

# Contracts (Applicable Law) Act 1993

## Principal Act

<b>Act. No. 1993-27</b>	<i>Commencement (LN.1995/058)</i>	18.7.1994
	<i>Assent</i>	16.12.1993

Amending enactments	Relevant current provisions	Commencement date
LN. 1994/121	ss. 2, (d), 3(4), (b)-(d), Schs. 1, 3A	1.9.1994
1995/042	s. 3(1A)	1.4.1995
Act. 2007-17	s. 5(1)	14.6.2007

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AN ACT TO MAKE PROVISION AS TO THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS IN THE CASE OF CONFLICT OF LAWS.

**Title and commencement.**

1. This Act may be cited as the Contracts (Applicable Law) Act 1993 and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes.

**Meaning of “the Conventions”.**

2. In this Act—

- (a) “the Rome Convention” means a Convention on the law applicable to contractual obligations opened for signature in Rome on the 19th of June 1980 and signed by the United Kingdom on the 7th of December 1981;
- (b) “the Luxembourg Convention” means a Convention on the accession of the Hellenic republic to the Rome Convention signed by the United Kingdom in Luxembourg on the 10th of April 1984;
- (c) “the Brussels Protocol” means the first Protocol on the interpretation of the Rome Convention by the European Court signed by the United Kingdom in Brussels on the 19th of December 1988; and
- (d) “the Funchal Convention” means the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the Rome Convention and the Brussels Protocol, with adjustments made to the Rome Convention by the Luxembourg Convention, signed by the United Kingdom in Funchal on 18th of May 1992;

and these conventions and this protocol are together referred to as “the Conventions”.

**Conventions to have force of law.**

3. (1) Subject to sub-sections (2) and (3), the Conventions shall have the force of law in Gibraltar.

(1A) The provisions of Schedule 9 to the Insurance Companies Act 1987 (law applicable to certain contracts of insurance) are the internal law for the purposes of Article 1(3) of the Rome Convention.

(2) Articles 7(1) and 10(1)(e) of the Rome Convention shall not have the force of law in Gibraltar.

(3) The Conventions shall apply in the case of conflicts between the laws of Gibraltar and of the United Kingdom, and for the purposes of the application of the Conventions by this Act, Gibraltar and the United Kingdom shall be treated as if each were a separate Contracting State.

(4) For ease of reference there are set out in Schedules 1, 2, 3 and 3A to this Act respectively, the English texts of—

- (a) the Rome Convention;
- (b) the Luxembourg Convention;
- (c) the Brussels Protocol;
- (d) the Funchal Convention.

#### **Interpretation of Conventions.**

4. (1) Any question of the meaning or effect of any provision of the Conventions shall, if not referred to the European Court in accordance with the Brussels Protocol, be determined in accordance with the principles laid down by, and any relevant decision of, the European Court.

(2) Judicial notice shall be taken of any decision of, or expression of opinion by, the European Court on any such question.

(3) Without prejudice to any practice of the courts as to the matters which may be considered apart from this sub-section—

- (a) the report on the Rome Convention by a Professor Mario Giulano and Professor Paul Lagarde which is reproduced in the Official Journal of the Communities of the 31st of October 1980, may be considered in ascertaining the meaning or effect of any provision of that Convention; and
- (b) any report on the Brussels Protocol which is reproduced in the Official Journal of the Communities may be considered in ascertaining the meaning or effect of any provision of that Protocol.

#### **Revision of Conventions etc.**

5. (1) If at any time it appears to the Government that Her Majesty's Government in the United Kingdom—

- (a) have agreed to a revision of any of the Conventions (including, in particular, any revision in connection with the accession to the Rome Convention of any state); or
- (b) have given notification in accordance with Article 22 (3) of the Rome Convention that either or both of the provisions mentioned in section 3(2) shall have the force of law in Gibraltar,

the Government may, by notice in the Gazette, make such consequential modifications of this Act or any other statutory provision, whenever passed or made, as the Government considers appropriate.

(2) In sub-section (1)–

“modifications” includes additions, omissions and alterations;

“revision” means an omission from, addition to or alteration of any of the Conventions and includes replacement of any of the Conventions to any extent by any other convention, protocol or other description of international agreement; and

“statutory provision” means any provision contained in any Act or in subsidiary legislation (as defined in section 2 of the Interpretation and General Clauses Act<sup>1</sup>).

**Application of “Contracting State”.**

6. Except as–

- (a) provided for in section 3(3); or
- (b) specified in Schedule 4,

for the purposes of this Act, where in a Convention there is a reference to a Contracting State that reference shall, in respect of Gibraltar, be a reference to the United Kingdom.

**Application to the Crown.**

7. This Act binds the Crown.

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<sup>1</sup> 1962-08

**SCHEDULE 1.**

Section 3

**THE ROME CONVENTION.**

The High Contracting Parties to the Treaty establishing the European Economic Community.

Anxious to continue in the field of private international law the work of unification of law which has already been done within the Community, in particular in the field of jurisdiction and enforcement of judgments,

Wishing to establish uniform rules concerning the law applicable to contractual obligations,

Have agreed as follows:

**TITLE I****SCOPE OF THE CONVENTION****ARTICLE 1***Scope of the Convention*

1. The rules of this Convention shall apply to contractual obligations in any situation involving a choice between the laws of different countries.

2. They shall not apply to:

- (a) questions involving the status or legal capacity of natural persons, without prejudice to Article 11;
- (b) contractual obligations relating to:
  - wills and succession,
  - rights in property arising out of a matrimonial relationship,
  - rights and duties arising out of a family relationship, parentage, marriage or affinity, including maintenance obligations in respect of children who are not legitimate;

- (c) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
  - (d) arbitration agreements and agreements on the choice of court;
  - (e) questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or unincorporate and the personal liability of officers and members as such for the obligations of the company or body;
  - (f) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party;
  - (g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
  - (h) evidence and procedure, without prejudice to Article 14.
3. The rules of this Convention do not apply to contracts of insurance which cover risks situated in the territories of the Member States of the European Economic Community. In order to determine whether a risk is situated in these territories the court shall apply its internal law.
4. The preceding paragraph does not apply to contracts of reinsurance.

**ARTICLE 2**

*Application of law of non-contracting States.*

Any law specified by this Convention shall be applied whether or not it is the law of a Contracting State.

**TITLE II.**

**UNIFORM RULES**

**ARTICLE 3**

*Freedom of choice*

1. A contract shall be governed by the law chosen by the parties. The choice must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.
2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Convention. Any variation by the parties of the law to be applied made after the conclusion of the contract shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties.
3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law of that country which cannot be derogated from by contract, hereinafter called “mandatory rules”.
4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.

#### **ARTICLE 4**

##### *Applicable law in the absence of choice*

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.
2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party’s trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.
3. Notwithstanding the provisions of paragraph 2 of the Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.



4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.

## ARTICLE 5

### *Certain consumer contracts*

1. This Article applies to a contract the object of which is the supply of goods or services to a person (“the consumer”) for a purpose which can be provided as being outside his trade or profession, or a contract for any provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

- if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or
- if the other party or his agent received the consumer’s order in that country, or
- if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer’s journey was arranged by the seller for the purpose of inducing the consumer to buy.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to:

- (a) a contract of carriage;

- (b) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence.

5. Notwithstanding the provisions of paragraph 4, this Article shall apply to a contract which, for an inclusive price, provides for a combination of travel and accommodation.

## **ARTICLE 6**

### *Individual employment contracts*

1. Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 in the absence of choice.

2. Notwithstanding the provisions of Article 4, a contract of employment shall, in absence of choice in accordance with Article 3, be governed:

- (a) by the law of the country in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country; or
- (b) if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated;

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

## **ARTICLE 7**

### *Mandatory rules*

1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

**ARTICLE 8**

*Material validity*

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Convention if the contract or term were valid.
2. Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph.

**ARTICLE 9**

*Formal validity*

1. A contract concluded between persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of the country where it is concluded.
2. A contract concluded between persons who are in different countries is formally valid if it satisfies the formal requirements of the law which governs it under this Convention or of the law of one of those countries.
3. Where a contract is concluded by an agent, the country in which the agent acts is the relevant country for the purposes of paragraphs 1 and 2.
4. An act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which under this Convention governs or would govern the contract or of the law of the country where the act was done.
5. The provisions of the preceding paragraphs shall not apply to a contract to which Article 5 applies, concluded in the circumstances described in paragraph 2 of Article 5. The formal validity of such a contract is governed by the law of the country in which the consumer has his habitual residence.
6. Notwithstanding paragraphs 1 to 4 of this Article, a contract the subject matter of which is a right in immovable property or a right to use immovable property shall be subject to the mandatory requirements of forum of the law of the country where the property is situated if by that law those requirements are imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract.

**ARTICLE 10**

*Scope of the applicable law*

1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

- (a) interpretation;
- (b) performance;
- (c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages in so far as it is governed by rules of law;
- (d) the various ways of extinguishing obligations, and prescription and limitation of actions;
- (e) the consequences of nullity of the contract.

2. In relation to the manner of performance and the steps to be taken in the event of defective performance regard shall be had to the law of the country in which performance takes place.

**ARTICLE 11***Incapacity*

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law only if the other party to the contract was aware of this incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

**ARTICLE 12***Voluntary assignment*

1. The mutual obligations of assignor and assignee under a voluntary assignment of a right against another person (“the debtor”) shall be governed by the law which under this Convention applies to the contract between the assignor and assignee.

2. The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor’s obligations have been discharged.

**ARTICLE 13**

*Subrogation*

1. Where a person (“the creditor”) has a contractual claim upon another (“the debtor”), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person’s duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.
2. The same rule applies where several persons are subject to the same contractual claim and one of them has satisfied the creditor.

**ARTICLE 14**

*Burden of proof, etc.*

1. The law governing the contract under this Convention applies to the extent that it contains, in law of contract, rules which raise presumptions of law or determine the burden of proof.
2. A contract or an act intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 9 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

**ARTICLE 15**

*Exclusion of renvoi.*

The application of the law of any country specified by this Convention means the application of the rules of law in force in that country other than its rules of private international law.

**ARTICLE 16**

*“Ordre public”*

The application of a rule of the law of any country specified by this Convention may be refused only if such application is manifestly incompatible with the public policy (“ordre public”) of the forum.

**ARTICLE 17**

*No retrospective effect*

This Convention shall apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State.

**ARTICLE 18***Uniform interpretation*

In the interpretation and application of the preceding uniform rules, regard shall be had to their international character and to the desirability of achieving uniformity in their interpretation and application.

**ARTICLE 19***States with more than one legal system*

1. Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Convention.
2. A State within which different territorial units have their own rules of law in respect of contractual obligations shall not be bound to apply this Convention to conflicts solely between the laws of such units.

**ARTICLE 20***Precedence of Community law*

This Convention shall not affect the application of provisions which, in relation to particular matters, lay down choice of law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonised in implementation of such acts.

**ARTICLE 21***Relationship with other conventions*

This Convention shall not prejudice the application of international conventions to which a Contracting State is, or becomes, a party.

**ARTICLE 22***Reservations*

1. Any Contracting State may, at the time of signature, ratification, acceptance or approval, reserve the right not to apply:

- (a) the provisions of Article 7(1);
- (b) the provisions of Article 10(1)(e).

2. *Omitted*

3. Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the third calendar month after notification of the withdrawal.

### TITLE III

#### FINAL PROVISIONS

##### ARTICLE 23

1. If, after the date on which this Convention has entered into force for a Contracting State, that State wishes to adopt any new choice of law rule in regard to any particular category of contract within the scope of this Convention, it shall communicate its intention to the other signatory States through the Secretary-General of the Council of the European Communities.

2. Any signatory State may, within six months from the date of the communication made to the Secretary-General, request him to arrange consultations between signatory States in order to reach agreement.

3. If no signatory State has requested consultations within this period or if within two years following the communication made to the Secretary General no agreement is reached in the course of consultations, the Contracting State concerned may amend its law in the manner indicated. The measures taken by that State shall be brought to the knowledge of the other signatory States through the Secretary-General of the Council of the European Communities.

##### ARTICLE 24

1. If, after the date on which this Convention has entered into force with respect to a Contracting State, that State wishes to become a party to a multilateral convention whose principal aim or one of whose principal aims is to lay down rules of private international law concerning any of the matters governed by this Convention, the procedure set out in Article 23 shall apply. However, the period of two years, referred to in paragraph 3 of that article, shall be reduced to one year.

2. The procedure referred to in the preceding paragraph need not be followed if a Contracting State or one of the European Communities is already a party to the multilateral convention, or if its object is to revise a convention to which the State concerned is already a party, or if it is a convention concluded within the framework of the Treaties establishing the European Communities.

**ARTICLE 25**

If a Contracting State considers that the unification achieved by this Convention is prejudiced by the conclusion of agreements not covered by Article 24(1), that State may request the Secretary-General of the Council of the European Communities to arrange consultations between the signatory States of this Convention.

**ARTICLE 26**

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 27**

*Omitted*

**ARTICLE 28**

1. This Convention shall be open from 19 June 1980 for signature by the States party to the Treaty establishing the European Economic Community.

2. This Convention shall be subject to ratification, acceptance or approval by the signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of the European Communities.

**ARTICLE 29**

1. This Convention shall enter into force on the first day of the third month following the deposit of the seventh instrument of ratification, acceptance or approval.

2. This Convention shall enter into force for each signatory State ratifying, accepting or approving at a later date on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

**ARTICLE 30**



1. This Convention shall remain in force for 10 years from the date of its entry into force in accordance with Article 29(1), even for States for which it enters into force at a later date.
2. If there has been no denunciation it shall be renewed tacitly every five years.
3. A Contracting State which wishes to denounce shall, not less than six months before the expiration of the period of 10 or five years, as the case may be, give notice to the Secretary-General of the Council of the European Communities.
4. The denunciation shall have effect only in relation to the State which has notified it. The Convention will remain in force as between all other Contracting States.

#### ARTICLE 31

The Secretary-General of the Council of the European Communities shall notify the States party to the Treaty establishing the European Economic Community of:

- (a) the signatures;
- (b) the deposit of each instrument of ratification, acceptance or approval;
- (c) the date of entry into force of this Convention;
- (d) communications made in pursuance of Articles 23, 24, 25, 26 and 30;
- (e) the reservations and withdrawals of reservations referred to in Article 22.

#### ARTICLE 32

The Protocol annexed to this Convention shall form an integral part thereof.

#### ARTICLE 33

This Convention, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, these 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 thereof to the Government of each signatory State.

#### PROTOCOL

The High Contracting Parties have agreed upon the following provision which shall be annexed to the Convention:

Notwithstanding the provisions of the Convention, Denmark may retain the rules contained in Soloven (Statute on Maritime Law) paragraph 169 concerning the applicable law in matters relating to carriage of goods by sea and may revise these rules without following the procedure prescribed in Article 23 of the Convention.

**SCHEDULE 2.**

Section 3

**THE LUXEMBOURG CONVENTION.**

The High Contracting Parties to the Treaty establishing the European Economic Community.

Considering that the Hellenic Republic, in becoming a Member of the Community, undertook to accede to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

Have decided to conclude this Convention, and to this end have designated as their plenipotentiaries:

(Designation of plenipotentiaries)

Who, meeting within the Council, having exchanged their full powers, found in good and due form,

Have agreed as follows:

**ARTICLE 1**

The Hellenic Republic hereby accedes to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980.

**ARTICLE 2**

The Secretary General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Irish and Italian languages to the Government of the Hellenic Republic.

The text of the Convention on the law applicable to contractual obligations in the Greek language is annexed hereto. The text in the Greek language shall be authentic under the same conditions as the other texts of the Convention on the law applicable to contractual obligations.

**ARTICLE 3**

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 4**

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and seven States which have ratified the Convention on the law applicable to contractual obligations.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following the deposit of its instrument of ratification.

#### **ARTICLE 5**

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 dates of entry into force of this Convention for the Contracting States.

#### **ARTICLE 6**

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

SCHEDULE 3.

Section 3

**THE BRUSSELS PROTOCOL.**

The High Contracting Parties to the Treaty establishing the European Economic Community,

Having regard to the Joint Declaration annexed to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980,

Have decided to conclude a Protocol conferring jurisdiction on the Court of Justice of the European Communities to interpret that Convention, and to this end have designated as their Plenipotentiaries:

(Designation of plenipotentiaries)

Who, meeting within the Council of the European Communities, having exchanged their full powers, found in good and due form,

Have agreed as follows:

**ARTICLE 1**

The Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of—

- (a) the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, hereinafter referred to as “the Rome Convention”;
- (b) the Convention on accession to the Rome Convention by the States which have become Members of the European Communities since the date on which it was opened for signature;
- (c) this Protocol.

**ARTICLE 2**

Any of the courts referred to below 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 contained in the instruments referred to in Article 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),

- in Denmark:  
Højesteret,

- in the Federal Republic of Germany:  
die obersten Gerichtschöfe des Bundes,

- in Greece:  
τα ανωτατα Αικαστηρια,

- in Spain,  
el tribunal Supremo,

- in France:  
la Cour de cassation and le Conseil d'Etat,

- in Ireland:  
the Supreme Court,

- in Italy:  
la Corte suprema di cassazione and il Consiglio di Stato,

- in Luxembourg:  
la Cour Supérieure de Justice, when sitting as Cour de cassation,

- in the Netherlands:  
de Hoge Raad,

- in Portugal:  
o Supremo Tribunal de Justiça and o Supremo Tribunal Administrativo,

- 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 3**

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 provisions contained in the instruments referred to

in Article 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 2. 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 request the Court of Justice for 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 Communities; they shall 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 or any costs or expenses awarded in respect of the proceedings provided for in this Article.

#### ARTICLE 4

1. Except where this Protocol otherwise provides, the provisions of the Treaty establishing the European Economic Community and those of the Protocol on the Statute of the Court of Justice annexed thereto, which are applicable when the Court is requested to give a preliminary ruling, shall also apply to any proceedings for the interpretation of the instruments referred to in Article 1.

2. 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 Economic Community.

#### ARTICLE 5

This Protocol shall be subject to ratification by the Signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

#### ARTICLE 6

1. To enter into force, this Protocol must be ratified by seven States in respect of which the Rome Convention is in force. This Protocol shall enter into force on the first day of the third month following the deposit of the instrument of ratification by the last such State to take this step. If, however, the Second Protocol conferring on the Court of Justice of the European

Communities certain powers to interpret the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, concluded in Brussels on 19 December 1988, enters into force on a later date, this Protocol shall enter into force on the date of entry into force of the Second Protocol.

2. Any ratification subsequent to the entry into force of this Protocol shall take effect on the first day of the third month following the deposit of the instrument of ratification provided that the ratification, acceptance or approval of the Rome Convention by the State in question has become effective.

#### **ARTICLE 7**

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 Protocol;
- (c) any designation communicated pursuant to Article 3(3);
- (d) any communication made pursuant to Article 8.

#### **ARTICLE 8**

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any provisions of their laws which necessitate an amendment to the list of courts in Article 2(a).

#### **ARTICLE 9**

This Protocol shall have effect for as long as the Rome Convention remains in force under the conditions laid down in Article 30 of that Convention.

#### **ARTICLE 10**

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

#### **ARTICLE 11**

This Protocol, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, all 10 texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European



Communities. The Secretary-General shall transmit a certified copy to the Government of each Signatory State.

**SCHEDULE 3A**

Section 3

**THE FUNCHAL CONVENTION**

The High Contracting Parties to the Treaty establishing the European Economic Community.

Considering that the Kingdom of Spain and the Portuguese Republic, in becoming Members of the Community, undertook to accede to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19th June, 1980.

Have decided to conclude this Convention, and to this end have designated as their plenipotentiaries:

(Designation of plenipotentiaries)

Who, meeting within the Council, having exchanged their full powers, found in good and due form.

Have agreed as follows:

**ARTICLE 1**

The Kingdom of Spain and the Portuguese Republic hereby accede to the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19th June, 1980.

**ARTICLE 2**

The Convention on the law applicable to contractual obligations is hereby amended as follows:

- (a) Article 22(2), Article 27 and the second sentence of Article 30(3) shall be deleted.
- (b) The reference to Article 27 in Article 31(d) shall be deleted.

**ARTICLE 3**

The Secretary-General of the Council of the European Communities shall transmit a certified copy of the Convention on the law applicable to contractual obligations in the Danish, Dutch, English, French, German, Greek, Irish and Italian languages to the Governments of the Kingdom of Spain and the Portuguese Republic.

**ARTICLE 4**

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 5**

This Convention shall enter into force, as between the States which have ratified it, on the first day of the third month following deposit of the last instrument of ratification by the Kingdom of Spain or the Portuguese Republic and by one State which has ratified the Convention on the law applicable to contractual obligations.

This Convention shall enter into force for each Contracting State which subsequently ratifies it on the first day of the third month following that of deposit of its instrument of ratification.

**ARTICLE 6**

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 dates of entry into force of this Convention for the Contracting States.

**ARTICLE 7**

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

## SCHEDULE 4.

Section 6

**APPLICATION OF “CONTRACTING STATE”****Rome Convention.**

1. In Article 17, “Contracting State” means Gibraltar and “that State” is a reference to Gibraltar.
2. In Article 21, the words “to which a Contracting State is, or becomes, a party” shall mean “which has been or is extended to Gibraltar”.
3. In Article 23.1, “Contracting State” means Gibraltar and “that State” is a reference to Gibraltar and the intention shall be communicated through the United Kingdom, and in Article 23.3, “Contracting State” means Gibraltar and a reference to “that State” is a reference to Gibraltar.
4. In Article 24.1, the words “a Contracting State, that State wishes to become a party to” mean “Gibraltar, and Gibraltar wishes to have extended to it”, and in Article 24.2 the words “to which the State concerned is already a party” mean “to which the United Kingdom is already a party and which have been extended to Gibraltar”.

**Brussels Protocol.**

1. In Article 2–
  - (a) in paragraph (a) the reference to other courts from which no further appeal is possible is a reference to the judicial committee of the Privy Council, as provided for in the Gibraltar (Appeals to Privy Council) Order 1985; and
  - (b) in paragraph (b) the reference includes a reference to the courts of Gibraltar.
2. In Article 3.1, the reference to a competent authority of the Contracting State includes a reference to the competent authority of Gibraltar which, for the purposes of this Article, is the Chief Justice of the Supreme Court.