

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COUNCIL

## COUNCIL DECISION

of 6 April 2009

**on the accession of the European Community to the Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001**

(2009/370/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) in conjunction with the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) The Community is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.

(2) The Convention on international interests in mobile equipment (hereinafter referred to as the 'Cape Town Convention') and its Protocol on matters specific to aircraft equipment (hereinafter referred to as the 'Aircraft Protocol'), adopted jointly in Cape Town on 16 November 2001, make a useful contribution to regulation at the international level in their respective areas. It is therefore desirable that the provisions of the two instruments which concern matters falling within the exclusive competence of the Community should be applied as soon as possible.

(3) The Commission negotiated the Cape Town Convention and the Aircraft Protocol on behalf of the Community, for the parts falling within the exclusive competence of the Community.

(4) Regional economic integration organisations which have competence over certain matters governed by the Cape Town Convention and the Aircraft Protocol may accede to the said Convention and the said Protocol after their entry into force.

(5) Some of the matters governed by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(2)</sup>, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings <sup>(3)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(4)</sup> are also dealt with in the Cape Town Convention and the Aircraft Protocol.

(6) The Community has exclusive competence over some of the matters governed by the Cape Town Convention and the Aircraft Protocol, while the Member States have competence over other matters governed by these two instruments.

(7) The Community should therefore accede to the Cape Town Convention and the Aircraft Protocol.

<sup>(1)</sup> Opinion of 18 December 2008 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(3)</sup> OJ L 160, 30.6.2000, p. 1.

<sup>(4)</sup> OJ L 177, 4.7.2008, p. 6.

- (8) Article 48 of the Cape Town Convention and Article XXVII of the Aircraft Protocol provide that, at the time of accession, a regional economic integration organisation shall make a declaration specifying the matters governed by the said Convention and the said Protocol in respect of which competence has been transferred to that organisation by its Member States. The Community should therefore make such a declaration at the time of accession to the two instruments.
- (9) Article 55 of the Cape Town Convention provides that a Contracting State may declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. At the time of accession to the said Convention, the Community should make such a declaration.
- (10) Articles X, XI and XII of the Aircraft Protocol apply only where a Contracting State has made a declaration to that effect pursuant to Article XXX of the said Protocol and under the conditions specified by that declaration. At the time of accession to the Aircraft Protocol, the Community should declare that it will not apply Article XII and that it will not be making any declaration pursuant to Article XXX(2) and (3). The competence of the Member States concerning the rules of substantive law as regards insolvency will not be affected.
- (11) The application of Article VIII of the Aircraft Protocol on choice of law is also subject to a declaration which may be made by any Contracting State pursuant to Article XXX(1). At the time of accession to the Aircraft Protocol, the Community should declare that it will not apply Article VIII.
- (12) The United Kingdom will remain bound by the 1980 Rome Convention on the law applicable to contractual obligations <sup>(1)</sup> until such time as it may be bound by the rules of Regulation (EC) No 593/2008. It is assumed that the United Kingdom, if it accedes to the Aircraft Protocol before such time, at the time of accession will make a declaration pursuant to Article XXX(1), which will not prejudice the application of the rules of the said Regulation.
- (13) The United Kingdom and Ireland are taking part in the adoption and application of this Decision.
- (14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on

European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

1. The Convention on international interests in mobile equipment (hereinafter referred to as the 'Cape Town Convention') and the Protocol on matters specific to aircraft equipment (hereinafter referred to as the 'Aircraft Protocol'), adopted jointly in Cape Town on 16 November 2001, are hereby approved on behalf of the European Community.

The texts of the Cape Town Convention and of the Aircraft Protocol are attached to this Decision.

2. In this Decision, 'Member State' shall mean all the Member States with the exception of Denmark.

#### *Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the Community, the instruments referred to in Article 47(4) of the Cape Town Convention and in Article XXVI(4) of the Aircraft Protocol.

#### *Article 3*

1. At the time of accession to the Cape Town Convention, the Community shall make the declarations set out in points I of Annexes I and II.

2. At the time of accession to the Aircraft Protocol, the Community shall make the declarations set out in points II of Annexes I and II.

Done at Luxembourg, 6 April 2009.

*For the Council*

*The President*

J. POSPÍŠIL

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<sup>(1)</sup> OJ L 266, 9.10.1980, p. 1.

## ANNEX I

**General declarations concerning the competence of the European Community to be made by the Community at the time of accession to the Convention on international interests in mobile equipment (Cape Town Convention) and the Protocol on matters specific to aircraft equipment (Aircraft Protocol), adopted jointly in Cape Town on 16 November 2001**

- I. Declaration made pursuant to Article 48(2) concerning the competence of the European Community over matters governed by the Convention on international interests in mobile equipment (Cape Town Convention) in respect of which the Member States have transferred their competence to the Community
1. Article 48 of the Cape Town Convention provides that regional economic integration organisations which are constituted by sovereign States and which have competence over certain matters governed by that Convention may accede to it on condition that they make the declaration referred to in Article 48(2). The Community has decided to accede to the Cape Town Convention and is accordingly making that declaration.
  2. The current Members of the Community are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
  3. However, this Declaration does not apply to the Kingdom of Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community.
  4. This Declaration is not applicable in the case of the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Cape Town Convention by the Member States concerned on behalf and in the interests of those territories.
  5. The Member States of the European Community have transferred their competence to the Community as regards matters which affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings <sup>(2)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(3)</sup>.
  6. At the time of accession to the Cape Town Convention, the Community will not make any of the declarations permitted under the Articles referred to in Article 56 of the said Convention, with the exception of a declaration concerning Article 55. The Member States keep their competence concerning the rules of substantive law as regards insolvency.
  7. The exercise of the competence which the Member States have transferred to the Community pursuant to the Treaty establishing the European Community is, by its nature, liable to continuous development. In the framework of that Treaty, the competent institutions may take decisions which determine the extent of the competence of the Community. The latter therefore reserves the right to amend this Declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Cape Town Convention.
- II. Declaration pursuant to Article XXVII(2) concerning the competence of the European Community over matters governed by the Protocol on matters specific to aircraft equipment (Aircraft Protocol), in respect of which the Member States have transferred their competence to the Community
1. Article XXVII of the Aircraft Protocol provides that regional economic integration organisations which are constituted by sovereign States and which have competence over certain matters governed by that Protocol may accede to it on condition that they make the declaration referred to in Article XXVII(2). The Community has decided to accede to the Aircraft Protocol and is accordingly making that declaration.

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> OJ L 160, 30.6.2000, p. 1.

<sup>(3)</sup> OJ L 177, 4.7.2008, p. 6.

2. The current Members of the Community are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
3. However, this Declaration does not apply to the Kingdom of Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community.
4. This Declaration is not applicable in the case of the territories of the Member States in which the Treaty establishing the European Community does not apply and is without prejudice to such acts or positions as may be adopted under the Aircraft Protocol by the Member States concerned on behalf and in the interests of those territories.
5. The Member States of the European Community have transferred their competence to the Community as regards matters which affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>, Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings <sup>(2)</sup> and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(3)</sup>.
6. At the time of accession to the Aircraft Protocol, the Community will not make a declaration pursuant to Article XXX(1) concerning the application of Article VIII nor will it make any of the declarations permitted under Article XXX(2) and (3). The Member States keep their competence concerning the rules of substantive law as regards insolvency.
7. The exercise of competence which the Member States have transferred to the Community pursuant to the Treaty establishing the European Community is, by its nature, liable to continuous development. In the framework of that Treaty, the competent institutions may take decisions which determine the extent of the competence of the Community. The latter therefore reserves the right to amend this Declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Aircraft Protocol.

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<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> OJ L 160, 30.6.2000, p. 1.

<sup>(3)</sup> OJ L 177, 4.7.2008, p. 6.

## ANNEX II

**Declarations to be made by the European Community at the time of accession to the Convention on international interests in mobile equipment (Cape Town Convention) and the Protocol on matters specific to aircraft equipment (Aircraft Protocol) concerning certain provisions and measures contained therein**

- I. Declaration by the European Community pursuant to Article 55 of the Convention on international interests in mobile equipment (Cape Town Convention)

Pursuant to Article 55 of the Cape Town Convention, where the debtor is domiciled in the territory of a Member State of the Community, the Member States bound by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup> will apply Articles 13 and 43 of the Cape Town Convention for interim relief only in accordance with Article 31 of Regulation (EC) No 44/2001 as interpreted by the Court of Justice of the European Communities in the context of Article 24 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters <sup>(2)</sup>.

- II. Declaration by the European Community pursuant to Article XXX of the Protocol on matters specific to aircraft equipment (Aircraft Protocol)

In accordance with Article XXX(5) of the Aircraft Protocol, Article XXI of that Protocol will not apply within the Community and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(3)</sup> will apply to this matter for the Member States bound by the said Regulation or by any other agreement designed to extend its effects.

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<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(2)</sup> OJ L 299, 31.12.1972, p. 32.

<sup>(3)</sup> OJ L 12, 16.1.2001, p. 1.