. the right of the defendant to defend himself in the original proceedings is safeguarded;
5. the number of grounds for refusal of recognition and enforcement is reduced.

In addition, the Convention is original in that:

1. the procedure for obtaining enforcement is standardized;
2. rules of procedure are laid down for cases in which recognition is at issue;
3. provision is made for cases of conflict with other conventions.


75. Case 12/76, Industrie Tessili Italiana Como v. Dunlop AG, 1976 E.C.R. 1473, 1 C.M.L.R. 26 (1977) (preliminary ruling requested by the Oberlandesgericht [Court of Appeal], Frankfurt am Main, Germany). The Court noted that the Brussels Convention implements article 220 of the Treaty of Rome, the purpose of which is to simplify the formalities of recognition of judgments and to strengthen the legal protection of persons situated in the Community:

In order to eliminate obstacles to legal relations and to settle disputes within the sphere of intra-Community relations in civil and commercial matters the Convention contains, *inter alia*, rules . . . facilitating the recognition and execution of courts’ judgments. Accordingly, the Convention must be interpreted having regard both to its principles and objectives and to its relationship with the Treaty.

*Id.* at 1484, 1 C.M.L.R. at 51; *see also* supra note 23 and accompanying text. On the *Tessili* case, see generally Rasmussen, *supra* note 18, at 261–64.

III. General Requirements for Recognition and Enforcement

A. The Scope of the Brussels Convention

1. Civil and Commercial Judgments

The scope of the Brussels Convention is limited by its terms to "civil and commercial matters." Subject to certain discrete limitations, a judgment that falls within the scope of the Brussels Convention must be recognized and given effect in the courts of every Member State.
Conversely, a judgment that falls outside of the scope of the Convention— that is, a judgment not "civil or commercial" within the meaning of the Brussels Convention— need not necessarily be recognized or given effect. Therefore, the determination of whether a judgment is civil or commercial is a crucial one since it may well be dispositive of the judgment's enforceability.

Unfortunately, the Brussels Convention does not define "civil or commercial." There exists some uncertainty as to the meaning of this phrase and hence, to the proper ambit of the Convention. T.C. Hartley observes:

What is a civil or commercial matter? This concept may not be very familiar to English lawyers but on the Continent the existence of these separate court systems necessitates the recognition of such an idea since the rules for deciding which court has jurisdiction in a particular case usually depend, in principle, on a concept of this nature. In essence a civil or commercial matter is an ordinary private law matter; it is not a criminal or public law matter. Thus, for example, fiscal and administrative cases would be excluded.

The general concept is fairly clear and well established in the legal systems of at least the Continental Member States of the Community. There is, however, no general consensus as to the detailed application of the principle and this varies from country to country. Consequently it could happen that a matter which was regarded as civil under the rules in force in Country A would not be so regarded under the rules in force in Country B. How should one decide whether a judgment relating to such a matter comes within the scope of the Convention? Should one look to the classification of the judgment-granting state or to that of the judgment-recognising state?

automatic application of the Convention, see infra part IV.A.

80. The State may still recognize and enforce such a judgment, but the Brussels Convention would not necessitate such recognition and enforcement. Nor does the Brussels Convention vitiate the applicability of the bilateral recognition conventions that predate the Brussels Convention with respect to matters not covered by the Convention. Brussels Convention, supra note 1, art. 56; Convention Consolidated Text, supra note 1, art. 56; Lugano Convention, supra note 43, art. 56; Joined Cases 9 & 10/77, Bavaria Fluggesellschaft Schwabe & Co. KG v. Eurocontrol, 1977 E.C.R. 1517, 1 C.M.L.R. 566 (1980) (preliminary ruling requested by the Bundesgerichtshof [Supreme Court], Germany).


83. Hartley, supra note 11, at 106.
As Hartley illustrates, to adopt the meaning given the phrase “civil and commercial” by the various Member States would lead to inconsistent application of the Brussels Convention. Such a result would likely be contrary to the intention of the drafters of the Convention, who hoped to “facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments.”

Varied and multiform interpretation of a matter as important as the scope of the Convention would doubtless frustrate this objective.

The European Court of Justice, recognizing the difficulties that would flow from parochial interpretation of the scope of the Brussels Convention, determined in the 1976 *Eurocontrol* decision that the phrase “civil and commercial” is to be afforded a Community definition independent of Member State law. In that case, the *Oberlandesgericht* of Düsseldorf asked the European Court of Justice for a preliminary ruling on the interpretation of the term “commercial and civil.” *Eurocontrol*, an international public organization established by treaty which provides certain air navigation safety services in Western Europe, brought suit in the Brussels *Tribunal de Commerce* against LTU, a German air transport firm, to recover unpaid charges from LTU for the use of *Eurocontrol* services. LTU argued unsuccessfully before the Belgian court that the matter was one of public law, not commercial law, and that the matter could not be brought before a commercial court such as the *Tribunal de Commerce*. The Belgian court, however, deemed the matter commercial and ruled in favor of *Eurocontrol*. *Eurocontrol* then sought enforcement in Germany, where the matter eventually came before the *Oberlandesgericht* in Düsseldorf. The German court was uncertain whether the matter was in fact commercial and within the scope of the Brussels Convention, and so referred the question to the European Court of Justice.

84. Convention Consolidated Text, *supra* note 1, pmbl.; *see also* Brussels Convention, *supra* note 1, pmbl.

85. Case 29/76, LTU Lufttransportunternehmen GmbH & Co. KG v. Eurocontrol, 1976 E.C.R. 1541, 1552, 1 C.M.L.R. 88, 102 (1977) (preliminary ruling requested by the Oberlandesgericht [Court of Appeal], Düsseldorf, Germany). The *Eurocontrol* case was one of the first decisions rendered by the Court of Justice pursuant to its authority to interpret the Brussels Convention under the 1971 Interpretation Protocol. *See supra* part I.B.


87. *Id.* at 1553, 1 C.M.L.R. at 90.

88. *Id.*, 1 C.M.L.R. at 91.

89. *Id.* at 1543, 1 C.M.L.R. at 89.

90. *Id.*, 1 C.M.L.R. at 89.

91. *Id.*, 1 C.M.L.R. at 90.

92. *Id.*, 1 C.M.L.R. at 90.
Justice for a preliminary ruling under the 1971 Interpretation Protocol.93

The European Court's decision in Eurocontrol addressed the issue of whether the phrase "civil and commercial" should be determined by reference to the law of the State where the judgment was rendered or the State where the judgment was to be enforced. The Court held that the laws of neither State should control, writing:

In the interpretation of the concept "civil and commercial matters" for the purposes of the application of the [Brussels] Convention ... reference must not be made to the law of one of the States concerned but, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.94

The Eurocontrol Court thus held that for purposes of determining the scope of the Brussels Convention, the phrase "civil and commercial matters" is to be afforded an independent Community definition. According to the Court, the purpose of this rule was to ensure the uniform application of the Brussels Convention to parties existing in diverse legal systems.95

93. Id., 1 C.M.L.R. at 90.

94. Id. at 1552, 1 C.M.L.R. at 102; see also Case 814/79, Netherlands v. Rüffer, 1980 E.C.R. 3807, 3 C.M.L.R. 293 (1981) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands); Case 133/78, Gourdain v. Nadler, 1979 E.C.R. 733, 3 C.M.L.R. 180 (1979) (preliminary ruling requested by the Bundesgerichtshof [Supreme Court], Germany).

95. The Court held:
Since Article 1 serves to indicate the area of application of the Convention it is necessary, in order to ensure, as far as possible, that the rights and obligations which derive from it for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the States concerned.

Eurocontrol, 1976 E.C.R. at 1551, 1 C.M.L.R. at 100. One observer notes that this language "illustrates once again the Court's consistent efforts generally to avoid a simple renvoi to national law of provisions of Community Law or of Community origin." A. McClellan, The Convention of Brussels of September 27, 1968 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 15 COMMON Mkt. L. REV. 228, 230 (1978). Another commentator points out that this approach is similar to the way in which the European Court reconciles Community documents drafted in several languages. Kohler, supra note 2, at 565–66. The Court has found that "[t]he different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part." Case 30/77, Regina v. Bouchereau, 1977 E.C.R. 1999, 2010, [1977–1978 Transfer Binder] Common Mkt. Rep. (CCH) ¶ 8441, at 7956 (1977) (preliminary ruling requested by the Magistrates' Court, London, England); see also Case 150/80, Elefanten Schuh GmbH v. Jacqmain, 1981 E.C.R. 1671, 3 C.M.L.R. 1 (1982) (preliminary ruling requested by the Hof van Cassatie [Supreme Court], Belgium) (selecting an interpretation that was "more in keeping with the objectives and spirit of the Convention"). Recall that the different language versions of the Brussels Convention are all valid under article 68. See supra note 19.
The European Court of Justice in Eurocontrol held somewhat cryptically that in the interpretation of the phrase "civil and commercial," reference must be made primarily "to the objectives and scheme of the Convention." These objectives include the overall aim of the Convention to strengthen the legal protection of persons established in the Community, through the rationalisation, concentration and unification of jurisdiction of Contracting States' courts and consequent simplification and facilitation of procedures for reciprocal recognition and enforcement of Community courts' judgments.

The Court, applying this new standard, found that Eurocontrol's claim against LTU was not commercial and was therefore not within the scope of the Brussels Convention. Accordingly, the judgment obtained by Eurocontrol could not be enforced in Germany under the Brussels Convention.

Curiously missing from the decision of the European Court of Justice in Eurocontrol is any consideration of whether the enforcement court is bound by the rendering court's characterization of the matter as civil or commercial, absent reference to the European Court. Kaye examines this matter in some depth, concluding:

(a) first, that there is no express basis in the Convention for holding that enforcement-courts are bound by decisions of judgment-courts as to civil and commercial nature of proceedings, leading to the judgment sought

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97. KAYE, *CIVIL JURISDICTION*, supra note 4, at 64–65; *see also* Brussels Convention, *supra* note 1, pmbl.

98. The Court found that the public nature of Eurocontrol, acting in its capacity as a public authority, rendered its claim against LTU a public claim, not a commercial matter under article 1 of the Brussels Convention. The Court held that "a judgment given in an action between a public authority and a person governed by private law, in which a public authority has acted in the exercise of its powers, is excluded from the area of application of the Convention." *Eurocontrol*, 1976 E.C.R. at 1552, 1 C.M.L.R. at 102. This holding is applicable only to public entities *qua* public entities — had Eurocontrol been acting as a private entity, the Brussels Convention would have applied.

In 1980, the European Court affirmed the reasoning of its earlier decision in Eurocontrol, finding that where a public authority is acting within the scope of its powers as a public authority, the Convention is inapplicable. Case 814/79, Netherlands v. Rüffer, 1980 E.C.R. 3807, 3 C.M.L.R. 293 (1981) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands). *Rüffer* concerned the removal of a wreck in a public waterway by a public authority, pursuant to an international obligation. The Court observed that certain judgments in an action involving a public authority may come within the purview of the Convention, but that this would not include actions in which the public authority is acting as such.

The Court's holdings in Eurocontrol and Rüffer illustrate that the scope of the Brussels Convention is limited to matters of private law and does not extend to matters of public law. While the public/private law distinction may be unfamiliar to those from common law systems, the concept is not new to practitioners of civil law, which includes most lawyers in Continental Europe.
to be enforced . . .; and
(b) secondly, that there are, nonetheless, strong and binding reasons of Convention policy, as consistently laid down by the European Court, for Contracting States' enforcement-courts to regard themselves as being under a duty to adopt a Community meaning of civil and commercial in relation to the facts of the particular case, which is consistent with the decision reached by the foreign judgment-court itself thereupon, where the latter's finding in this respect was both express and at least defensible and the enforcement-court has no serious reasons for doubting its correctness . . . . Thus, only when the judgment-court's decision is felt to be wholly unjustified, or is not expressed or at least evident, should the enforcement-court itself consider departing from the judgment-court's finding, or, as the case may be, reaching its conclusion independently, as to civil and commercial.99

Put simply, the enforcement court should not substitute its own opinion for that of the judgment court as to whether the matter is civil or commercial. When, however, there is a genuine dispute as to the characterization of the matter, the enforcement court ought to refer the question to the European Court of Justice.

2. Specific Exclusions From Scope

The Brussels Convention expressly exempts from the scope of the agreement four fields of law. Pursuant to article 1, the Brussels Convention shall not apply to:
1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
3. social security;
4. arbitration.100

A subsequent amendment to the Brussels Convention added the provision that it "shall not extend, in particular, to revenue, customs or administrative matters."101

99. Kaye, Civil Jurisdiction, supra note 4, at 1347-48 (footnotes omitted). Kaye indicates that these principles apply with special force "where the judgment-court has held proceedings not to be civil and commercial within Article 1 of the Convention, not merely where it has held them to be so." Id. at 1348.

100. Convention Consolidated Text, supra note 1, art. 1; Lugano Convention, supra note 43, art. 1; see also Brussels Convention, supra note 1, art. 1.

101. Convention Consolidated Text, supra note 1, art. 1. This provision was added by the 1978 Accession Convention. Id. art. 1 n.1.
Ideally, the Brussels Convention would have applied to all civil and commercial matters. But, under the disparate state of European law and policy, the drafters of the Convention saw fit to exempt from coverage these categories of cases. Nevertheless, in doing so, the drafters adopted exclusionary rather than permissive language, believing that this approach would afford the Convention the broadest possible scope. Had the drafters undertaken to define in positive terms the scope of the Convention, all matters not so described would fall outside the Convention's ambit. As drafted, the Convention applies to all civil and commercial matters unless specifically excluded. In this manner, the reach of the Convention is extended as far as possible, increasing with it the degree of European social and economic integration.

The four exceptions listed in article I must be interpreted in light of the decision of the European Court in the *Eurocontrol* case discussed above. That is, each exception must be afforded an independent Community interpretation based primarily upon "the objectives and scheme of the Convention" and not upon the laws of either the State where the judgment was rendered or the State where the judgment is to be enforced.

The four exceptions obtain only when the matter concerned is the principle element of the case. Jenard observes that "matters falling outside the scope of the Convention do so only if they constitute the principal subject-matter of the proceedings. They are thus not excluded when they come before the court as a subsidiary matter either in the main proceedings or in preliminary proceedings." The European Court of Justice held in the *De Cavel II* decision that "[a]ncillary claims . . . come within the scope of the Convention according to the subject-matter with which they are concerned and not according to the subject-matter involved in the principal claim." Moreover, the Court has found no

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103. *Id.; see also* Bartlett, *supra* note 6, at 48–49.
104. *Kaye, Civil Jurisdiction, supra* note 4, at 84.
106. *See supra* notes 85–98 and accompanying text.
107. *Eurocontrol*, 1976 E.C.R. at 1552, 1 C.M.L.R. at 101; *see also* *Kaye, Civil Jurisdiction, supra* note 4, at 85.
108. 1979 Jenard Report, *supra* note 13, at 10; *see also* *Kaye, Civil Jurisdiction, supra* note 4, at 151–53; Bartlett, *supra* note 6, at 48. Problems arise, however, in determining whether an issue is principal or ancillary. *Kaye, Civil Jurisdiction, supra* note 4, at 152; *Byrne, supra* note 4, at 14.
legal basis for drawing a distinction between interim and final measures, and whether an interim measure falls within the Convention’s scope depends upon its nature.\textsuperscript{10}

a. Exclusion of matters concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, and wills and succession

Article 1(1) of the Brussels Convention exempts from coverage all matters concerning “the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession.”\textsuperscript{111} The Committee of Experts responsible for drafting the Brussels Convention excluded these matters because “there was such disparity on these matters between the various systems of law [of the Member States].”\textsuperscript{112} This disparity would be troublesome in light of the principle of automatic recognition set out in the Convention;\textsuperscript{113} the judge of one State would be wary of enforcing a foreign judgment rendered under law that is at odds with the law of his own State.\textsuperscript{114} Rather than risk disruption of the Convention’s effectiveness, the Committee excluded such matters altogether.\textsuperscript{115}

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\textsuperscript{10} Id. at 740, 3 C.M.L.R. at 6.
\textsuperscript{110} Id. at 741, 3 C.M.L.R. at 6.
\textsuperscript{111} Convention Consolidated Text, supra note 1, art. 1(1). This provision remains unaltered by subsequent revisions.
\textsuperscript{112} 1979 Jenard Report, supra note 13, at 10.
\textsuperscript{113} See Brussels Convention, supra note 1, art. 26; Convention Consolidated Text, supra note 1, art. 26; Lugano Convention, supra note 43, art. 26.
\textsuperscript{114} 1979 Jenard Report, supra note 13, at 10 (citing as an example the differences in the divorce laws of the various Member States). Hartley observes:
The matters . . . are probably excluded because they are personal matters in which questions of public policy, morality and social philosophy are likely to be important. Consequently, judges would be unwilling to depart from their own national conceptions and would therefore find it difficult to accept the principle of automatic recognition of foreign judgments.

Hartley, supra note 11, at 108.
\textsuperscript{115} Jenard reports that if these matters had been included, “it would have been
i. Status or legal capacity

The first subject of the article 1(1) exclusion is "the status or legal capacity of natural persons." Within the meaning of the Brussels Convention, matters concerning "the status or legal capacity of natural persons" involve the following:

- the voidability and nullity of marriages, and judicial separation,
- the dissolution of marriages,
- the death of a person,
- the status and legal capacity of a minor and the legal representation of a person who is mentally ill; the status and legal capacity of a minor also includes judgments on the right to custody after the divorce or legal separation of the parents . . . ,
- the nationality or domicile . . . of a person,
- the care, custody and control of children, irrespective of whether these are in issue in divorce, guardianship, or other proceedings,
- the adoption of children.

This catalogue, provided by the rapporteur of the 1978 Accession Convention to the Brussels Convention, should not be taken as an exclusive listing of matters falling within the purview of article 1(1). Note, however, that this provision applies only to natural persons.

ii. Property rights arising from marriage

Judgments concerning the "rights in property arising out of a matrimonial relationship" are also exempted from enforceability under the Brussels Convention. Such matters were excluded because of the great divergences between the legal systems of European States with regard to property rights arising out of a marital relationship. Additionally, there
are "very marked divergences between the rules of conflict of laws [in this regard], and this provokes positive conflicts between the systems."\textsuperscript{123}

In light of the disparity in the laws of the various Member States, the European Court of Justice established a uniform definition of "rights in property arising out of a marital relationship" within the meaning of the Brussels Convention. In its 1979 decision in the \textit{De Cavel I} case, the Court held:

The enforced settlement on a provisional basis of proprietary legal relationships between spouses in the course of proceedings for divorce is closely linked to the grounds for the divorce and the personal situation of the spouses or any children of the marriage and is, for that reason, inseparable from questions relating to the status of persons raised by the dissolution of the matrimonial relationship and from the settlement of rights in property arising out of the matrimonial relationship. Consequently, the term "rights in property arising out of a marital relationship" includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any proprietary relationships resulting directly from the matrimonial relationship or the dissolution thereof.\textsuperscript{124}

This independent definition is consistent with the Court's general preference for establishing an independent Community-wide construction of Convention terminology.\textsuperscript{125}

As the Court indicates, this exception applies only to rights in property that arise "directly" out of a marital relationship or the dissolution thereof.\textsuperscript{126} The exclusion does not automatically preclude enforcement of judgments rendered in any action involving a husband and wife. If, for example, "the claim of a spouse subsists in the law of contract, in tort or in the law of property independently of the matri-
monial regime, the [Brussels] Convention will apply. But despite the illumination by the Court of the phrase “rights in property arising out of a matrimonial relationship,” there remains considerable uncertainty as to the application of this particular exclusion.

iii. Wills and succession

Article 1(1) of the Brussels Convention also exempts matters concerning wills and succession. Here again, the primary reason for exclusion was the disparate treatment of succession matters in the Member States. The rapporteur of the 1978 Accession Convention discusses the scope of this exemption:

The expression “wills and succession” covers all claims to testate or intestate succession to an estate. It includes disputes as to the validity or interpretation of the terms of a will setting up a trust, even where the trust takes effect on a date subsequent to the death of the testator. The same applies to proceedings in respect of the application and interpretation of statutory provisions establishing trusts in favour of persons or institutions as a result of a person dying intestate. The [Brussels] Convention does not, therefore, apply to any disputes concerning the creation, interpretation and administration of trusts arising under the law of succession including wills. On the other hand, disputes concerning the relations of the trustee with persons other than beneficiaries, in other words the “external relations” of the trust, come within the scope of the [Brussels] Convention.

b. Exclusion of matters concerning bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings

The second subject-matter exclusion, set out in article 1(2) of the Brussels Convention, exempts matters of “bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.”

127. Hauschild, supra note 82, at 55.
128. Id.; Kaye, Civil Jurisdiction, supra note 4, at 89. For an extended treatment of the marital exception, see id. at 89–117; Byrne, supra note 4, at 15–19.
129. Brussels Convention, supra note 1, art. 1(1).
130. 1979 Jenard Report, supra note 13, at 11.
131. 1979 Schlosser Report, supra note 29, at 89.
132. Convention Consolidated Text, supra note 1, art. 1(2); see also Brussels Convention, supra note 1, art. 1. The European Court of Justice has observed:
Judgments obtained in such proceedings are not enforceable under the Brussels Convention.\textsuperscript{133}

The Committee of Experts responsible for drafting the Brussels Convention believed that “the peculiarities of this branch of law require[d] special rules.”\textsuperscript{134} Accordingly, the Committee left enforcement of bankruptcy and similar judgments to a separate convention drafted at the same time as the Brussels Convention.\textsuperscript{135} The Brussels Convention and the draft bankruptcy convention were “intended to dovetail almost completely with each other.”\textsuperscript{136}

Jenard reports that the article 1(2) bankruptcy exemption refers to those proceedings which, depending on the system of law involved, are based on the suspension of payments, the insolvency of the debtor or his inability to raise credit, and which involve the judicial authorities for the purpose either of compulsory and collective liquidation of the assets or simply of supervision.\textsuperscript{137} The exemption applies to proceedings concerning legal persons as well as natural persons.\textsuperscript{138}

c. Exclusion of matters concerning social security

Article 1(3) of the Brussels Convention provides that judgments relating to social security are unenforceable under the Convention.\textsuperscript{139} The

As far as concerns bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings, according to the various laws of the Contracting Parties relating to debtors who have declared themselves unable to meet their liabilities, insolvency or the collapse of the debtor’s creditworthiness, which involve the intervention of the courts culminating in the compulsory “liquidation des biens” in the interest of the general body of creditors of the person, firm or company, or at least in supervision by the courts, it is necessary, if decisions relating to bankruptcy and winding-up are to be excluded from the scope of the Convention, that they must \textit{derive directly} from the bankruptcy or winding-up and \textit{be closely connected} with the proceedings for the “liquidation des biens” or the “règlement judiciaire.”


\textsuperscript{133} See Brussels Convention, supra note 1, art. 1.

\textsuperscript{134} 1979 Jenard Report, supra note 13, at 11; 1979 Schlosser Report, supra note 29, at 89.

\textsuperscript{135} 1979 Jenard Report, supra note 13, at 11; 1979 Schlosser Report, supra note 29, at 89.

\textsuperscript{136} 1979 Schlosser Report, supra note 29, at 90.

\textsuperscript{137} 1979 Jenard Report, supra note 13, at 11–12.

\textsuperscript{138} See Brussels Convention, supra note 1, art. 1. For an extended discussion of the bankruptcy exemption, see \textsc{Kaye, Civil Jurisdiction, supra note 4, at 129–44; Byrne, supra note 4, at 19–21.}

\textsuperscript{139} Brussels Convention, supra note 1, art. 1(3).
Committee of Experts responsible for the draft Brussels Convention excluded such matters because "[i]n some countries . . . social security is a matter of public law, and in others it falls in the borderline area between private law and public law."\textsuperscript{140} The Committee also expressed concern over possible interference "on matters of social security between the Convention and agreements already concluded, whether bilaterally or under the auspices of other international organizations such as the International Labour Organization or the Council of Europe."\textsuperscript{141}

The Brussels Convention does not define "social security." The Convention rapporteur, however, indicates that social security signifies at least the following benefits: "medical care, sickness benefits, maternity allowances, invalidity benefits, old age and survivors' pensions, benefits for accidents at work and occupational diseases, family allowances and unemployment benefits.”\textsuperscript{142} In any event, the exemption is confined to disputes arising from relationships between the administrative authorities concerned and employers or employees. On the other hand, the Convention is applicable when the authority concerned relies on a right of direct recourse against a third party responsible for injury or damage, or is subrogated as against a third party to the rights of the injured party insured by it, since, in doing so, it is acting in accordance with the ordinary legal rules.\textsuperscript{143}

d. Exclusion of arbitration

The Brussels Convention, pursuant to article 1(4), does not apply to arbitration.\textsuperscript{144} Several international agreements on arbitration were in force prior to the Brussels Convention, and the Committee of Experts did not see fit to add to this existing body of law.\textsuperscript{145} Accordingly, arbitral awards are not enforceable under the Brussels Convention.\textsuperscript{146} The European Court of Justice recently held that the article 1(4) exclusion is applicable to litigation in a State court as concerns the appointment of an arbitrator, even where a preliminary question in such litigation is whether

\textsuperscript{140} 1979 Jenard Report, supra note 13, at 12.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Id. at 13; see also 1979 Schlosser Report, supra note 29, at 92. On the social security exemption, see KAYE, CIVIL JURISDICTION, supra note 4, at 144-46; BYRNE, supra note 4, at 21-22.
\textsuperscript{144} Brussels Convention, supra note 1, art. 1(4). On the arbitration exception, see KAYE, CIVIL JURISDICTION, supra note 4, at 146-50; BYRNE, supra note 4, at 22.
\textsuperscript{145} 1979 Jenard Report, supra note 13, at 13.
\textsuperscript{146} Id.
there exists an enforceable arbitration agreement.\textsuperscript{147}

IV. RECOGNITION OF JUDGMENTS

Recognition of a judgment is distinct from enforcement of a judgment. Recognition is the judicial acceptance by one forum of a judgment rendered by another forum. Enforcement occurs when a judicial forum orders compliance with a judgment rendered by it or by another forum. Recognition therefore is a prerequisite to enforcement; a judgment must be recognized before it may be enforced, although a court may recognize a judgment without enforcing it.\textsuperscript{148} The Brussels Convention provides for both the recognition and the enforcement of foreign judgments.

A. General Rule of Automatic Recognition

If a judgment given in one Member State is found to be "civil or commercial" within the meaning of the Brussels Convention,\textsuperscript{149} and the subject matter of the judgment is not exempted from coverage pursuant to article 1,\textsuperscript{150} then the judgment shall be recognized in other Member States without any special procedure being required.\textsuperscript{151} Under article 26 of the Brussels Convention, the foreign judgment is deemed to be recognized "automatically."\textsuperscript{152} That is, the Convention "does not require


\textsuperscript{148} Hartley observes:
The recognition of a foreign judgment takes place when the recognising court accepts as binding the determination of the rights and duties of the parties contained in the judgment. Enforcement takes place when the court obliges the defendant, if necessary by coercion, to obey the judgment. Consequently a judgment cannot be enforced unless it is first recognised; but it may be recognised without being enforced. Hartley, supra note 11, at 105; see also LASOK & STONE, supra note 4, at 312.

\textsuperscript{149} See supra part III.A.1.

\textsuperscript{150} See supra part III.A.2.

\textsuperscript{151} Brussels Convention, supra note 1, art. 26; Convention Consolidated Text, supra note 1, art. 26; Lugano Convention, supra note 43, art. 26.

\textsuperscript{152} 1979 Jenard Report, supra note 13, at 43. One writer observes:
The Convention is different from traditional treaties on the recognition and enforcement of judgments. Usually, those treaties contain only "indirect rules" (e.g. rules imposing recognition or enforcement provided that certain grounds for assuming jurisdiction have been adopted by the foreign court). However, a convention with "direct rules" dictates common grounds for jurisdiction among the contracting States; subsequent recognition or enforcement abroad of judgments rendered in conformity with such common grounds are, therefore, subject to a few exceptions, automatic. Giardina, supra note 19, at 263 n.3; see also Bartlett, supra note 6, at 56 ("Articles 5
a judicial decision in the State in which recognition is sought to enable the party in whose favour judgment has been given to invoke that judgment against any party concerned. A judgment recognized pursuant to article 26 should in principle have the same authority as if it were rendered in the State where enforcement is sought.

The Brussels Convention applies only to "judgments," which the Convention defines as follows:

For the purposes of this Convention, "judgment" means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

The Convention therefore is not limited to the enforcement of "judgment[s] terminating the proceedings before the court, but also applies to provisional court orders," including interlocutory court decisions. The European Court of Justice has, however, determined that ex parte proceedings are not entitled to recognition and enforcement under the Brussels Convention. Hence, provisional or interlocutory orders may be recognized and enforced only if granted after a "proper hearing."

B. Exceptions to Recognition

A court may refuse to recognize a foreign judgment under the Brussels Convention in five situations. Article 27 provides:

through 30 set forth uniform rules of recognition based on the rebuttable presumption that all judgments are to be recognised and enforced without requiring special proceedings.

Kohler, supra note 2, at 575.

153. 1979 Jenard Report, supra note 13, at 43.


155. Convention Consolidated Text, supra note 1, art. 25; Lugano Convention, supra note 43, art. 25; see also Brussels Convention, supra note 1, art. 25. See generally Byrne, supra note 4, at 104–05. Note that the Convention is also applicable to authentic instruments and court settlements. See Brussels Convention, supra note 1, arts. 50–51; see also infra notes 232–33 and accompanying text; Dashwood et al., supra note 4, at 36–37.

156. 1979 Schlosser Report, supra note 29, at 126.

157. Id.

158. Case 125/79, Denilauler v. S.N.C. Couchet Frères, 1980 E.C.R. 1553, 1 C.M.L.R. 62 (1981) (preliminary ruling requested by the Oberlandesgericht [Court of Appeal], Frankfurt am Main, Germany). Note, however, that article 24 provides: "Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter." Convention Consolidated Text, supra note 1, art. 24; Lugano Convention, supra note 43, art. 24; see also Brussels Convention, supra note 1, art. 24.

159. Kohler, supra note 2, at 576.
A judgment shall not be recognized:
1. if such recognition is contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;
3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if the court of the State of origin, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;
5. if the judgment is irreconcilable with an earlier judgment given in a non-Contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the State addressed.\(^{160}\) Point 4 mirrors the exemptions set forth in article 1(1).\(^{161}\) The provision is therefore redundant and need not be discussed again here.\(^{162}\) The remaining provisions concern public policy, the rights of the defendant, and irreconcilable judgments. These exceptions are discussed in turn below.

1. Public Policy

The public policy exception set out in article 27(1) provides an "escape clause" for reviewing courts in cases that touch upon the matters of grave domestic concern.\(^{163}\) The Committee of Experts responsible for the draft Convention considered that the public policy exception was to operate in exceptional cases only.\(^{164}\) The European Court of Justice,

\(^{160}\) See Convention Consolidated Text, supra note 1, art. 27; see also Brussels Convention, supra note 1, art. 27; Lugano Convention, supra note 43, art. 27. Subparagraphs 2 and 5 were modified by the 1978 Accession Convention, and subparagraphs 4 and 5 were modified by the 1989 San Sebastian Convention. See Convention Consolidated Text, supra note 1, art. 27 nn.1–3.

\(^{161}\) See Convention Consolidated Text, supra note 1, art. 1(1). On article 27(4), see Kaye, CIVIL JURISDICTION, supra note 4, at 1492–97.

\(^{162}\) Kaye suggests the provision be removed. Kaye, CIVIL JURISDICTION, supra note 4, at 1497.

\(^{163}\) See Brussels Convention, supra note 1, art. 27(1).

\(^{164}\) 1979 Jenard Report, supra note 13, at 44; see also Bartlett, supra note 6, at 57.
consistent with this opinion, has construed the exception narrowly.\textsuperscript{165} In the Hoffman case, the Court found that the incompatibility of a foreign judgment with a domestic judgment does not implicate the general public policy exception set out in point 1 of article 27.\textsuperscript{166} Rather, the issue is to be resolved by recourse to the specific provision of point 3, quoted above.\textsuperscript{167} Even so, there is some question as to whether under this exception, a State may refuse to recognize a judgment obtained by fraud.\textsuperscript{168}

2. Rights of the Defendant

Article 27(2) permits a Member State’s courts to refuse to recognize a judgment entered against a defendant in default without certain procedural safeguards.\textsuperscript{169} By its terms, the exception does not apply where: (1) the defendant has been afforded adequate notice and (2) the notice has been provided in a timely fashion.\textsuperscript{170} The court in which enforcement is sought has the responsibility of determining whether these conditions have been met.\textsuperscript{171} Accordingly, a court may refuse recognition where it determines that the conditions of article 27(2) are satisfied, even though the rendering court deemed the defendant duly served.\textsuperscript{172} It follows from this rule that article 27(2) may be applicable even where the defendant was timely served under the laws of the State in which the judgment was originally rendered, or where the defendant resided, exclusively or otherwise, within the jurisdiction of such court or in the

\begin{itemize}
\item \textsuperscript{165} Case 145/86, Hoffman v. Krieg, 1988 E.C.R. 645, 668, [1989] 2 CEC (CCH) 494, 505 (1988) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands); see also Hartley, supra note 11, at 114; KAYE, CIVIL JURISDICTION, supra note 4, at 1438–44. On the public policy exception, see id. at 1437–49; Byrne, supra note 4, at 108; Lasok & Stone, supra note 4, at 299–301; Dashwood et al., supra note 4, at 39–40; Rasmussen, supra note 18, at 264–66.
\item \textsuperscript{166} Hoffman, 1988 E.C.R. at 668–69, [1989] 2 CEC (CCH) at 505.
\item \textsuperscript{167} Id., [1989] 2 CEC (CCH) at 505.
\item \textsuperscript{168} 1979 Schlosser Report, supra note 29, at 128; KAYE, CIVIL JURISDICTION, supra note 4, at 1444–49.
\item \textsuperscript{169} See Brussels Convention, supra note 1, art. 27(2); Convention Consolidated Text, supra note 1, art. 27(2); Lugano Convention, supra note 43, art. 27(2).
\item \textsuperscript{170} See 1979 Jenard Report, supra note 13, at 44. On the article 27(2) exception, see KAYE, CIVIL JURISDICTION, supra note 4, at 1449–70; Byrne, supra note 4, at 108–13; Lasok & Stone, supra note 4, at 301–07; Dashwood et al., supra note 4, at 40–41.
\item \textsuperscript{171} Article 27(2) is addressed only to the court in which enforcement is sought. Case 166/80, Klomps v. Michel, 1981 E.C.R. 1593, 2 C.M.L.R. 773 (1982) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands).
\item \textsuperscript{172} Case 228/81, Pendy Plastic Products B.V. v. Pluspunkt Handelsgesellschaft GmbH, 1982 E.C.R. 2723, 1 C.M.L.R. 665 (1983) (preliminary ruling requested by the Bundesgerichtshof [Supreme Court], Germany).
\end{itemize}
A court asked to enforce a judgment entered in default must therefore independently review the circumstances in which the judgment was rendered to determine whether recognition of the judgment is permissible under article 27(2). In connection with this inquiry, the court must limit its review to matters contained within article 27(2) and may therefore deny recognition only if the defendant received untimely or inadequate notice. Article 27(2) requires that the reviewing court deny recognition where the defendant was not served with notice of the lawsuit in sufficient time to allow him to respond and avoid entry of default. As noted above, whether the notice was deemed timely under the law of the State where the judgment was rendered is irrelevant — the reviewing court must undertake an independent examination of the circumstances to ensure that the notice was in fact timely as determined by reference to the Brussels Convention. In making this inquiry, the reviewing court may not demand proof that the defendant was actually aware of the notice.

The European Court has determined that where the enforcement court finds that the defendant has been timely served, the court may presume that the defendant had a sufficient opportunity to prepare a defense. The presumption that timely notice equals good notice is not irrebuttable, however, and the enforcement court is entitled to consider any exceptional circumstances that may render timely service of notice inadequate under article 27(2). The enforcement court, which is charged with determining whether notice was served in a timely fashion, may consider the following factors in determining whether the case under review is exceptional: (1) the means by which service was effected; (2) the relationship between the plaintiff and the defendant; and (3) the steps required of the defendant to prevent the entry of a default judgment.

173. Case 49/84, Debaecker v. Bouwman, 1985 E.C.R. 1779, 2 C.M.L.R. 400 (1986) (reference for a preliminary ruling from the Hoge Raad [Supreme Court], Netherlands). The Court has held that article 27(2) applies without regard to whether the parties reside in different Member States or in the same Member State. Klomps, 1981 E.C.R. 1593, 2 C.M.L.R. 773.

174. In Debaecker, the Court noted, "It follows from the wording of Article 27 that the courts of the Contracting State may refuse to recognize a judgment only on one of the grounds expressly mentioned in that provision." 1985 E.C.R. at 1796, 2 C.M.L.R. at 418.

175. Klomps, 1981 E.C.R. at 1608, 2 C.M.L.R. at 796. Since article 27(2) is addressed only to the court in which enforcement is sought, it is irrelevant for purposes of the Brussels Convention that a court of the State in which the judgment was rendered has already determined that the defendant was afforded timely notice. Id., 2 C.M.L.R. at 795.

176. Id., 2 C.M.L.R. at 796.

177. Id. at 1608–09, 2 C.M.L.R. at 796.

178. Id. at 1609, 2 C.M.L.R. at 796; accord Debaecker, 1985 E.C.R. 1779, 2 C.M.L.R. 400. In Debaecker, the Court held that conduct undertaken by a plaintiff following service
Inadequacy of notice is the second ground for denying recognition of a judgment obtained in default of appearance. In a recent decision, the European Court of Justice ruled that recognition may not be given a default judgment rendered against a defendant who was not properly notified in accordance with the local law of the State where the defendant is served.\footnote{Case C-123/91, Minalmet GmbH v. Brandeis, Ltd., __ E.C.R. __ (Nov. 12, 1992) (reference for a preliminary ruling from the Bundesgerichtshof [Supreme Court], Germany), discussed in EUROWATCH, vol. 4, no. 18, Dec. 14, 1992, available in LEXIS, Europe Library, AllNews File. Brandeis sought to execute in Germany a default judgment rendered in England in connection with the repayment of a loan forwarded to Minalmet. After Brandeis commenced suit in England, it attempted to serve Minalmet with a writ of summons in Germany by forwarding the summons to the German authorities. The German authorities attempted without success to serve the writ on Minalmet at the address indicated and eventually left the writ at the local post office with a certificate that service had been attempted. Under German law, such service was inadequate.} The European Court has also ruled that a judgment rendered in default of appearance shall not be given recognition where the notice of service is not in due form, even though it was timely served.\footnote{Case C-305/88, Isabelle Lancray SA v. Peters & Sickert KG, 1990 E.C.R. I-2725 (reference for a preliminary ruling from the Bundesgerichtshof [Supreme Court], Germany); see also Pieri, supra note 2, at 553.} In the \textit{Isabelle Lancray} case, the Court noted that any issue raised by the plaintiff's attempt to cure a defective service is governed by the law of the State where the judgment was rendered or, where applicable, by international agreement.\footnote{Isabelle Lancray, 1990 E.C.R. at I-2740.} Also, the Court of Justice has found that a "document which instituted the proceedings" referred to in this provision may be any document that, under the law of the State in which the judgment is rendered, requires a defendant to make an appropriate response and which in default thereof entitles a plaintiff to judgment.\footnote{Klomps, 1981 E.C.R. 1593, 2 C.M.L.R. 773. In Klomps, the Court deemed a payment order (Zahlungsbefehl) a "document" under article 27(2) since, under German law, service of a payment order entitles a plaintiff to a default judgment where the defendant fails to take appropriate responsive action.}

3. Irreconcilable Judgments

A State court may refuse to recognize a judgment, pursuant to article 27(3), when it is "irreconcilable with a judgment given in a dispute is an element which may be used to determine whether service was timely. The Court noted that after a defendant has been served, the plaintiff is under no obligation to re-serve the defendant after learning that the defendant has assumed a new address. Even so, the plaintiff's re-service of the defendant ensures that the defendant's change of address cannot be deemed an "exceptional circumstance" preventing a determination that the defendant was timely served. The Court further noted that the enforcement court may consider the defendant's responsibility for any failure of a duly served document to reach him.
between the same parties in the State in which recognition is sought.” 183 Although such a circumstance may well fall within the public policy exception, 184 the Committee of Experts responsible for drafting the Brussels Convention carved out a separate exception to obviate the “danger that the concept of public policy would be interpreted too widely.” 185 The Court of Justice has ruled that “[i]n order to ascertain whether the two judgments are irreconcilable within the meaning of Article 27(3), it should be examined whether they entail legal consequences that are mutually exclusive.” 186 In the case of an irreconcilable conflict, “the local judgment in the recognising state will always prevail, irrespective of which judgment was given first or which court was first seized of the case.” 187

Under article 27(5), a Member State’s court may refuse to recognize a judgment that is irreconcilable with a judgment rendered earlier in a non-Contracting State. 188 This provision, which was added to the

183. Convention Consolidated Text, supra note 1, art. 27(3); Lugano Convention, supra note 43, art. 27(3); see also Brussels Convention, supra note 1, art. 27(3).

184. See supra notes 163–64 and accompanying text.

185. 1979 Jenard Report, supra note 13, at 45.


23. It is apparent from the documents before the court that, in the present case, the order for enforcement of the foreign maintenance order was issued at a time when the national decree of divorce had already been granted and had acquired the force of res judicata, and that the main proceedings are concerned with the period following the divorce.

24. That being so, the judgments at issue have legal consequences which are mutually exclusive. The foreign judgment, which necessarily presupposes the existence of the matrimonial relationship, would have to be enforced although that relationship has been dissolved by a judgment given in a dispute between the same parties in the state in which enforcement is sought.

Id. at 669, [1989] 2 CEC (CCH) at 505.

In a later decision, the Court noted that it was the purpose of the Convention to ensure “the sound administration of justice and the efficacious conduct of proceedings.” Case C-220/88, Dumez France & Tracoba v. Hessische Landesbank, 1990 E.C.R. 1-49 (reference for a preliminary ruling from the Cour de Cassation [Supreme Court], France). In this connection, the Court noted:

In order to meet that objective, which is of fundamental importance in a convention which has essentially to promote the recognition and enforcement of judgments in States other than those in which they were delivered, it is necessary to avoid the multiplication of courts of competent jurisdiction which would heighten the risk of irreconcilable decisions, this being the reason for which recognition or an order for enforcement is withheld by virtue of Article 27(3) of the Convention.

Id. at 1-80.


188. Convention Consolidated Text, supra note 1, art. 27(5); Lugano Convention, supra note 43, art. 27(5). On the article 27(5) exemption, see Kaye, Civil Jurisdiction, supra note 4, at 1495–1501; Byrne, supra note 4, at 114; Lasok & Stone, supra note 4, at 307–10; Dashwood et al., supra note 4, at 42.
Brussels Convention as an amendment, removed the uncertainty as to whether article 27(3) applied to judgments of the courts of States not parties to the Brussels Convention.\textsuperscript{189} The article 27(5) exemption differs from the article 27(3) exemption in two important aspects. First, pursuant to article 27(5), the judgment of the non-Contracting State must have preceded the judgment with which it conflicts; this limitation does not apply to the article 27(3) exemption. Second, article 27(5) does not apply unless the conflicting judgments concern the same cause of action, a requirement inapplicable to the article 27(3) exemption.\textsuperscript{190}

4. Special Exclusions

Apart from the exclusions set out in article 27, the Brussels Convention provides elsewhere that a court may not recognize a judgment rendered by a foreign court under other special circumstances.\textsuperscript{191} In particular, a court may not afford recognition to a judgment that does not comport with the special rules set out in the Convention concerning the following: (1) insurance matters;\textsuperscript{192} (2) consumer contracts;\textsuperscript{193} (3) exclusive jurisdiction;\textsuperscript{194} or (4) conventions with third States.\textsuperscript{195}

\begin{itemize}
\item \textsuperscript{189} Kaye, Civil Jurisdiction, \textit{supra} note 4, at 1498.
\item \textsuperscript{190} \textit{Id.} at 1498–1500.
\item \textsuperscript{191} Brussels Convention, \textit{supra} note 1, art. 28; Convention Consolidated Text, \textit{supra} note 1, art. 28; Lugano Convention, \textit{supra} note 43, art. 28.
\item \textsuperscript{192} Convention Consolidated Text, \textit{supra} note 1, tit. II § 3.
\item \textsuperscript{193} \textit{Id.} tit. II § 4.
\item \textsuperscript{194} The Brussels Convention provides: The following courts shall have exclusive jurisdiction, regardless of domicile:
1. (a) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated; 
(b) however, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Contracting State in which the defendant is domiciled shall also have jurisdiction, provided that the landlord and the tenant are natural persons and are domiciled in the same Contracting State;
2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the decisions of their organs, the courts of the Contracting State in which the company, legal person or association has its seat;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the Contracting State in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or is under the terms of an international convention deemed to have taken place;
5. in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced.

Convention Consolidated Text, \textit{supra} note 1, art. 16; see also Brussels Convention, \textit{supra} note 1, art. 16; Lugano Convention, \textit{supra} note 43, art. 16.
\item \textsuperscript{195} Article 59 provides:
C. Recognition Procedure

1. The Application for Recognition

A party seeking recognition of a foreign judgment pursuant to the Brussels Convention must produce for the court of the State in which recognition is sought an authentic copy of the foreign judgment. The Convention provides that the copy must "satisf[y] the conditions necessary to establish its authenticity." Although the Convention does not specify the conditions necessary to establish the judgment's authenticity, it is reasonable to assume that authenticity may be established by whatever means are normally employed by the rendering court to signify the authenticity of its decisions.

Where the party seeks recognition of a judgment entered in default, the party must produce, in addition to an authenticated judgment, the "original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings." The Convention further notes that if the party fails to produce these documents, the court may "specify a time for their production, accept equivalent documents or, if it considers that it has

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This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3. However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessoriy rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property, or

2. if the property constitutes the security for a debt which is the subject-matter of the action.

Convention Consolidated Text, supra note 1, art. 59; see also Brussels Convention, supra note 1, art. 59; Lugano Convention, supra note 43, art. 59.

196. Brussels Convention, supra note 1, art. 46; Convention Consolidated Text, supra note 1, art. 46; Lugano Convention, supra note 43, art. 46.

197. Convention Consolidated Text, supra note 1, art. 46(1); Lugano Convention, supra note 43, art. 46(1); see also Brussels Convention, supra note 1, art. 46.

198. The Brussels Convention provides, "No legalization or other similar formality shall be required in respect of the documents referred to" in this article. Convention Consolidated Text, supra note 1, art. 49.

199. Id. art. 46(2). This point was amended by the 1978 Accession Convention. Id. art. 46 n.3.
sufficient information before it, dispense with their production.\textsuperscript{200} The court may also order that these documents be translated by a certified translator.\textsuperscript{201}

2. Recognition of the Judgment

A party may seek recognition of a foreign judgment either as incidental to any proceeding in which it is relevant or as a first step to enforcement of such a judgment.\textsuperscript{202} The Brussels Convention does not require the court to follow a special recognition process,\textsuperscript{203} and the court may resolve the issue of recognition under its own procedural rules. A judgment may be given partial recognition.\textsuperscript{204} Under no circumstances, however, may the court review the substance of the judgment,\textsuperscript{205} and the jurisdiction of the rendering court may only be reviewed in certain exceptional cases.\textsuperscript{206}

3. Stay Pending Appeal

A stay of recognition is permissible where an ordinary appeal of the judgment for which recognition is sought has been commenced in the State where the judgment was rendered.\textsuperscript{207} The European Court of Justice has determined that an "ordinary appeal" within the meaning of this provision is any appeal which is such that it may result in the annulment or the amendment of the judgment which is the subject matter of the pro-

\textsuperscript{200} Id. art. 48.
\textsuperscript{201} Id. It is unclear whether this provision, which refers to "documents specified in Article 46(2)" (documents instituting a proceeding in an action resulting in default) also applies to documents specified in point 1 of article 46 (authenticated copies of judgments).
\textsuperscript{202} See supra note 148 and accompanying text; see also LASOK & STONE, supra note 4, at 312.
\textsuperscript{203} See Brussels Convention, supra note 1, art. 26. Compare the absence of an imposed recognition procedure with the elaborately detailed procedure applicable to the enforcement of judgments. Id. tit. III, ch. 2.
\textsuperscript{204} See infra note 233 and accompanying text.
\textsuperscript{205} See Brussels Convention, supra note 1, art. 29; Case 42/76, De Wolf v. Harry Cox B.V., 1976 E.C.R. 1760, 1767, 2 C.M.L.R. 43, 55 (1977) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands); LASOK & STONE, supra note 4, at 293–94.
\textsuperscript{206} Brussels Convention, supra note 1, art. 28; Convention Consolidated Text, supra note 1, art. 28; Lugano Convention, supra note 43, art. 28. See generally LASOK & STONE, supra note 4, at 295–99; Kohler, supra note 2, at 578–81.
\textsuperscript{207} Article 30 provides in part, "[a] court of a Contracting State in which recognition is sought of a judgment given in another Contracting State may stay the proceedings if an ordinary appeal against the judgment has been lodged." Convention Consolidated Text, supra note 1, art. 30; Lugano Convention, supra note 43, art. 30; see also Brussels Convention, supra note 1, art. 30; Byrne, supra note 4, at 116–17.
ceeding for recognition or enforcement under the Convention and the lodging of which is bound, in the State in which the judgment was given, to a period which is laid down by the law and starts to run by virtue of that same judgment.208

The Court further noted that the recognition court need not stay proceedings "but merely has the power to do so."209 A special provision applicable only to judgments rendered in the United Kingdom or Ireland allows a court to stay proceedings "if enforcement is suspended in the State of origin, by reason of an appeal."210

V. ENFORCEMENT OF JUDGMENTS

A. General Rules

Pursuant to article 31, "[a] judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there."211 Enforceability, therefore, consists of three elements.

208. Case 43/77, Industrial Diamond Supplies v. Riva, 1977 E.C.R. 2175, 2191–92, 1 C.M.L.R. 349, 367 (1978) (preliminary ruling requested by the Rechtbank van Eerste Aanleg [Court of First Instance], Antwerp, Belgium); see also LASOK & STONE, supra note 4, at 314–15. Lasok and Stone note that "Article 30 should be construed as permitting a stay where the time for an ordinary appeal has not yet expired and a party intends to lodge such an appeal." Id. (citing 1979 Jenard Report, supra note 13, at 46–47).

209. Industrial Diamond, 1977 E.C.R. at 2189, 1 C.M.L.R. at 365. Once again, the Court ruled that a Convention term — here, "ordinary appeal" — must be "defined solely within the framework of the system of the Convention itself and not according to the law either of the State in which the judgment was given or of the State in which recognition or enforcement of that judgment is sought." Id. at 2190, 1 C.M.L.R. at 367.

210. Convention Consolidated Text, supra note 1, art. 31; see also Brussels Convention, supra note 1, art. 30; Lugano Convention, supra note 43, art. 30. This provision was added by the 1978 Accession Convention. Lasok and Stone observe that "[t]his addition seems unnecessary; there appears to be no reason why the concept of 'ordinary appeal', as construed by the European Court, should produce special difficulties in relation to British and Irish judgments . . . ." LASOK & STONE, supra note 4, at 315.

211. Convention Consolidated Text, supra note 1, art. 31; Lugano Convention, supra note 43, art. 31; see also Brussels Convention, supra note 1, art. 31. The text of article 31 previously read: "A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there." Brussels Convention, supra note 1, art. 31 (emphasis added). This provision was amended by the 1989 San Sebastian Convention. Convention Consolidated Text, supra note 1, art. 31 n.4. On enforcement, see KAYE, CIVIL JURISDICTION, supra note 4, at 1423–45; BYRNE, supra note 4, at 117–44.

Under the Convention, the force of a judgment derives directly from the court in which it was rendered. The European Court of Justice has ruled:

1. A foreign judgment which has been recognized by virtue of Article 26 of the Convention must in principle have the same effects in the State in which enforcement is sought as it does in the State in which the judgment was given;
2. A foreign judgment whose enforcement has been ordered in a Contracting State pursuant to Article 31 of the Convention and which remains enforceable in the State
First, the judgment must have been recognized in the Member State in which enforcement is sought. Accordingly, a court may refuse to enforce a judgment "if there is ground for refusing recognition." That is, a judgment is not enforceable if it falls within one of the four exclusions discussed in Part IV.B. Second, the judgment must be enforceable in the Member State in which it was rendered. This is an appropriate requirement, inasmuch as "no greater effect should be given a foreign judgment than it possesses in the judgment-State itself." Third, the interested party must have made an application for enforcement to the appropriate body.

The Brussels Convention provides that the court to which application for enforcement is made "shall give its decision without delay," and that the "appropriate officer of the court shall without delay bring the decision given on the application to the notice of the applicant." The court may refuse to enforce the judgment only for those reasons set out in the Convention and discussed above, and "under no circumstances may the foreign judgment be reviewed as to its substance." The law in which it was given must not continue to be enforced in the State where enforcement is sought when, under the law of the latter State, it ceases to be enforceable for reasons which lie outside the scope of the Convention.


121. 1979 Jenard Report, supra note 13, at 47. See generally Bartlett, supra note 6, at 58. As noted above, recognition is distinct from enforcement, and a party may seek to have a judgment recognized even if it does not wish the judgment enforced. See supra note 148 and accompanying text.

122. Kaye, Civil Jurisdiction, supra note 4, at 1429.

123. In most States, application is made to a civil court of first instance. See Brussels Convention, supra note 1, art. 32; Convention Consolidated Text, supra note 1, art. 32(1); Lugano Convention, supra note 43, art. 32(1). In Italy, however, application is made to an intermediate appellate court. Convention Consolidated Text, supra note 1, art. 32(1). In the United Kingdom, special provision is made for applications within England and Wales, Scotland, and Northern Ireland. Id. Lasok and Stone make the following point: "It appears that, for example, a Scottish decision which gives or refuses incidental recognition to a French judgment has no binding effect in subsequent English proceedings for the registration [i.e., enforcement] of the French judgment, but otherwise the Scottish judgment has its normal effects in England." Lasok & Stone, supra note 4, at 312-13.

Article 32(2) provides that the proper local court of the Member State "shall be determined by reference to the place of domicile of the party against whom enforcement is sought." Convention Consolidated Text, supra note 1, art. 32(2); Lugano Convention, supra note 43, art. 32(2); see also Brussels Convention, supra note 1, art. 32; Lasok & Stone, supra note 4, at 316.

125. Convention Consolidated Text, supra note 1, art. 34; Lugano Convention, supra note 43, art. 34; see also Brussels Convention, supra note 1, art. 34.

126. Convention Consolidated Text, supra note 1, art. 35; Lugano Convention, supra note 43, art. 35; see also Brussels Convention, supra note 1, art. 35.

127. See supra part IV.B.

128. Convention Consolidated Text, supra note 1, art. 34; Lugano Convention, supra
of the State in which enforcement is sought determines the application procedure. A party that has obtained a judgment in one State that is amenable to enforcement in another State cannot commence a second action in the other State for a judgment on the same terms against the same party. Finally, where an applicant obtained a judgment with the assistance of legal aid in the rendering State, the applicant is entitled under the Convention to legal aid in the State wherein enforcement is sought.

B. The Application for Enforcement

The application for enforcement must be accompanied by appropriate documentation. This includes an authenticated copy of the judgment sought to be enforced, documents establishing that the judgment is

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note 43, art. 34; see also Brussels Convention, supra note 1, art. 34.

219. Brussels Convention, supra note 1, art. 33; Convention Consolidated Text, supra note 1, art. 33; Lugano Convention, supra note 43, art. 33; Case 148/84, Deutsche Genossenschaftsbank v. SA Brasserie du Pêcheur, 1985 E.C.R. 1981, 2 C.M.L.R. 496 (1986) (preliminary ruling requested by the Cour d'Appel [Court of Appeal], Colmar, France). The European Court of Justice has ruled that although execution of an enforcement order follows the local law of the State where the order is executed, application of local law must not impair the effectiveness of the Brussels Convention regime. Case 145/86, Hoffman v. Krieg, 1988 E.C.R. 645, 666, 670, [1989] 2 CEC (CCH) 494, 504, 506 (1988) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands); see also Case C-365/88, Kongress Agentur Hagen GmbH v. Zeehaghe BV, May 15, 1990 (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands) (LEXIS, Europe Library, Cases File).


221. Article 44 provides in part:

An applicant who, in the 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 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

Convention Consolidated Text, supra note 1, art. 44; see also DASHWOOD ET AL., supra note 4, at 37. Note that such legal aid is limited to the stage at which the court makes its original determination whether to issue an enforcement order, and that legal aid for the appeal of such decisions is left to the discretion of the State in which enforcement is sought. See LASOK & STONE, supra note 4, at 317. The text of this provision was amended by the 1978 and 1989 Accession Conventions. Convention Consolidated Text, supra note 1, art. 44 n.2.

222. Brussels Convention, supra note 1, art. 33; Convention Consolidated Text, supra note 1, art. 33; Lugano Convention, supra note 43, art. 33; see also 1979 Jenard Report, supra note 13, at 48.

223. Brussels Convention, supra note 1, art. 46; Convention Consolidated Text, supra
enforceable, \textsuperscript{224} and a local address for the party seeking enforcement.\textsuperscript{225} The application must also contain, "where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin."\textsuperscript{226} Both of these documents must be translated if the enforcement court so requires.\textsuperscript{227} The enforcement court, however, may not order the "legalization or other similar formality" in respect to these documents,\textsuperscript{228} but may under certain circumstances accept equivalent documents or waive the need to produce them altogether.\textsuperscript{229} The party against whom enforcement is sought may not, however, make any submissions on his own behalf, and the initial application process is entirely \textit{ex parte}.\textsuperscript{230}
C. Execution of Enforcement Orders

The Brussels Convention has little to say concerning the execution of an enforcement order, leaving the matter to the local law of the State in which enforcement has been ordered. The Convention does provide that during the time specified for an appeal of an order resulting from the initial enforcement application, "no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought."\(^{231}\) The court is permitted to or tribunal to ask the defendant for an explanation, even in exceptional cases. Such a possibility would mean that the proceedings were not properly ex parte. Courts might be inclined to hear the defendant, which would in fact result in the ex parte procedure becoming inter partes. Moreover, there would have been the weakening in the element of surprise which is necessary in an enforcement procedure if the defendant is not to have the opportunity of withdrawing his property from any measure of enforcement.

Bartlett, supra note 6, at 58 n.72; see also LASOK & STONE, supra note 4, at 317–18; Byrne, supra note 4, at 126–27. Allowing a defendant to make submissions would tempt the court to review the substance of the judgment, which the Convention forbids. See Brussels Convention, supra note 1, art. 34; Convention Consolidated Text, supra note 1, art. 34; Lugano Convention, supra note 43, art. 34; see also Byrne, supra note 4, at 117–18. The appeal process, however, is inter partes. See LASOK & STONE, supra note 4, at 321.

231. Convention Consolidated Text, supra note 1, art. 39. The Convention provides at article 39:

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Id.; Lugano Convention, supra note 43, art. 39.; see also LASOK & STONE, supra note 4, at 318–20; Byrne, supra note 4, at 135–38.

The Court of Justice recognized that article 39 protects the rights of a party who has obtained an enforcement order by ensuring that the party against whom enforcement is sought does not frustrate this order by disposing of his property during the pendency of his appeal. Case 119/84, Capelloni v. Pelkmans, 1985 E.C.R. 3147, 3159, 1 C.M.L.R. 388, 398–99 (1986) (preliminary ruling requested by the Corte Suprema di Cassazione [Supreme Court], Italy). The law of the State hearing the case governs the procedure by which a protective order may be put in place. Id. at 3159, 1 C.M.L.R. at 399. Even so, application of such local law cannot contravene the principles of the Brussels Convention regime. Id. at 3160, 1 C.M.L.R. at 399.

The Court has ruled that an applicant's right to protective measures flows directly from the decision authorizing enforcement. For this reason, the applicant need not obtain special authorization before implementing protective measures. Id. at 3161, 1 C.M.L.R. at 400. His right to protection commences the moment the enforcement order is rendered and extends until the expiration of the time required to appeal or, if an appeal is taken, until a decision is rendered on the appeal. Id., 1 C.M.L.R. at 399.

A party against whom protective measures are taken has no recourse under the Brussels Convention except for article 36, which permits the appeal of a decision granting an enforcement order. Id. at 3162, 1 C.M.L.R. at 401. If such a party believes that his rights have been compromised by the protective measures taken against him, he may, consistent with the Convention, commence a lawsuit under local law. Id. at 3163, 1 C.M.L.R. at 401.
“make enforcement conditional on the provision of such security as it shall determine.” 232 A court may enter an order for partial enforcement of a judgment where enforcement cannot be authorized for all matters contained in the judgment. 233 With respect to judgments requiring periodic payments, the Convention provides that a “foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.” 234

D. Appeal

The Brussels Convention provides for two levels of appeal of enforcement decisions: appeal of the initial decision and appeal of the results of such appeal. A party may appeal a court’s decision to enforce or, in the rare case, not to enforce a foreign judgment by making a timely appeal. 235

232. Convention Consolidated Text, supra note 1, art. 38; Lugano Convention, supra note 43, art. 38; see also Brussels Convention, supra note 1, art. 38. The Court of Justice has read this provision to allow the reviewing court to require the posting of security only when the court gives a judgment on appeal. Case 258/83, Calzaturificio Brennero SAS v. Wendel GmbH Schuhproduktion International, 1984 E.C.R. 3971, 2 C.M.L.R. 59 (1986). On this decision, see LASOK & STONE, supra note 4, at 322; K. Lipstein, Enforcement of Judgments Under the Jurisdiction and Judgments Convention: Safeguards, 36 INT’L & COMP. L.Q. 873, 874–76 (1987).

Note also that security cannot be required of a foreign person seeking enforcement solely because of his status as a foreign person. Article 45 states:

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Convention Consolidated Text, supra note 1, art. 45.

233. Brussels Convention, supra note 1, art. 42; Convention Consolidated Text, supra note 1, art. 42; Lugano Convention, supra note 43, art. 38; see also LASOK & STONE, supra note 4, at 313 (“Thus, for example, partial recognition and/or enforcement could occur where the judgment has decided two causes of action, and one of them is outside the scope of the Convention or the decision on one of them is contrary to the stringent public policy of the country addressed; and partial enforcement could occur where a money judgment has been partially satisfied.”).

234. Convention Consolidated Text, supra note 1, art. 43; Lugano Convention, supra note 43, art. 43; see also Brussels Convention, supra note 1, art. 43. This provision was amended by the 1989 San Sebastian Convention. Convention Consolidated Text, supra note 1, art. 43 n.1.

235. Article 36 specifies the time within which the defendant must file his appeal:

If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Convention Consolidated Text, supra note 1, art. 36; see also Brussels Convention, supra note 1, art. 36; Lugano Convention, supra note 43, art. 36.
to the appropriate court. The decision on such appeal may itself be appealed. The European Court of Justice has determined that the Brussels Convention limits the right of appeal to unsuccessful applicants and respondents, and that it does not permit the appeal of an enforcement

In *Hoffman v. Krieg*, the European Court of Justice ruled that the time limit set out in article 36 is mandatory and may not be circumvented by an applicant even where the applicant's appeal comports with national law. 1988 E.C.R. 645, [1989] 2 CEC (CCH) 494 (1988) (preliminary ruling requested by the Hoge Raad [Supreme Court], Netherlands). While the national law of the State of execution generally governs matters of enforcement procedure, the Court ruled that such law "may not impair the effectiveness of the scheme of the Convention." *Id.* at 670, [1989] 2 CEC (CCH) at 506. The Court found:

30. It follows that the legal remedies available under national law must be precluded when an appeal against the execution of a foreign judgment for which an enforcement order has been issued is lodged by the same person who could have appealed against the enforcement order and is based on an argument which could have been raised in such an appeal. In those circumstances, to challenge the execution would be tantamount to again calling in question the enforcement order after the expiry of the strict time-limit laid down by the second paragraph of Art. 36 of the Convention, and would thereby render that provision ineffective.

*Id.*

The Convention does not specify the time limit for the case in which an applicant wishes to appeal the court's decision not to enforce his judgment. See Brussels Convention, *supra* note 1, arts. 40-41; Convention Consolidated Text, *supra* note 1, arts. 40-41; Lugano Convention, *supra* note 43, arts. 40-41. Presumably, this is a matter governed by the law of the forum. See LASOK & STONE, *supra* note 4, at 322-23.

236. The courts to which a respondent shall appeal are listed in article 37. Brussels Convention, *supra* note 1, art. 37; Convention Consolidated Text, *supra* note 1, art. 37(1); Lugano Convention, *supra* note 43, art. 37(1). The courts to which an unsuccessful applicant may appeal are set out in article 40. Brussels Convention, *supra* note 1, art. 40; Convention Consolidated Text, *supra* note 1, art. 40(1); Lugano Convention, *supra* note 43, art. 40(1).

The second paragraph of article 40 requires that the "party against whom enforcement is sought shall be summoned to appear before the appellate court." Convention Consolidated Text, *supra* note 1, art. 40(2); Lugano Convention, *supra* note 43, art. 40(2). The European Court of Justice has found that this provision requires that a court hearing the appeal of an applicant whose application for enforcement was denied must hear the party against whom enforcement is sought — even where the application is dismissed for procedural reasons only. Case 178/83, Firma P v. Firma K, 1984 E.C.R. 3033, 2 C.M.L.R. 238 (1985) (reference for a preliminary ruling from the Oberlandesgericht [Court of Appeal], Frankfurt am Main, Germany).

237. As to respondents, see Convention Consolidated Text, *supra* note 1, art. 37(2); Lugano Convention, *supra* note 43, art. 37(2). And, as to applicants, see Convention Consolidated Text, *supra* note 1, art. 40(2); see also Brussels Convention, *supra* note 1, art. 40; Lugano Convention, *supra* note 43, art. 40(2).

The right of appeal under articles 37(2) and 40(2) is limited to final judgments. The European Court of Justice has determined that an article 37(2) appeal is unavailable against interim or interlocutory measures. Case 258/83, Calzaturificio Brennero SAS v. Wendel GmbH Schuhproduktion International, 1984 E.C.R. 3971, 2 C.M.L.R. 59 (1986). The Court held:

Under the general scheme of the Convention, and in light of one of its principal objectives, which is to simplify procedures in the State in which enforcement is sought, that provision [article 37(2)] cannot be extended so as to enable an appeal in cassation to be lodged against a judgment other than that given on the appeal, for instance against a preliminary or interlocutory order requiring preliminary inquiries to be made. *Id.* at 3983, 2 C.M.L.R. at 71; see also LASOK & STONE, *supra* note 4, at 323-24.
order by interested third parties. The court to which an appeal is taken may stay the appeal proceedings if an ordinary appeal has been lodged against the judgment in the State where the judgment originated, or it may permit enforcement conditioned upon the provision of security. Pending resolution of the appeal, no enforcement measures may be taken other than protective measures against the person or property that is the subject of the enforcement order.

E. Settlements and Authentic Instruments

The Convention further provides that a document drawn up and enforceable in one Member State as an “authentic instrument” must be enforced as such in any other Member State in which a proper application is made. Also, a settlement “which has been approved by a court in

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239. Brussels Convention, supra note 1, art. 38; Convention Consolidated Text, supra note 1, art. 38; Lugano Convention, supra note 43, art. 38; see also supra part IV.C.3. (discussing “ordinary appeal”); LASOK & STONE, supra note 4, at 321-22.

The European Court of Justice recently determined that a court asked to stay proceedings under article 38 may consider only those submissions of the appealing party that such party was unable to make before the court which rendered the judgment to be enforced. Case C-183/90, Van Dalsen v. Van Loon, __ E.C.R. __ (Oct. 4, 1991), discussed in Pieri, supra note 2, at 554. The Court further ruled in the Van Dalsen case that the refusal of the appellate court to stay proceedings pursuant to article 38 does not constitute a “judgment given on the appeal” within the meaning of article 37(2) and therefore cannot be appealed pursuant to that provision.

240. See supra note 232.

241. See supra note 231 and accompanying text.

242. Article 50 provides:
A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed. The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin. Convention Consolidated Text, supra note 1, art. 50; Lugano Convention, supra note 43, art. 50; see also Brussels Convention, supra note 1, art. 50. This provision was amended by the 1989 Accession Convention. Convention Consolidated Text, supra note 1, art. 50 n.1.

Note that authentic instruments are enforceable under the ordinary enforcement procedures set out in article 31. It is also interesting that the only basis for refusing to
the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments."

CONCLUSION

The Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is a remarkable accomplishment. In the twenty-five years since the Convention was signed, the EC has moved closer to its goal of social, political, and economic harmonization. The Brussels Convention has been instrumental to this purpose. By allowing the free flow of judgments among the Member States of the Community, the Brussels Convention helps to realize the goal of a fully integrated Europe. Moreover, with the entry into force of the Lugano Convention, a coherent regime on the recognition and enforcement of judgments now exists for all nations of Western Europe. The European Court of Justice has paid due regard to the significance of the Brussels Convention as establishing a distinctly European regime. In its several interpretative rulings, the Court has consistently applied the Convention with a view toward shaping a body of truly European procedural rules distinct from the laws of the various Member States. And so, with each judgment recognized under the Brussels Convention, the common market of Europe moves closer to legal unity.

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enforce an authentic instrument is that such enforcement would contravene the public policy of the State in which enforcement is sought. This is a much more limited basis for refusal than that applicable to ordinary judgments enforceable under article 31. See generally LASOK & STONE, supra note 4, at 324–25.

243. Convention Consolidated Text, supra note 1, art. 51; Lugano Convention, supra note 43, art. 51; see also Brussels Convention, supra note 1, art. 51; LASOK & STONE, supra note 4, at 324–25. This provision was modified by the 1989 Accession Convention. Convention Consolidated Text, supra note 1, art. 51 n.2.
APPENDIX

CONVENTION

ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

(90/C 189/02)

PREAMBLE

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

DESIRING to implement the provisions of Article 220 of that Treaty by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals;

ANXIOUS to strengthen in the Community the legal protection of persons therein established;

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements;

HAVE DECIDED to conclude this Convention . . . [and]

HAVE AGREED AS FOLLOWS:

TITLE I

SCOPE

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

2. bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

3. social security;

4. arbitration.

TITLE II

JURISDICTION

TITLE III

RECOGNITION AND ENFORCEMENT

Article 25

For the purposes of this Convention, "judgment" means any judgment given by a court or tribunal of a Contracting State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by any officer of the court.

Section 1

RECOGNITION

Article 26

A judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required.

Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognized.

If the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 27

A judgment shall not be recognized:

1. if such recognition is contrary to public policy in the State in which recognition is sought;

2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;

3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;

4. if the court of the State of origin, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private interna-
tional law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State;

5. if the judgment is irreconcilable with an earlier judgment given in a non-contracting State involving the same cause of action and between the same parties, provided that this latter judgment fulfils the conditions necessary for its recognition in the state addressed.

**Article 28**

Moreover, a judgment shall not be recognized if it conflicts with the provisions of Sections 3, 4 or 5 of Title II, or in a case provided for in Article 59.

In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.

Subject to the provisions of the first paragraph, the jurisdiction of the court of the State of origin may not be reviewed; the test of public policy referred to in point 1 of Article 27 may not be applied to the rules relating to jurisdiction.

**Article 29**

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

**Article 30**

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

A court of a Contracting 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 State of origin, by reason of an appeal.

**Section 2**

**ENFORCEMENT**

**Article 31**

A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.

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 32**

1. The application shall be submitted:

   — in Belgium, to the tribunal de première instance or rechtbank van eerste aanleg,
— in Denmark, to the byret,
— in the Federal Republic of Germany, to the presiding judge of a chamber of the Landgericht,
— in Greece, to the Μονομελές Προτοδικείο,
— 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 Portugal, to the Tribunal Judicial de Circulo,
— in the United Kingdom:

1. in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State;

2. in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court on transmission by the Secretary of State;

3. in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court on transmission by the Secretary of State.

2. The jurisdiction of the local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.

Article 33

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

The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Article 34

The court applied to shall give its decision without delay; the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.
The application may be refused only for one of the reasons specified in Articles 27 and 28.

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

Article 35

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

Article 36

If enforcement is authorized, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 37

1. An appeal against the decision authorizing enforcement shall be lodged in accordance with the rules governing procedure in contentious matters:

— in Belgium, with the tribunal de première instance or rechtbank

— in Denmark, with the landsret,

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

— in Greece, with the Ἐφετείο,

— 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 supérieure de justice sitting as a court of civil appeal,

— in the Netherlands, with the arrondissementsrechtbank,

— in Portugal, with the Tribunal de Relação,

— in the United Kingdom:

(a) in England and Wales, with the High Court of Justice, or in the case of maintenance judgment with the Magistrates' Court;

(b) in Scotland, with the Court of Session, or in the case of a maintenance judgment with the Sheriff Court;

(c) in Northern Ireland, with the High Court of Justice, or in the case of a maintenance
judgment with the Magistrates' Court.

2. The judgment given on the 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 the leave of the Minister of Justice,

- in the Federal Republic of Germany, by a Rechtsbeschwerde,

- in Ireland, by an appeal on a point of law to the Supreme Court,

- in Portugal, by an appeal on a point of law.

- in the United Kingdom, by a single further appeal on a point of law.

Article 38

The court with which the appeal under Article 37(1) is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

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

The court may also make enforcement conditional on the provision of such security as it shall determine.

Article 39

During the time specified for an appeal pursuant to Article 36 and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought.

The decision authorizing enforcement shall carry with it the power to proceed to any such protective measures.

Article 40

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

- in Belgium, to the cour d'appel or 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 court d'appel,

- in Ireland, to the High Court,

- in Italy, to the corte d'appello,
in Luxembourg, to the Cour supérieure de justice sitting as a court of civil appeal,

in the Netherlands, to the gerechtshof,

in Portugal, to the Tribunal da Relação,

in the United Kingdom:

(a) in England and Wales, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court;

(b) in Scotland, to the Court of Session, or in the case of a maintenance judgment to the Sheriff Court;

(c) in Northern Ireland, to the High Court of Justice, or in the case of a maintenance judgment to the Magistrates' Court.

2. The party against whom enforcement is sought shall be summoned to appear before the appellate court. If he fails to appear, the provisions of the second and third paragraphs of Article 20 shall apply even where he is not domiciled in any of the Contracting States.

Article 41

A judgment given on an appeal provided for in Article 40 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 the leave of the Minister of Justice,

— in the Federal Republic of Germany, by a Rechtsbeschwerde,

— in Ireland, by an appeal on a point of law to the Supreme Court,

— in Portugal, by an appeal on a point of law,

— in the United Kingdom, by a single further appeal on a point of law.

Article 42

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

An applicant may request partial enforcement of a judgment.

Article 43

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.
Article 44

An applicant who, in the State of origin has benefitted from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedures provided for in Articles 32 to 35, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark in respect of a maintenance order may, in the State addressed, claim the benefits referred to in the first paragraph 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 45

No security, bond or deposit, however described, shall be required of a party who in one Contracting State applies for enforcement of a judgment given in another Contracting State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Article 46

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

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.

Article 47

A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State of origin the judgment is enforceable and has been served;

2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State of origin.

Article 48

If the documents specified in point 2 of Articles 46 and 47 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,
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If the court so requires, a translation of the documents shall be produced; the translation shall be certified by a person qualified to do so in one of the Contracting States.

Article 49

No legalization or other similar formality shall be required in respect of the documents referred to in Articles 46 or 47 or the second paragraph of Article 48, or in respect of a document appointing a representative ad litem.

TITLE IV

AUTHENTIC INSTRUMENTS
AND COURT SETTLEMENTS

Article 50

A document which has been formally drawn up or registered as a authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.

Article 51

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments.

TITLE V

GENERAL PROVISIONS

TITLE VI

TRANSITIONAL PROVISIONS

TITLE VII

RELATIONSHIP TO OTHER CONVENTIONS

Article 55

Subject to the provisions of the second subparagraph of Article 54, and of Article 56, this Convention shall, for the States which are parties to it, supersede the following conventions concluded between two or more of them:

Article 56

The Treaty and the conventions referred to in Article 55 shall continue to have effect in relation to matters to which this Convention does not apply.
They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 57

1. This Convention shall not affect any conventions to which the Contracting States are or will be parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.

2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:

(a) this Convention shall not prevent a court of a Contracting State which is a party to a convention on a particular matter from assuming jurisdiction in accordance with that Convention, even where the defendant is domiciled in another Contracting State which is not a party to that Convention. The court hearing the action shall, in any event, apply Article 20 of this Convention;

(b) judgments given in a Contracting State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognized and enforced in the other Contracting State in accordance with this Convention.

Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedure for recognition and enforcement of judgments may be applied.

Article 58

Until such time as the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Lugano on 16 September 1988, takes effect with regard to France and the Swiss Confederation, this Convention shall not affect the rights granted to Swiss nationals by the Convention between France and the Swiss Confederation on jurisdiction and enforcement of judgments in civil matters, signed at Paris on 15 June 1869.

Article 59

This Convention shall not prevent a Contracting State from assuming, in a convention on the recognition and enforcement of judgments, an obligation towards a third State not to recognize judgments given in other Contracting States against defendants domiciled or habitually resident in the third State where, in cases provided
for in Article 4, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3.

However, a Contracting State may not assume an obligation towards a third State not to recognize a judgment given in another Contracting State by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:

1. if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property; or

2. if the property constitutes the security for a debt which is the subject-matter of the action.

TITLE VIII

FINAL PROVISIONS

Article 60

[Deleted]

Article 61

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

Article 62

This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last signatory State to take this step.

Article 63

The Contracting States recognize that any State which becomes a member of the European Economic Community shall be required to accept this Convention as a basis for the negotiations between the Contracting States and that State necessary to ensure the implementation of the last paragraph of Article 220 of the Treaty establishing the European Economic Community.

The necessary adjustments may be the subject of a special convention between the Contracting States of the one part and the new Member States of the other part.

Article 64

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

(a) the deposit of each instrument of ratification;

(b) the date of entry into force of this Convention;

(c) [deleted];

(d) any declaration received pursuant to Article IV of the Protocol;

(e) any communication made pursuant to Article VI of the Protocol.
Article 65

The Protocol annexed to this Convention by common accord of the Contracting States shall form an integral part thereof.

Article 66

This Convention is concluded for an unlimited period.

Article 67

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

Article 68

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