

EXPLANATORY REPORT

on the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the Law applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, and to the first and second Protocols on its interpretation by the Court of Justice

(Text approved by the Council on 26 May 1997)

(97/C 191/02)

INTRODUCTION

The Convention on the Law applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980 (Rome Convention of 1980), lays down uniform choice-of-law rules to apply within its specific area of application. These rules constitute an important supplement to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 (1968 Brussels Convention). Pursuant to Article 28 of the Rome Convention of 1980, that Convention may be signed (only) by States party to the Treaty establishing the European Economic Community.

In order that the rules thus uniformized may be also applied to the new Member States which, in acceding to the European Union, undertook to accede also to the Rome Convention of 1980, the Permanent Representatives Committee agreed on 1 February 1996 to set up a working party to prepare the accession of the three new Member States to the 1968 Brussels and the 1980 Rome Conventions and the Protocols thereto as adapted and amended by subsequent accession conventions. Over two meetings, the Working Party drafted the technical amendments necessary for the accession of the three States in question.

A technical adjustment is also made to the first Protocol on the interpretation by the Court of Justice of the European Communities of the Convention on the Law applicable to Contractual Obligations, signed on 19 December 1988, hereafter referred to as the 'first Protocol of 1988', listing the supreme courts in the acceding States.

The first Protocol of 1988 and the Protocol conferring on the Court of Justice of the European Communities Certain Powers to Interpret the Convention on the Law applicable to Contractual Obligations signed on 19 December 1988 and hereafter referred to as the 'second Protocol of 1988' (together commonly referred to as the '1988 interpretative protocols'), are designed to ensure uniform interpretation of the Rome Convention of 1980. They have not yet entered into force.

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

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

TITLE I

General provisions

Article 1

This provision expressly provides for the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and specifies the three instruments concerned, namely the Rome Convention of 1980 and the first and second Protocols of 1988.

The Rome Convention of 1980 was amended by two previous accession conventions: the Convention, hereafter referred to as the '1984 Accession Convention' signed in Luxembourg on 10 April 1984 on the Accession of the Hellenic Republic, and the Convention, hereafter referred to as the '1992 Accession Convention' signed in Funchal on 18 May 1992 on the Accession of the Kingdom of Spain and the Portuguese Republic. It is to this amended version of the Rome Convention of 1980 that the three new Member States are acceding.

TITLE II

Adjustments to the Protocol annexed to the Rome Convention of 1980*Article 2*

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

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

However, the Member States thought it advisable to make a joint declaration, which is annexed to the Convention, in which they take note that Denmark, Finland and Sweden state their readiness to examine the extent to which they will be able to ensure that any future amendment concerning their national law applicable to questions relating to the carriage of goods

by sea complies with the procedure provided for in Article 23 of the Rome Convention of 1980.

TITLE III

Adjustments to the first Protocol of 1988*Article 3*

Article 2 (a) of the first Protocol of 1988 lists the supreme courts in the Member States which may submit questions of interpretation to the Court of Justice of the European Communities for a preliminary ruling. The supreme courts in the new Member States are now added to that list.

TITLE IV

Final provisions*Articles 4 to 8*

The final provisions, modelled on the 1984 and 1992 Accession Conventions, give the Finnish and Swedish versions of the Rome Convention of 1980 and the First and Second Protocols of 1988 the same legal status as the other language versions, stipulate the need for ratification of the Accession Convention by the Signatory States, contain provisions on its entry into force, and specify that the Accession Convention is equally authentic in all 12 official languages.

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