

First Reference for a Preliminary Ruling on the Rome Convention

On 28 March 2008, in case *Intercontainer Interfrigo (ICF) S.C./M.I.C. Operations B.V. and another* (Nr. C06/318HR - LJN BC2726), **the Dutch Supreme Court (*Hoge Raad*) made a preliminary reference to the ECJ, with regard to the interpretation of Art. 4 of the 1980 Rome Convention on the law applicable to contractual obligations.**

The preliminary reference is **the first to be made pursuant to the two Protocols on the interpretation of the Convention** by the Court of Justice, that were signed by the Member States in 1988: as it is widely known, the Protocols entered into force on 1st August 2004, following the ratification by Belgium.

Unfortunately, the case has not yet been published on the ECJ website, and there is no English version available of the referred questions: as far as we could get from a very rough translation, the *Hoge Raad*, following the opinion delivered by Advocate General Strikwerda, asked the ECJ whether **Art. 4(4) of the Convention**, on contracts for the carriage of goods, or **Art. 4(2)** (the “general” presumption pointing to the law of “the country where the party who is to effect the performance which is characteristic of the contract has [...] his habitual residence”) should apply to a contract concluded (not in writing) by the parties (a Belgian firm and two Dutch firms) for a service of carriage by rail from Amsterdam to Frankfurt. Additionally, the Dutch Supreme Court asked the ECJ to clarify the **conditions set out by Art. 4(5) in order to activate the escape clause.**

Further details and the English text of the referred questions will be provided as soon as they are available. The referring decision, and the opinion of Advocate General Strikwerda can be found on the Hoge Raad website.

Comments (viz, corrections and explanations) are warmly welcome.