

Consumer contracts and employment contracts

Version 0.6 (presented to Plenary Session in Edinburgh)

NOTE: The use of square brackets in this text indicates matters which require further consideration.

Article 7 *Contracts concluded by consumers*

1. This Article applies to contracts concluded between a natural person who concludes a contract primarily for personal, family or household purposes, (the consumer), and a person who concludes a contract for the purposes of its trade or profession (the business) [, unless the business demonstrates that it neither knew nor had reason to know that the consumer was concluding the contract primarily for personal, family or household purposes and would not have entered into the contract if it had known otherwise].
2. A consumer may bring proceedings in the courts of the State in which the consumer is habitually resident if the conclusion of the contract to which the claim relates arises out of activities which the business engaged in in that State, or directed to that State[, unless:
 - a. the consumer took the steps necessary for the conclusion of the contract in another State; and
 - b. {the goods or services were supplied to the consumer while the consumer was present in that other State}].
3. For the purposes of paragraph (2) activity by the business:
 - a. includes the promotion, solicitation or negotiation of contracts; and
 - b. [shall not be regarded as being directed to a State if the business demonstrates that it took reasonable steps to avoid concluding contracts with consumers habitually resident in that State.]
4. A business may bring proceedings against a consumer under this Convention only:
 - a. in the courts of the State in which the consumer is habitually resident; or
 - b. if the business and the consumer have entered into an agreement to which paragraph 5(a) or (c) or (d) applies, in the court designated in that agreement.
5. Article 4 applies to an agreement between a business and a consumer only:
 - a. if the agreement is entered into after the dispute has arisen; or
 - b. to the extent that it allows the consumer to bring proceedings in the courts of a State other than the State in which the consumer is habitually resident; or
 - c. [if at the time the agreement is entered into, both the consumer and the business are habitually resident in the same State, and the agreement confers jurisdiction on the courts of that State, provided that the agreement is not contrary to the law of that State¹; or]
 - d. to the extent that the agreement is binding on the consumer under the law of the State in which the consumer is habitually resident at the time the agreement is entered into.

¹ cf. text of Brussels Regulation Article 17(3).

Article 8 Individual contracts of employment

1. This Article applies in matters relating to individual contracts of employment.
2. An employee may bring a claim against the employer
 - a. In the courts of the State in which the employee habitually carries out or carried out his work, [unless it was not reasonably foreseeable by the employer that the employee would habitually carry out his work in that State]; or
 - b. If the employee does not or did not habitually carry out his work in any one State, in the courts of the State in which the establishment that engaged the employee is or was situated.
3. An employer may bring a claim against the employee under this Convention only –
 - a. in the courts of the State:
 - (i) in which the employee is habitually resident; or
 - (ii) in which the employee habitually carries out his work; or
 - b. if the employee and the employer have entered into an agreement to which para 4(b) or (c) applies, in the court designated in that agreement.
4. Article 4 applies to an agreement between an employee and an employer only:
 - a. to the extent that it allows the employee to bring proceedings in the courts of a State other than the State referred to in paragraph 2; or
 - b. if the agreement is entered into after the dispute has arisen; or
 - c. to the extent that the agreement is binding on the employee under the law of the State in which the employee is resident at the time the agreement is entered into.

Article 25

“Subject to Article 25 bis ...”

[Article 25 bis

1. [A Contracting State may make a declaration that it will not recognise or enforce a judgment under this Chapter, or a declaration specifying the conditions under which it will recognise or enforce a judgment under this Chapter, where:
 - a. the judgment was rendered by the court of origin under Article 7(2) or Article 8(2); and
 - b. the parties had entered into an agreement which conforms with the requirements of Article 4 designating a court other than the court of origin.

[A declaration under this Article may not deny recognition and enforcement of a judgment given under Article 7(2) or Article 8(2) if the Contracting State making the declaration would exercise jurisdiction under the relevant Article in a corresponding case.]
2. Recognition or enforcement of a judgment may be refused by a Contracting State that has made a declaration contemplated by paragraph 1 in accordance with the terms of that declaration.]