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## Appendix: The European Union Convention on Insolvency Proceedings

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## **Appendix**

### **EUROPEAN UNION CONVENTION ON INSOLVENCY PROCEEDINGS**

#### **PREAMBLE**

**THE HIGH CONTRACTING PARTIES TO THIS CONVENTION, MEMBER STATES OF THE EUROPEAN UNION,**

**DESIRING** to implement Article 220 of the Treaty Establishing the European Community, by virtue of which they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of the judgments of courts or tribunals,

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

**CONSIDERING** that it is necessary for that purpose to determine the jurisdiction of their courts or authorities with regard to intra-Community effects of insolvency proceedings, to create certain uniform conflict-of-laws rules for such proceedings, to ensure the recognition and enforcement of judgments given in such matters, to make provision for the possibility of opening secondary insolvency proceedings and to guarantee information for creditors and their right to lodge claims,

**AWARE** that this Convention does not affect the application of the provisions of Community law which, in relation to particular matters, lay down rules relating to insolvency proceedings or of national law harmonized in implementation of such Community law,

**MEETING WITH THE COUNCIL,**

**HAVE DECIDED AS FOLLOWS:**

CHAPTER I  
GENERAL PROVISIONS

ARTICLE 1

*Scope*

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

ARTICLE 2

*Definitions*

For the purposes of this Convention:

- (a) “insolvency proceeding” shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A, which shall form an integral part of this Convention;
- (b) “liquidator” shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs. Those persons and bodies are listed in Annex C, which shall form an integral part of this Convention;
- (c) “winding-up proceedings” shall mean insolvency proceedings within the meaning of point (a) involving realizing the assets of the debtor, including where the proceedings have been closed by a composition or other measure terminating the insolvency, or closed by

reason of the insufficiency of the assets. Those procedures are listed in Annex B, which shall form an integral part of this Convention;

- (d) “court” shall, with the exception of Articles 44 and 45, mean the judicial body or any other competent body of a Contracting State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;
- (e) “judgment” in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;
- (f) “the time of the opening of proceedings” shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;
- (g) “the Contracting State in which assets are situated” shall mean, in the case of:
  - tangible property, the Contracting State within the territory of which the property is situated;
  - property and rights ownership of or entitlement to which must be entered in a public register, the Contracting State under the authority of which register is kept;
  - claims, the Contracting State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);
- (h) “establishment” shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

## ARTICLE 3

*International jurisdiction*

1. The courts of the Contracting State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

2. Where the centre of a debtor's main interests is situated within the territory of a Contracting State, the courts of another Contracting State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Contracting State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Contracting State.

3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.

4. Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:

- (a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Contracting State within the territory of which the centre of the debtor's main interests is situated, or
- (b) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Contracting State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

## ARTICLE 4

*Law applicable*

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

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

- (a) against which debtors insolvency proceedings may be brought on account of their capacity;
- (b) the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings;
- (c) the respective powers of the debtor and the liquidator;
- (d) the conditions under which set-offs may be invoked;
- (e) the effects of insolvency proceedings on current contracts to which the debtor is party;
- (f) the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending;
- (g) the claims which are to be lodged against the debtor’s estate and the treatment of claims arising after the opening of insolvency proceedings;
- (h) the rules governing the lodging, verification and admission of claims;
- (i) the rules governing the distribution of proceeds from the realization of assets, the ranking of claims and the

rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in rem or through a set-off;

- (j) the conditions for and the effects of closure of insolvency proceedings, in particular by composition;
- (k) creditors' rights after the closure of insolvency proceedings;
- (l) who is to bear the costs and expenses incurred in the insolvency proceedings;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

## ARTICLE 5

### *Third parties' rights in rem*

1. The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets belonging to the debtor which are situated within the territory of another Contracting State at the time of the opening of proceedings.

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

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

them contrary to the wishes of the party so entitled;

(d) a right in rem to the beneficial use of assets.

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

4. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 4(2)(m).

## ARTICLE 6

### *Set-off*

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

2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 4(2)(m).

## ARTICLE 7

### *Reservation of title*

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

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



territory of a Contracting State other than the State of the opening of proceedings.

3. Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 4(2)(m).

## ARTICLE 8

### *Contracts relating to immovable property*

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

## ARTICLE 9

### *Payment systems and financial markets*

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

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

## ARTICLE 10

### *Contracts of employment*

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

## ARTICLE 11

*Effects on rights subject to registration*

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

## ARTICLE 12

*Community patents and trade marks*

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

## ARTICLE 13

*Detrimental acts*

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

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

## ARTICLE 14

*Protection of third-party purchasers*

Where, by an act concluded after the opening of insolvency pro-

ceedings, the debtor disposes, for consideration, of:

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

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

## ARTICLE 15

### *Effects of insolvency proceedings on lawsuits pending*

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

## CHAPTER II

### RECOGNITION OF INSOLVENCY PROCEEDINGS

## ARTICLE 16

### *Principle*

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

This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debt-

or in other Contracting States.

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

## ARTICLE 17

### *Effects of recognition*

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

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

## ARTICLE 18

### *Powers of the liquidator*

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

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

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

## ARTICLE 19

### *Proof of the liquidator's appointment*

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

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

## ARTICLE 20

### *Return and imputation*

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

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

## ARTICLE 21

### *Publication*

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

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

## ARTICLE 22

### *Registration in a public register*

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

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

## ARTICLE 23

*Costs*

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

## ARTICLE 24

*Honouring of an obligation to a debtor*

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

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

## ARTICLE 25

*Recognition and enforceability of other judgments*

1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognized in accordance with Article 16 and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognized with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51 of the Convention on Jurisdiction and the Enforcement of

Judgments in Civil and Commercial Matters, with the exception of Article 34(2).

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

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

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

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

## ARTICLE 26

### *Public policy*

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



## CHAPTER III

## SECONDARY INSOLVENCY PROCEEDINGS

## ARTICLE 27

*Opening of proceedings*

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

## ARTICLE 28

*Applicable law*

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

## ARTICLE 29

*Right to request the opening of proceedings*

The opening of secondary proceedings may be requested by:

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

## ARTICLE 30

*Advance payment of costs and expenses*

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

## ARTICLE 31

*Duty to cooperate and communicate information*

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

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

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

## ARTICLE 32

*Exercise of creditors' rights*

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

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

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

### ARTICLE 33

#### *Stay of liquidation*

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

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

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

## ARTICLE 34

*Measures ending secondary insolvency proceedings*

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

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

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

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

## ARTICLE 35

*Assets remaining in the secondary proceedings*

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

## ARTICLE 36

*Subsequent opening of the main proceedings*

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

## ARTICLE 37

*Closure and conversion of earlier proceedings*

1. At the request of the liquidator in the main proceedings, the court which has jurisdiction under Article 3(2) shall order the closure of proceedings opened previously, on condition that a continuation is not justified by the public interest and after hearing the authority which requested the opening.

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

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

## ARTICLE 38

*Preservation measures*

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

opening of insolvency proceedings and the judgment opening the proceedings.

## CHAPTER IV

### PROVISION OF INFORMATION FOR CREDITORS AND LODGEMENT OF THEIR CLAIMS

#### ARTICLE 39

##### *Right to lodge claims*

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

#### ARTICLE 40

##### *Duty to inform creditors*

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

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

## ARTICLE 41

*Content of the lodgement of a claim*

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

## ARTICLE 42

*Languages*

1. The information provided for in Article 40 shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading "Invitation to lodge claim. Time limits to be observed" in all the official languages of the European Union.
2. Any creditor who has his habitual residence, domicile or registered office in a Contracting State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that other State. In that event, however, the lodgement of his claim shall bear the heading "Lodgement of claim" in the official language or one of the official languages of the State of the opening of proceedings. In addition, he may be required to provide a translation, into that language, of the lodgement of claim.

## CHAPTER V

## INTERPRETATION BY THE COURT OF JUSTICE

## ARTICLE 43

*Jurisdiction of the Court of Justice*

1. The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of this Convention, including the Annexes thereto, and the Conventions on accession to this Convention by the States which become Members of the European Union after the date on which this Convention is closed for signature.
2. The Protocol on the Statute of the Court of Justice and the Rules of Procedure of the Court of Justice shall apply.
3. The Rules of Procedure of the Court of Justice shall, if necessary, be adjusted and supplemented in accordance with Article 188 of the Treaty establishing the European Community.

## ARTICLE 44

*Preliminary ruling proceedings*

The following courts may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions of the instruments referred to in Article 43(1) if that court considers that a decision on the question is necessary to enable it to give judgment:

- (a) - in Belgium:  
la Cour de Cassation/het Hof van Cassatie and le Conseil d'Etat/de Raad van State [the Supreme Court and the State Council];
- in Denmark:  
Højesteret [Supreme Court];



- in the Federal Republic of Germany:  
die obersten Gerichtshöfe des Bundes [the Supreme Federal Court];
- in Greece:  
Ários Págos ke Simvoúlio tis Epikratías  
[Supreme Court and the State Council];
- in Spain:  
el Tribunal Supremo [the Supreme Court];
- in France:  
la Cour de Cassation and le Conseil d'Etat [the Supreme Court and the State Council];
- in Ireland:  
the Supreme Court;
- in Italy:  
la Corte suprema di cassazione and il Consiglio di Stato [the Supreme Court and the State Council];
- in Luxembourg:  
la Cour Supérieure de Justice [the Superior Judicial Court], when sitting as Cour de Cassation;
- in Austria:  
der Oberste Gerichtshof [the Supreme Court];  
der Verfassungsgerichtshof [the Supreme Constitutional Court];  
der Verwaltungsgerichtshof [the Supreme Administrative Court];
- in the Netherlands:  
de Hoge Raad [the Supreme Court];
- in Portugal:  
o Supremo Tribunal de Justiça [the Supreme Court of Justice];
- in Finland:  
Korkein oikeus/Högsta domstolen [Supreme Court];

- in Sweden:  
Högsta domstolen [Supreme Court];
  - in the United Kingdom:  
the House of Lords and other courts from which no further appeal is possible;
- (b) the courts of the Contracting States when acting as appeal courts.

## ARTICLE 45

### *Proceedings brought by a competent authority*

1. The competent authority of a Contracting State may request the Court of Justice to give a ruling on a question of interpretation of the instruments referred to in Article 43(1) if judgments given by courts of that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Contracting State referred to in Article 44. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.
2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.
3. The Procurators-General of the Supreme Courts of Appeal of the Contracting States, or any other authority designated by a Contracting State, shall be entitled to ask the Court of Justice to give a ruling on interpretation in accordance with paragraph 1.
4. The Registrar of the Court of Justice shall give notice of the request to the Contracting States, to the Commission and to the Council of the European Union; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.
5. No fees shall be levied nor any costs or expenses awarded in respect of the proceedings provided for in this Article.

## ARTICLE 46

*Reservations*

1. Any signatory State which is unable to apply Article 44 for constitutional reasons may enter a reservation on that Article at the time of signing this Convention.
2. Any signatory State which has entered a reservation pursuant to paragraph 1 may withdraw all or part of that reservation by notifying the depositary.

Withdrawal shall take effect from the date on which the depositary receives the notification.

## CHAPTER VI

## TRANSITIONAL AND FINAL PROVISIONS

## ARTICLE 47

*Applicability in time*

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

## ARTICLE 48

*Relationship to other Conventions*

1. When this Convention applies, it shall, in respect of the matters referred to therein, supersede, as between the States which are party to it, the following Conventions concluded between two or more of those States:

- the Convention between Belgium and France on Jurisdiction and the Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments, signed at Paris on 8 July 1899;
- the Convention between Belgium and Austria on Bankruptcy, Winding-up, Arrangements, Compositions and Suspension of Payments (with Additional Protocol of 13 June 1973), signed at Brussels on 16 July 1969;
- the Convention between Belgium and the Netherlands on Territorial Jurisdiction, Bankruptcy and the Validity and Enforcement of Judgments, Arbitration Awards, and Authentic Instruments, signed at Brussels on 28 March 1925;
- the Treaty between Germany and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Vienna on 25 May 1979;
- the Convention between France and Austria on Jurisdiction, Recognition and Enforcement of Judgments on Bankruptcy, signed at Vienna on 27 February 1979;
- the Convention between France and Italy on the Enforcement of Judgments in Civil and Commercial Matters, signed at Rome on 3 June 1930;
- the Convention between Italy and Austria on Bankruptcy, Winding-up, Arrangements and Compositions, signed at Rome on 12 July 1977;
- the Convention between the Kingdom of the Netherlands and the Federal Republic of Germany on the Mutual Recognition and Enforcement of Judgments and other Enforceable Instruments in Civil and Commercial Matters, signed at The Hague on 30 August 1962;
- the Convention between the United Kingdom and the Kingdom of Belgium providing for the reciprocal enforcement of judgments in civil and commercial matters, with Protocol, signed at Brussels on 2 May 1934;

- the Convention between Denmark, Finland, Norway, Sweden and Iceland on Bankruptcy, signed at Copenhagen on 11 November 1933;
  - the European Convention on Certain International Aspects of Bankruptcy, signed at Istanbul on 5 June 1990.
2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of this Convention.
3. This Convention shall not apply:
- in any Contracting State, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy from another convention concluded by that State with one or more non-contracting States before the entry into force of this Convention;
  - in the United Kingdom of Great Britain and Northern Ireland, to the extent that it is irreconcilable with the obligations arising in relation to bankruptcy and the winding-up of insolvent companies from any arrangements with the Commonwealth existing at the time this Convention enters into force.

#### ARTICLE 49

##### *Signature, ratification and entry into force*

1. The Secretary-General of the Council of the European Union shall be the depositary of this Convention.
2. This Convention shall be open from 23 November 1995 up to and including 23 May 1996 for signature by the Member States of the European Union.
3. This Convention shall not enter into force until it has been ratified, accepted or approved by all the Member States of the European Union as constituted on the date on which this Convention is closed for signature. It shall enter into force on the

first day of the sixth month following that of the deposit of the instrument of ratification, acceptance or approval by the last Member State of the European Union to take that step.

4. The instruments of ratification, acceptance or approval shall be deposited with the depositary.

## ARTICLE 50

### *Accession to the Convention*

1. The Contracting States recognize that any State which becomes a member of the European Union 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 indent of Article 220 of the Treaty establishing the European Community in relations between the Contracting States and that State.

2. The necessary adjustments may be the subject of a special Convention between the Contracting States and the new Member State.

## ARTICLE 51

### *Notification by the depositary*

The depositary shall notify the signatory States of:

- (a) the deposit of each instrument of ratification, acceptance or approval;
- (b) the date of entry into force of this Convention;
- (c) any other act, notification or communication relating to this Convention.

## ARTICLE 52

*Duration of the Convention*

This Convention is concluded for an unlimited period.

## ARTICLE 53

*Revision or evaluation of the Convention*

Any Contracting State may request the holding of a conference for the revision or evaluation of this Convention. In that event, the President of the Council of the European Union shall convene the conference.

If, within ten years of the entry into force of this Convention, no Contracting State has requested the holding of a conference for the evaluation of the Convention, such a conference shall be convened at the initiative of the Council of the European Union.

## ARTICLE 54

*Amendment of the Annexes*

The Contracting States may at any time address to the depositary a declaration containing any amendment it wishes to make to the Annexes.

The depositary shall notify the signatory States and the Contracting States of the content of any such declaration. The desired amendment shall be deemed accepted if none of the States thus notified raises objections within three months of the date of notification. The amendment shall enter into force on the first day of the following month.

## ARTICLE 55

*Deposit of the Convention*

This Convention, drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all twelve texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union.

The depositary shall transmit a certified copy to the Government of each signatory State.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done at Brussels on the twenty-third day of November in the year one thousand nine hundred and ninety-five.

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ANNEX A\*

## BELGIQUE/BELGIË/BELGIUM

- La faillite/Het faillissement [Bankruptcy]
- Concordat judiciaire/Het gerechtelijk akkoord [Judicial agreement]

## DANMARK/DENMARK

- Konkurs [Bankruptcy]
- Tvangsakkord [Composition scheme enforced by a majority of creditors]
- Betalingsstandsning [Suspension of payments]
- Insolvensbehandling [Insolvency procedure]

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\* Bracketed portions indicate unofficial translations by the *Brooklyn Journal of International Law*.



## DEUTSCHLAND/GERMANY

- Das Konkursverfahren [Bankruptcy]
- Das gerichtliche Vergleichsverfahren [Court-supervised composition proceedings]
- Das Gesamtvollstreckungsverfahren [Bankruptcy proceedings (East Germany)]
- Das Insolvenzverfahren [Insolvency proceedings]

## ELLAS/GREECE

- Ptóhefsi [Bankruptcy]
- I ithikí ekathárisi [Specific investigation and administration in bankruptcy of the estate]
- I prosoriní thiahírisi eterías thoíkisi ke i ziahírisi ton pistotón [Creditor's voluntary arrangements in winding-up a bankruptcy estate with confirmation by a court]
- I ipagogí epíhírisis ipó epítropo me skopó ti sínapsi simbibasmoú me tous pistotés [Arrangements under the control of the court which involve the vesting of all or part of the debtor's property in the Trustee in Bankruptcy for realization and distribution]

## ESPAÑA/SPAIN

- Concurso de acreedores [Creditors' meeting]
- Quiebra [Bankruptcy]
- Suspensión de pagos [Suspension of payments]

## FRANCE

- Liquidation judiciaire [Judicial liquidation]
- Redressement judiciaire avec nomination d'un administrateur [Judicial rehabilitation with appointment of an administrator]

## ÉIRE/IRELAND

- Foirceannadh éigeantach / Compulsory winding-up
- Féimheacht / Bankruptcy
- Eastát daoine a d'éag agus iad dócmhainneach a riaradh i bhféimheacht / The administration in bankruptcy of the

estate of persons dying insolvent

- Foirceannadh comhpháirtíochta i bhféimheacht / Winding-up in bankruptcy of partnerships
- Foirceannadh deonach creidiúnaithe (le deimhniú Cúirte) / Creditors' voluntary winding-up (with confirmation of a court)
- Socruithe faoi rialú na Cúirte, lena ngabhann dilsíú mhaoín an fhéichiúnaí go hiomlán nó go páirteach don Sannai Oifigiúil lena réadú agus lena himdháileadh / Arrangements under the control of the Court, which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution
- Scrúdaitheoireacht chuideachta / Company examinership

#### ITALIA/ITALY

- Fallimento [Bankruptcy]
- Concordato preventivo [Agreement precedent]
- Liquidazione coatta amministrativa [Imposed administrative liquidation]
- Amministrazione straordinaria [Extraordinary administration]
- Amministrazione controllata [Controlled administration]

#### LUXEMBOURG

- Faillite [Bankruptcy]
- Gestion contrôlée [Supervised management]
- Concordat préventif de faillite (par abandon d'actif) [Special agreement to avoid bankruptcy by abandoning assets]
- Régime spécial de liquidation du notariat [Special liquidation proceeding by a notary]

#### NEDERLAND/NETHERLANDS

- Het faillissement [Bankruptcy]
- De surséance van betaling [Suspension of payments]

#### ÖSTERREICH/AUSTRIA

- das Konkursverfahren [Bankruptcy]
- das Ausgleichsverfahren [Court-supervised composition]

- proceedings]
- das Vorverfahren [Preliminary insolvency proceedings]

## PORTUGAL

- O Processo de falência [Bankruptcy proceeding]
- Os Processos especiais de recuperação de empresa, ou seja [Special proceedings for economic recuperation, as follows]:
  - = A concordata [Payment plan between creditors and the debtor, with approval by the court]
  - = O acordo de credores [Agreement among creditors]
  - = A reestruturação financeira [Financial restructuring]
  - = A gestão controlada [Controlled management]

## SUOMI/FINLAND

- Konkurssi/konkurs [Bankruptcy]
- Yrityssaneeraus/företagssanering [Reorganization]

## SVERIGE/SWEDEN

- Konkurs [Bankruptcy]
- Offentligt ackord [Public composition]
- Företagsrekonstruktion [Corporate reorganization]

## UNITED KINGDOM

- Winding-up by the Court (Compulsory Winding-up)
  - Bankruptcy (England and Wales, Northern Ireland)
  - Administration of the insolvent estate of a deceased person (England and Wales, Northern Ireland)
  - Administration by a Judicial Factor of the insolvent estate of a deceased person (Scotland)
  - Sequestration (Scotland)
  - Creditors' Voluntary winding-up (with confirmation by the Court)
  - Administration
  - Voluntary Arrangements under the Insolvency Act 1986 or the Insolvent Partnerships Order 1994
-

## ANNEX B

## BELGIQUE/BELGIË/BELGIUM

- La faillite/Het faillissement [Bankruptcy]

## DANMARK/DENMARK

- Konkurs [Bankruptcy]
- Likvidationsakkord [Winding-up procedure]
- Insolvensbehandling [Insolvency procedure]

## DEUTSCHLAND/GERMANY

- Das Konkursverfahren [Bankruptcy]
- Das Gesamtvollstreckungsverfahren [Bankruptcy (East Germany)]
- Das Insolvenzverfahren [Insolvency proceedings]

## ELLAS/GREECE

- Ptóhefsi [Bankruptcy]
- I ithikí ekathárisi [Specific investigation and administration in bankruptcy of the estate]

## ESPAÑA/SPAIN

- Concurso de acreedores [Creditors' meeting]
- Quiebra [Bankruptcy]
- Suspensión de pagos basada en la insolvencia definitiva [Suspension of payments based on declared insolvency]

## FRANCE

- Liquidation judiciaire [Judicial liquidation]

## ÉIRE/IRELAND

- Foirceannadh éigeantach / Compulsory winding-up
- Féimheacht / Bankruptcy
- Eastát daoine a d'éag agus iad dócmhhainneach a riaradh

i bhféimheacht / The administration in bankruptcy of the estate of persons dying insolvent

- Foirceannadh comhpháirtíochta i bhféimheacht / Winding-up in bankruptcy of partnerships
- Socruithe faoi rialú na Cúirte, lena ngabhann dilsíú mhaoin an fhéichiúnai go hiomlán nó go páirteach don Sannai Oifigiúil lena réadú agus lena himdháileadh / Arrangements under the control of the Court, which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution

#### ITALIA/ITALY

- Fallimento [Bankruptcy]
- Liquidazione coatta amministrativa [Imposed administrative liquidation]

#### LUXEMBOURG

- Faillite [Bankruptcy]
- Régime spécial de liquidation du notariat [Special liquidation proceeding by a notary]

#### NEDERLAND/NETHERLANDS

- Het faillissement [Bankruptcy]

#### ÖSTERREICH/AUSTRIA

- das Konkursverfahren [Bankruptcy]

#### PORTUGAL

- O processo de falência [Bankruptcy proceeding]

#### SUOMI/FINLAND

- Konkurssi/konkurs [Bankruptcy]

#### SVERIGE/SWEDEN

- Konkurs [Bankruptcy]

## UNITED KINGDOM

- Winding-up by the Court (Compulsory Winding-up)
  - Bankruptcy (England and Wales, Northern Ireland)
  - Administration of the insolvent estate of a deceased person (England and Wales, Northern Ireland)
  - Administration by a Judicial Factor of the insolvent estate of a deceased person (Scotland)
  - Sequestration (Scotland)
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## ANNEX C

## BELGIQUE/BELGIË/BELGIUM

- Le curateur/de curator [Trustee]
- Le juge délégué/de rechter-commissaris [Assigned judge]

## DANMARK/DENMARK

- Kurator [Trustee]
- Midlertidig bestyrer [Provisional receiver]
- Skifteretten [Bankruptcy court]
- Tilsyn [Supervision]
- Bobestyrer [Receiver]

## DEUTSCHLAND/GERMANY

- Konkursverwalter [Trustee in bankruptcy]
- Vergleichsverwalter [Administrator in composition proceedings]
- Sachwalter (nach der Vergleichsordnung) [Curator in composition proceedings (under the Composition Act)]
- Verwalter [Administrator]
- Insolvenzverwalter [Trustee in insolvency proceedings]
- Sachwalter (nach der Insolvenzordnung) [Curator (under the Insolvency Act)]
- Treuhänder [Trustee]

## ELLAS/GREECE

- Síndikos [Official receiver of the bankruptcy estate]
- O prosorínós thiahiristís [Interim liquidator]  
I thikoúsa epitropí tón pistotón [Creditors of the debtor's  
bankruptcy estate]
- O ithikós ekatharistís [Interim and permanent trustee in  
sequestration]
- O epítropos [Trustee in bankruptcy]

## ESPAÑA/SPAIN

- Depositario-administrador [Trustee administrator]
- Interventor o Interventores [Referee or referees]
- Síndicos [Official receiver of the bankruptcy estate]
- Comisario [Auditor]

## FRANCE

- Représentant des créanciers [Representative of the credi-  
tors]
- Mandataire liquidateur [Appointee of the liquidator]
- Administrateur judiciaire [Judicial administrator]
- Commissaire à l'exécution de plan [Supervisor of a volun-  
tary arrangement]

## ÉIRE/IRELAND

- Leachtaitheoir / Liquidator
- Sannaí Oifigiúil / Official Assignee
- Iontaobhaí i bhféimheacht / Trustee in bankruptcy
- Leachtaitheoir Sealadach / Provisional Liquidator
- Scrúdaitheoir / Examiner

## ITALIA/ITALY

- Curatore [Trustee]
- Commissario [Auditor]

## LUXEMBOURG

- Le curateur [Trustee]

- Le commissaire [Auditor]
- Le liquidateur [Liquidator]
- Le conseil de gérance de la section d'assainissement du notariat [Notarial council in charge of insolvency]

#### NEDERLAND/NETHERLANDS

- De curator in het faillissement [Trustee in bankruptcy]
- De bewindvoerder in de surséance van betaling [Trustee in a suspension of payment]

#### ÖSTERREICH/AUSTRIA

- Masseverwalter [Trustee in bankruptcy]
- Ausgleichsverwalter [Administrator in composition proceedings]
- Sachwalter [Curator]
- Treuhänder [Trustee]
- Besonderer Verwalter [Special administrator]
- Vorläufiger Verwalter [Interim trustee]
- das Konkursgericht [Insolvency Court]

#### PORTUGAL

- Gestor Judicial [Judicially appointed trustee-administrator]
- Liquidatário Judicial [Judicially appointed liquidator]
- Comissão de Credores [Commission of creditors]

#### SUOMI/FINLAND

- Pesähoitaja/boförvaltare [Administrator in bankruptcy]
- Selvittäjä/utredare [Administrator in reorganization]

#### SVERIGE/SWEDEN

- Förvaltare [Administrator]
- God man [Trustee]
- Rekonstruktör [Reorganizer]



## UNITED KINGDOM

- Liquidator (England and Wales, Scotland, Northern Ireland)
- Interim liquidator (Scotland)
- Official Receiver (England and Wales, Northern Ireland)
- Administrator (England and Wales, Scotland, Northern Ireland)
- Trustee (England and Wales, Scotland, Northern Ireland)
- Interim and Permanent Trustee in Sequestration (Scotland)
- Judicial Factor (Scotland)
- Supervisor of a voluntary arrangement

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