

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 27 November 2008

concerning the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

(2009/430/CE)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament ⁽¹⁾,

Whereas:

- (1) On 16 September 1988, the Member States of the European Communities signed an international agreement with the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation on jurisdiction and the enforcement of judgments in civil and commercial matters ⁽²⁾ (the Lugano Convention), thereby extending to Iceland, Norway, and Switzerland the application of the rules of the Convention of 27 September 1968 on the same subject matter ⁽³⁾ (the Brussels Convention).

⁽¹⁾ Assent of 18 November 2008 (not yet published in the Official Journal).

⁽²⁾ Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 319, 25.11.1988, p. 9).

⁽³⁾ Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 299, 31.12.1972, p. 32). (Consolidated version in OJ C 27, 26.1.1998, p. 1).

- (2) Negotiations concerning a revision of the Brussels Convention and the Lugano Convention were undertaken during the years 1998-1999 within the framework of an ad hoc Working Party enlarged with Iceland, Norway and Switzerland. These negotiations led to the adoption of a text of a draft convention prepared by the Working Party, which was confirmed by the Council at its meeting on 27 and 28 May 1999.

- (3) Subsequent negotiations within the Council on the basis of this text led to the adoption of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽⁴⁾, which modernised the rules of the Brussels Convention and made the system of recognition and enforcement swifter and more efficient.

- (4) In the light of the parallelism between the Brussels and the Lugano Convention regimes on jurisdiction and on recognition and enforcement of judgments in civil and commercial matters, the rules of the Lugano Convention should be aligned with the rules of Regulation (EC) No 44/2001 in order to achieve the same level of circulation of judgments between the EU Member States and the EFTA States concerned.

⁽⁴⁾ OJ L 12, 16.1.2001, p. 1.

- (5) In accordance with 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 application of measures pursuant to Title IV of the Treaty establishing the European Community. In order for the rules of the Lugano Convention to apply to Denmark, Denmark should therefore participate as a Contracting Party to a new convention covering the same subject matter.
- (6) By Decision of 27 September 2002, the Council authorised the Commission to negotiate with a view to the adoption of a new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- (7) The Commission negotiated such a convention, on behalf of the Community, with Iceland, Norway, Switzerland and Denmark. This Convention was signed, on behalf of the Community, on 30 October 2007 in accordance with Council Decision 2007/712/EC ⁽¹⁾, subject to its conclusion at a later date.
- (8) At the time of the adoption of Decision 2007/712/EC the Council agreed to examine in the framework of the discussions on the conclusion of the new Lugano Convention the possibility of making a declaration in accordance with Article II(2) of Protocol 1 to the Convention. The Community should make such a declaration at the time of conclusion of the Convention.
- (9) During the negotiations of the Convention the Community committed itself to making a declaration, at the time of ratification of the Convention, to the effect that when amending Regulation (EC) No 44/2001 the Community would clarify the scope of Article 22(4) of the said Regulation with a view to taking into account the relevant case law of the Court of Justice of the European Communities with respect to proceedings concerned with the registration or validity of intellectual property rights, thereby ensuring its parallelism with Article 22(4) of the Convention. In this context, regard should be had to the results of the evaluation of the application of Regulation (EC) No 44/2001.

- (10) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Decision.
- (11) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application.
- (12) The Convention should now be concluded,

HAS DECIDED AS FOLLOWS:

Article 1

The conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which will replace the Lugano Convention of 16 September 1988, is hereby approved on behalf of the Community.

When depositing its instrument of ratification, the Community shall make the declarations set out in Annexes I and II to this Decision.

The text of the Convention is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit on behalf of the Community the instrument of ratification in accordance with Article 69(2) of the Convention.

Done at Brussels, 27 November 2008.

For the Council
The President
 M. ALLIOT-MARIE

⁽¹⁾ Council Decision 2007/712/EC of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 339, 21.12.2007, p. 1).

ANNEX I

DECLARATION BY THE EUROPEAN COMMUNITY

'The European Community hereby declares that, when amending Council Regulation (EC) No 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, it intends to clarify the scope of Article 22(4) of the said Regulation with a view to taking into account the relevant case law of the Court of Justice of the European Communities with respect to proceedings concerned with the registration or validity of intellectual property rights, thereby ensuring its parallelism with Article 22(4) of the Convention while taking into account the results of the evaluation of the application of Regulation (EC) No 44/2001.'

ANNEX II

**DECLARATION BY THE EUROPEAN COMMUNITY IN ACCORDANCE WITH ARTICLE II(2)
OF PROTOCOL 1 TO THE CONVENTION**

The European Community declares that proceedings referred to in Articles 6(2) and 11 may not be resorted to in the following Member States: Estonia, Latvia, Lithuania, Poland and Slovenia in addition to the three already mentioned in Annex IX to the Convention.

In accordance with Article 77(2) of the Convention the Standing Committee set up by Article 4 of Protocol 2 to the Convention should therefore as soon as the Convention enters into force be requested to amend Annex IX to the Convention as follows:

“ANNEX IX

The States and the rules referred to in Article II of Protocol 1 are the following:

- Germany: Articles 68, 72, 73 and 74 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices,
 - Estonia: Article 214(3) and (4) and Article 216 of the Code of Civil Procedure (tsiviilkohtumenetluse seadustik) concerning third-party notices,
 - Latvia: Articles 78, 79, 80 and 81 of the Civil Procedure Law (Civilprocesa likums) concerning third-party notices,
 - Lithuania: Article 47 of the Code of Civil Procedure (Civilinio proceso kodeksas),
 - Hungary: Articles 58 to 60 of the Code of Civil Procedure (Polgári perrendtartás) concerning third-party notices,
 - Austria: Article 21 of the code of civil procedure (Zivilprozessordnung) concerning third-party notices,
 - Poland: Articles 84 and 85 of the Code of Civil Procedure (Kodeks postępowania cywilnego) concerning third-party notices (przypozwanie),
 - Slovenia: Article 204 of the Civil Procedure Act (Zakon o pravdnem postopku) concerning third-party notices,
 - Switzerland, with respect to those cantons whose applicable code of civil procedure does not provide for the jurisdiction referred to in Articles 6(2) and 11 of the Convention: the appropriate provisions concerning third-party notices (*litis denuntiatio*) of the applicable code of civil procedure.”
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