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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.02.2008
COM(2008) 116 final

2008/0048 (AVC)

Proposal for a

COUNCIL DECISION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Political and legal background

On 16 September 1988, the Member States of the European Communities signed with the Republic of Iceland, the Kingdom of Norway, and the Swiss Confederation the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. This Convention, referred to as the "Lugano Convention", extended the application of the rules of the 1968 Brussels Convention on the same subject matter, concluded between the EC Member States, to certain States members of the European Free Trade Association.

Negotiations on a revision of the 1968 Brussels and 1988 Lugano Conventions were undertaken during the years 1998-1999 in the context of an *ad hoc* Working Party enlarged with Switzerland, Norway, and Iceland. These negotiations led to the adoption of a text of a draft convention prepared by the Working Party. This text was confirmed by the Council on 27 and 28 May 1999 (JUSTCIV 60 of 30 April 1999).

Since the entry into force of the Amsterdam Treaty on 1 May 1999, the matters covered by the 1968 Brussels Convention have become the subject of Community policy, pursuant to Articles 61(c) and 65 EC Treaty. As a result thereof, the 1968 Brussels Convention has been converted into a Regulation, in particular Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. On that occasion, the rules of the Brussels Convention were modernised and the system of recognition and enforcement was made more swift and efficient.

In the light of the parallelism between the "Brussels" (EC) and the "Lugano" regimes on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, the 1988 Lugano Convention needs to be adapted in order to reflect the evolution of the "Brussels" regime. In particular, it is important to align the system of recognition and enforcement of judgments in order to achieve the same level of circulation of judgments with the EFTA States concerned.

The Commission presented on 22 March 2002 a recommendation for a Council Decision authorising the Commission to open negotiations for the adoption of a Convention between the Community and, on the basis of the Protocol on its position, Denmark, of the one part, and Iceland, Norway, Switzerland and Poland, of the other, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to replace the Lugano convention of 16 September 1988 (SEC(2002) 298 final).

At its Session of 14 and 15 October 2002, the Council adopted negotiating directives authorising the Commission to enter into negotiations on a new Lugano Convention.

At its session of 27-28 February 2003, Council decided to request the European Court of Justice to deliver an opinion on the question whether the conclusion of the new Lugano Convention resorts under the exclusive competence of the Community or whether it concerns a competence that is shared between the Community and the Member States. In its Opinion 1/03 of 7 February 2006, the European Court of Justice has opined that the conclusion of the new Lugano Convention resorts entirely under the exclusive competence of the Community.

Following the opinion of the Court, negotiations resumed and were finalised in Brussels on 28 March 2007. Following the Council's Decision of 15 October 2007 on the signing, on behalf of the Community, of the new Lugano Convention, the Convention was signed in Lugano on 30 October 2007.

Pursuant to Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does

not participate in Title IV of the Treaty. As a consequence, Community instruments adopted in the field of, among others, judicial cooperation in civil matters are not binding upon or applicable in Denmark. As a result, Denmark participates in this context as a Contracting Party to the new Lugano Convention. As between the other EC Member States and the Kingdom of Denmark, the provisions of Regulation (EC) No 44/2001 apply since 1 July 2007, pursuant to the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005.

2. Results of the negotiations and signature of the Convention

The Commission negotiated the new Lugano Convention in accordance with the Council's negotiating directives, coordinating with the special Committee designated by the Council to assist the Commission during negotiations. Negotiations were finalised in Brussels on 28 March 2007. Following the Council's Decision of 15 October 2007 on the signing, on behalf of the Community, of the new Lugano Convention, the latter was signed in Lugano on 30 October 2007.

3. Conclusion

In view of the positive outcome of the negotiations and the signature of the Convention, the Commission recommends that the Council adopt the decision concerning the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and 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 Commission¹,

Having regard to the assent of the European Parliament²,

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 (the Lugano Convention),³ thereby extending to Iceland, Norway, and Switzerland the application of the rules of the Brussels Convention of 27 September 1968 on the same subject matter (the "Brussels Convention").⁴
- (2) Negotiations on a revision of the 1968 Brussels and 1988 Lugano Conventions were undertaken during the years 1998-1999 in the context of an *ad hoc* Working Party enlarged with Switzerland, Norway, and Iceland. These negotiations led to the adoption of a text of a draft convention prepared by the Working Party, which was confirmed by the Council on 27 and 28 May 1999.
- (3) The rules of the Brussels Convention have been modernised and the system of recognition and enforcement has been made more swift and efficient by Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- (4) In the light of the parallelism between the Brussels and the Lugano Convention regimes on jurisdiction, 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 with the EFTA States concerned.
- (5) Pursuant to the Protocol on the position of Denmark annexed to the Treaty on the European Union (EU Treaty) and the Treaty establishing the European Community

¹ OJ C [...] [...], p. [...].

² OJ C [...] [...], p. [...].

³ OJ L 319, 25.11.1988, p. 9

⁴ 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ C 27, 26.1.1992, p. 1 e.s. (consolidated version).

(EC Treaty), Denmark does not participate in Title IV of the EC Treaty. In order for the rules of the Lugano Convention to apply to Denmark, Denmark should 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 a convention between the Community and, on the basis of the Protocol on its position, Denmark, of the one part, and Iceland, Norway, Poland, and Switzerland, of the other, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to replace the Lugano Convention.
- (7) The Commission has negotiated such convention, on behalf of the Community, with the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation, and the Kingdom of Denmark. The Convention was signed, on behalf of the European Community, on 30 October 2007, subject to its possible conclusion at a later date, in accordance with Council Decision of 15 October 2007.
- (8) The Community committed to make a declaration, at the time of ratification of the Convention, that it intends to clarify the scope of Art. 22(4) of Council Regulation (EC) No 44/2001 with a view to taking into account the relevant case-law of the European Court of Justice with respect to proceedings concerned with the registration or validity of intellectual property rights, thereby ensuring its parallelism with Art. 22(4) of the Convention. In this context, reference shall be made to the study made to evaluate the application of Regulation (EC) No 44/2001.
- (9) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the EU Treaty and the EC Treaty, are taking part in the adoption and application of this Decision.
- (10) In accordance with Articles 1 and 2 of the above-mentioned Protocol on the position of Denmark, Denmark does not take part in the adoption of the present Decision and is not bound by it or subject to its application.
- (11) The Convention should now be concluded.

HAS DECIDED AS FOLLOWS:

Article 1

The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to replace the Lugano Convention of 16 September 1988 shall be concluded on behalf of the European Community. When depositing its instrument of ratification, the Community shall make the declaration provided for in annex to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit the instrument of ratification as provided for in Article 69(2) of the Convention.

Done at Brussels,

*For the Council
The President*

ANNEX

Declaration on the part of the European Community

The European Community hereby declares that, when modifying 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 Art. 22(4) of that Regulation with a view to taking account of the relevant case-law of the European Court of Justice with respect to proceedings concerned with the registration or validity of intellectual property rights, thereby ensuring its parallelism with Art. 22(4) of the Convention while taking into account the results of the evaluation of the application of Regulation (EC) No 44/2001.