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AN BILLE UM DHLÍNSE CÚIRTEANNA AGUS  
FORGHNÍOMHÚ BREITHIÚNAS, 1993  
JURISDICTION OF COURTS AND ENFORCEMENT OF  
JUDGMENTS BILL, 1993

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EXPLANATORY AND FINANCIAL MEMORANDUM

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**General**

1. The object of the Bill is to enable Ireland to ratify two international conventions relating to the reciprocal recognition and enforcement of judgments in civil and commercial matters:

- (1) a convention (the 1989 Accession Convention), providing for the accession of Spain and Portugal to the 1968 Brussels Convention on jurisdiction and enforcement of judgments (the EC Convention) and to the Protocol on its interpretation by the European Court of Justice, and
- (2) a convention (the Lugano Convention) on jurisdiction and enforcement of judgments between member states of the European Communities and European Free Trade Association (EFTA).

The Bill gives the force of law to both conventions. When they enter into force, Irish judgments (including maintenance orders) will be enforceable in Spain and Portugal and in the member states of EFTA (Austria, Finland, Iceland, Norway, Sweden and Switzerland) and *vice versa*.

**Background**

2. The EC Convention was drawn up in 1968 by the six original member states of the European Community and provided speedy and informal procedures for enabling judgments given in one member state to be recognised and enforced in each of the others. The Convention was limited to judgments in civil and commercial matters (including maintenance orders). It was amended in 1978 and 1982 by conventions providing for the accession to the EC Convention of Denmark, Ireland, the United Kingdom and Greece. As so amended, it was given the force of law in Ireland by the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988. As a result, Irish judgments are now reciprocally enforceable in 9 other EC states and will be so enforceable in Spain and Portugal when the Accession Convention relating to these two countries (the 1989 Accession Convention) enters into force.

3. The Lugano Convention, which governs enforcement of judgments between EC and EFTA member states, parallels the EC Convention article for article. It includes a number of changes as compared with that Convention which had been identified during the negotiations on the Lugano Convention. Advantage was taken of the opportunity presented by the 1989 Accession Convention to make

broadly similar adjustments in the text of the EC Convention. A note of these adjustments is given in the appendix to this memorandum.

#### *Provisions of the Bill*

4. *Part I* (sections 1 and 2) provides for the short title of the Bill and for its collective citation with the Principal Act, i.e. the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act 1988. The Bill will be brought into operation by order of the Minister for Equality and Law Reform according as the two conventions enter into force between Ireland and other contracting states.

5. *Part II* makes the necessary amendments in the 1988 Act to take account of the accession of Spain and Portugal to the 1968 EC Convention and also of the adjustments made to it by the 1989 Accession Convention so as to align it with the Lugano Convention. Most of the amendments are of a technical character but the effect of them is to give the force of law to the amended EC Convention and the 1971 Protocol to it providing for its interpretation by the European Court of Justice.

6. *Section 3* amends section 1 (interpretation) of the Principal Act. It redefines "the Conventions" to include the 1989 Accession Convention and extends the definition of "Contracting State" to include Spain and Portugal. It adapts references in the 1988 Act to the EC Convention and 1971 Protocol so as to take account of the accession of Spain and Portugal. The references in the 1988 Act to Article 60 of the EC Convention are being deleted. Article 60 dealt with the geographical extent of the application of that Convention and included provision for its extension by declaration to certain dependent territories of contracting states. It was deleted by the 1989 Accession Convention.

7. *Section 4* updates section 4 of the 1988 Act by including the report prepared by Messrs. Cruz, Real and Jenard on the 1989 Accession Convention in the reports that may be considered by courts when interpreting the amended EC Convention.

8. *Section 5* is a consequential amendment of section 14 (1) of the 1988 Act. Section 14 (1) gave jurisdiction to the Circuit Court in proceedings under certain Articles (nos. 2, 8.1, 11 and 14) of the EC Convention in the circuit where the defendant ordinarily resides or carries on any profession, business or occupation. That provision was necessary because these Articles determine jurisdiction on the basis of the defendant's "domicile" and that term is defined in the 1988 Act (by section 13 and the Fifth Schedule) as ordinary residence. What section 5 of the Bill does is to add a further Article — Article 16 (1) (b) — to the list of those in section 14 (1) of the 1988 Act. (Article 16 (1) (b) was added to the EC Convention by the 1989 Accession Convention and gave jurisdiction, in proceedings affecting short term tenancies of immovable property, to the courts of the state where the defendant is domiciled.)

9. *Section 6* sets out in schedules to the Bill, for convenience of reference, amended texts of the EC Convention and the Protocol for its interpretation by the European Court of Justice and also the transitional and final provisions of the 1978, 1982 and 1989 Accession Conventions.

10. *Part III* gives the force of law to the Lugano Convention and to Protocol 1 annexed to it dealing with certain questions of jurisdiction, procedure and enforcement.

11. *Section 7* deals with the interpretation of this Part and includes

a definition of Protocol 1. *Subsections (2) to (4)* correspond to sections 1 (2) to (4) of the 1988 Act. *Subsection (2)* sets out how a copy of a judgment given by a court of a contracting state, including this country, is to be authenticated. *Subsection (3)* is a usual interpretative provision. *Subsection (4) (a)* authorises the Minister for Foreign Affairs to make an order declaring that specified states are contracting states or that certain denunciations, declarations or communications have been made pursuant to the Lugano Convention or Protocol 1. Paragraph *(b)* of the subsection makes such orders admissible as evidence of the facts stated in them.

12. *Section 8*, corresponding to section 2 of the 1988 Act, applies this Part of the Bill to any judgment for the purposes of the Lugano Convention, i.e. any judgment given by a court or tribunal of a contracting state, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by a court officer.

13. *Section 9*, corresponding to section 3 of the 1988 Act, gives the Lugano Convention and Protocol 1 to it the force of law and requires them to be judicially noticed. For convenience of reference, the texts of the Convention and Protocol are set out in the *Sixth* and *Seventh Schedules* to the Bill.

14. *Section 10 (1)* requires our courts to take judicial notice of relevant decisions taken by courts of other contracting states concerning provisions of the Lugano Convention and to pay due account to the principles laid down by these decisions when they are applying and interpreting its provisions. This subsection gives effect to Article 1 of Protocol 2 to the Lugano Convention, which deals with the uniform interpretation of the Convention. Protocol 2 also provides for the setting up of a system of exchange of information concerning judgments delivered pursuant to the Lugano and EC Conventions. A declaration by the representatives of EC Governments on the signature of the Lugano Convention states that they considered as appropriate that the European Court of Justice, when interpreting the EC Convention, pay due account to the rulings contained in the case law of the Lugano Convention. There is also a declaration by the representatives of EFTA Governments in relation to their courts paying due account to the case law of the European Court and national EC courts on the provisions of the EC Convention corresponding to those in the Lugano Convention. *Subsection (2)* of section 10 requires courts to take judicial notice of the report by Messrs. P. Jenard and G. Möller on the Lugano Convention and to give it such weight as is appropriate when interpreting any of the provisions of the Convention. There is a similar provision in section 4 (2) of the 1988 Act (as proposed to be amended by section 4 of the Bill) regarding the reports on the EC Conventions and the 1971 Protocol.

15. *Section 11* provides that certain sections of the 1988 Act, which deal with the application in the State of the EC Convention, will apply also to the application here of the Lugano Convention. These sections (nos. 5 to 14) of the 1988 Act provide for:

- (1) applications for recognition or enforcement of judgments to be made to, and determined by, the Master of the High Court (section 5);
- (2) orders made by the Master for the enforcement of judgments (except orders for periodical payment of maintenance) to have the same effect as a judgment of the High Court (section 6);

- (3) enforcement by the District Court of orders for periodical payment of maintenance (section 7);
- (4) payment of interest and costs in relation to orders for enforcement of judgments (section 8);
- (5) amounts payable under a maintenance order to be payable in Irish currency (section 9);
- (6) proof and admissibility of certain judgments and related translations and documents (section 10);
- (7) grant of provisional, including protective, measures (section 11);
- (8) provision to interested parties of certain documents relating to judgments given by Irish courts (section 12);
- (9) interpretation of domicile (section 13 and Fifth Schedule); and
- (10) venue for certain proceedings instituted in the Circuit Court (section 14).

16. The *First* and *Second Schedules* contain updated texts of the 1968 EC Convention and the 1971 Protocol on its interpretation by the European Court of Justice and take account of the adjustments made in them by the 1978, 1982 and 1989 Accession Conventions. The transitional and final provisions of the Accession Conventions are set out in the *Third*, *Fourth* and *Fifth Schedules*. The *Sixth* and *Seventh Schedules* contain the texts of the Lugano Convention and of Protocol 1, which deals with certain questions of jurisdiction, procedure and enforcement.

#### ***Financial and Staffing Implications***

17. There are no financial or staffing implications.

### **APPENDIX**

Changes made by the Lugano Convention as compared with the original EC Convention and incorporated in that Convention by the 1989 Accession Convention.

#### ***Employment contracts***

A specific jurisdictional rule has been provided, in both the Lugano Convention and the amended EC Judgments Convention, for individual employment contracts (these contracts are governed in the original EC Convention by the general provision giving jurisdiction to the courts of that state where the defendant is domiciled). Under this rule (in Article 5.1 of each Convention) an employee may sue the employer in the courts for the place where the employee habitually works. If the employee does not habitually work in any one country, the employee may sue in the courts for the place of business through which he or she was engaged. The amended EC Convention also provides specifically for the case where the business which engaged the employee moves to another member state and allows the employee to sue in that state.

#### ***Combination of actions***

Article 6.4 of the Lugano Convention provides that, where national law permits, an action relating to a contract may be combined with an action relating to rights *in rem* in immovable property and be taken in the courts for the place where the property is situated. Such an action could arise in respect of mortgages. A similar provision has been incorporated in the amended EC Convention. Moreover, Article

16.1 (b) of the Lugano Convention allows, in the case of short term (i.e. up to 6 months) tenancies, an exception to the rule in Article 16.1 of the EC Convention that proceedings relating to tenancies of immovable property must be heard in the courts of the state where the property is situated. The new provision would allow, for example, a Swede to take an action against a fellow Swede in Sweden where the dispute relates to a short term tenancy of a property (e.g. a holiday home) situated in another country such as Spain. However, the tenant must be a natural person (not a company). A contracting state may reserve the right, under Article 1b of Protocol I to the Lugano Convention, not to recognise or enforce judgments where jurisdiction is founded on Article 16.1 (b). The provision in the amended EC Convention is similar but it applies only where landlord *and* tenant are both natural persons and domiciled in the same country and there is no provision for a reservation.

#### *Agreements conferring jurisdiction*

Article 17.1 of each Convention, dealing with formal requirements for agreements conferring jurisdiction, modifies the original text of the EC Convention to bring it more into line with Article 9.2 of the 1980 Vienna Convention on International Contracts for the Sale of Goods. An additional paragraph inserted at the end of Article 17 provides that, in matters relating to individual contracts of employment, jurisdictional agreements will be legally enforceable only if entered into after the dispute has arisen. The purpose of that paragraph is to protect the weaker party, i.e. the employee. The amended EC Convention goes further and gives an employee the option of invoking a pre-dispute agreement conferring jurisdiction.

#### *Lis pendens — related actions*

Article 21 of each Convention differs from the original text of the EC Convention. The Article provides that a court other than the one first seised must stay its proceedings rather than (as in the original text) decline jurisdiction until the jurisdiction of the court first seised has been confirmed. This is to cover the case where the jurisdiction of the court first seised is successfully challenged.

#### *Dependent domicile*

The original EC text had special provision (Article 52, third paragraph) for determining the domicile of a dependant. This has not been reproduced in the Lugano Convention or amended EC Convention.

#### *Particular conventions*

Article 57 of the EC Convention provides for the enforcement of judgments where jurisdiction is established on the basis of an international convention relating to particular matters even if the enforcing country is not a party to that convention. Under the Lugano Convention that position will not necessarily apply. If jurisdiction is established under a convention relation to a particular matter, the enforcing state, if not a party to it, may refuse to enforce the judgment in certain circumstances (see Article 57.4).

#### *Territorial scope*

The EC Convention is restricted to members of the European Communities. The Lugano Convention is open to EC states, EFTA states and third countries who may be invited to accede (see Articles 60 and 62 of the Lugano Convention).

#### *Interpretation*

The Court of Justice of the European Communities will not have

jurisdiction to interpret the Lugano Convention. To try and ensure uniform interpretation of the Lugano Convention and to avoid divergences between its interpretation and that of the EC Convention the following provisions were adopted:

- (i) the courts of each contracting state are to pay due account to the principles laid down in decisions by the courts of other contracting states concerning provisions of the Lugano Convention (Protocol 2 — Article 1);
- (ii) a system for exchanging information concerning judgments will be established (Protocol 2 — Article 2);
- (iii) the EC states have made a declaration that they consider it appropriate that the European Court of Justice when interpreting the EC Convention pay due account to the rulings contained in the case law of the Lugano Convention; and
- (iv) the EFTA states have made a declaration that they consider it appropriate that the courts of EFTA states pay due account to the rulings of the European Court of Justice and national EC courts on those provisions of the EC Convention that are substantially reproduced in the Lugano Convention.

*An Roinn Comhionannais agus Athchóirithe Dlí,  
Márta, 1993.*

b diai zaiqinng eht oi nurooss

AN BILL TO AMEND THE COURTS AND JUDICIAL OFFICERS ACTS  
1993  
JURISDICTION OF COURTS AND ENFORCEMENT OF  
JUDGMENTS BILL, 1993

Mar a rithcath ag Seanaid Eireann  
As passed by Seanaid Eireann

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation, construction and commencement.
2. "Principal Act".

PART II

AMENDMENTS TO PRINCIPAL ACT CONSEQUENT ON 1989 ACCESSION  
CONVENTION

3. Amendment of section 1 of Principal Act.
4. Amendment of section 4 of Principal Act.
5. Amendment of section 14 of Principal Act.
6. Texts of Convention and 1971 Protocol.

PART III

LUGANO CONVENTION

7. Interpretation (Part III).
8. Application (Part III).
9. Lugano Convention to have force of law.
10. Interpretation of Lugano Convention.
11. Application of certain provisions of Principal Act.

FIRST SCHEDULE

Text of the 1968 Convention as amended by the 1978 Accession  
Convention, the 1982 Accession Convention and the 1989 Accession  
Convention

[No. 106 of 1993]

provision to interpret the Lugano Convention. To try and ensure uniform interpretation of the Lugano Convention and to avoid divergences between its interpretation and that of the EC Convention the following provisions were adopted:

- (i) the courts of each contracting state are to pay due account to the principles laid down in decisions by the courts of other contracting states concerning provisions of the Lugano Convention (Protocol 2 — Article 1);
- (ii) a system for exchanging information concerning judgments will be established (Protocol 2 — Article 2);
- (iii) the EC states have made a declaration that they consider it appropriate that the European Court of Justice when interpreting the EC Convention pay due account to the rulings contained in the case law of the Lugano Convention; and
- (iv) the EFTA states have made a declaration that they consider it appropriate that the courts of EFTA states pay due account to the rulings of the European Court of Justice and national EC courts on those provisions of the EC Convention that are substantially reproduced in the Lugano Convention.

*An Rinnas Comhionannear agus Aitheathas Dlí,  
Máru, 1993.*