COUNCIL ACT

of 26 May 1997

drawing up the Protocol on the interpretation, by the Court of Justice of the European Communities, of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters

(97/C 261/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (c) thereof,

Having regard to Article 17 of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters,

Whereas Article K.3 (2) (c) of the Treaty provides that conventions drawn up on the basis of Article K.3 thereof may stipulate that the Court of Justice of the European Communities shall have jurisdiction to interpret their provisions in accordance with such arrangements as they may lay down,

Having examined the views of the European Parliament [1], following the consultation conducted by the Presidency in accordance with Article K.6 of the Treaty,

HAVING DECIDED that the Protocol, the text of which is attached, which has been signed today by the Representatives of the Governments of the Member States, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at Brussels, 26 May 1997.

For the Council

The President

W. SORGDRAGER

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[1] Opinion delivered on 11 April 1997 (not yet published in the Official Journal).

PROTOCOL,

drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by the Court of Justice of the European Communities, of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters

THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 26 May 1997,

REFERRING to Article 17 of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, which provides that the Court of Justice of the European Communities shall have jurisdiction to give rulings on the interpretation of that Convention,

WISHING to regulate the conditions under which the Court of Justice of the European Communities shall have jurisdiction to give rulings on questions of interpretation of the Convention and this Protocol —

HAVE AGREED AS FOLLOWS:

Article 1

In accordance with Article 17 of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, hereinafter referred to as 'the Convention', the Court of Justice of the European Communities shall have jurisdiction, under the conditions laid down in this Protocol, to give rulings on the interpretation of the Convention and this Protocol.

Article 2

1. The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

(a) the following highest courts of Member States:

— in Belgium: 'la Cour de cassation — het Hof van Cassatie' and 'le Conseil d'Etat — de Raad van State',

— in Denmark: 'Højesteret',

— in Germany: 'die obersten Gerichthöfe des Bundes',

— in Greece: 'τα Ανώτατα δικαστήρια'

— in Spain: 'el Tribunal Supremo',

— in France: 'la Cour de cassation' and 'le Conseil d'État',

— in Ireland: 'the Supreme Court',

— in Italy: 'la Corte suprema di cassazione' and 'il Consiglio di Stato',

— in Luxembourg: 'la Cour supérieure de justice' when sitting as Cour de cassation,

— in the Netherlands: 'de Hoge Raad',

— in Austria: 'der Oberste Gerichtshof', 'der Verwaltungsgerichtshof' and 'der Verfassungsgerichtshof',

— in Portugal: 'o Supremo Tribunal de Justiça' and 'o Suprema Tribunal Administrativo',

— in Finland: 'korkein oikeus/högsta domstolen', 'korkein hallinto-oikeus/högsta förvaltningsdomstolen',

— in Sweden: 'Högsta domstolen', 'Regeringsrätten', 'Arbetsdomstolen' and 'Marknadsdomstolen',

— in the United Kingdom: 'the House of Lords';

(b) the courts of the Member States when they are sitting in an appellate capacity.

2. At the request of the Member State concerned, the list of the highest courts referred to in paragraph 1 (a) may be modified by a decision of the Council of the European Union.

Article 3

1. Where a question of interpretation is raised in a case pending before one of the courts listed in Article 2 (1) (a), that court shall, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.

2. Where such a question is raised before any court referred to in Article 2 (1) (b), that court may, under the conditions laid down in paragraph 1, request the Court of Justice to give a ruling thereon.

Article 4

1. The competent authority of a Member State may request the Court of Justice to give a ruling on a question of interpretation if judgments given by courts of the State conflict with the interpretation given either by the Court of Justice or in a judgement of one of the courts of another Member State referred to in Article 2 (1) (a) and (b), if this Member State is a Party to this Protocol. The provisions of this paragraph shall apply only to judgments which have become *res judicata*.

2. The interpretation given by the Court of Justice in response to such a request shall not affect the judgments which gave rise to the request for interpretation.

3. The Procurators-General of the Courts of Cassation of the Member States, or any other authority designated by a Member State, shall be entitled to request the Court of Justice for a ruling on interpretation in accordance with paragraph 1

4. The Registrar of the Court of Justice shall give notice of the request to the Member States, to the Commission and to the Council of the European Union; they shall then be entitled within two months of the notification to submit statements of case or written observations to the Court.

5. No fees shall be levied or any costs or expenses awarded in respect of the proceedings provided for in this Article.

Article 5

The Protocol on the Statue of the Court of Justice of the European Communities and the Rules of Procedure of that Court shall apply.

Article 6

This Protocol may not be subject to any reservation.

Article 7

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the depositary of the completion of their respective constitutional requirements for adopting this Protocol.

3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the third State which, being a member of the European Union on the date of adoption by the Council of the act drawing up this Protocol, fulfils that formality. However, it shall at the earliest enter into force at the same time as the Convention.

Article 8

1. This Protocol shall be open to accession by any State that becomes a member of the European union.

2. Instruments of accession shall be deposited with the depositary.

3. When depositing its instruments of accession, the acceding Member State shall indicate which of its highest Courts has, or shall have, the right to ask the Court of Justice to give preliminary rulings on questions of interpretation in accordance with Article 2 (1) (a).

4. Before the date of entry into force of this Protocol in respect of the acceding Member State, the Council shall adopt, in accordance with Article 2 (2), amendments to the list of highest Courts in Article 2 (1) (a).

5. The text of this Protocol in the language or languages of the acceding State, drawn up by the Council of the European Union, shall be authentic.

6. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the date of deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not already entered into force at the time of expiry of the said period of 90 days expires.

Article 9

1. Without prejudice to Article 2 (2) and 8 (4), amendments to this Protocol may be proposed by any Member State, being a Party to this Protocol, or by the Commission. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.

2. Amendments shall be adopted by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.

3. Amendments thus adopted shall enter into force in accordance with the provisions of Article 7.

Article 10

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the *Official Journal of the European Communities* the notifications, instruments or communications concerning this Protocol.

En fe de lo cual los plenipotenciarios abajo firmantes suscriben el presente Protocolo.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne protokol.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Protokoll gesetzt.

Σε πίστωση των ανωτέρω, οι υπογράφοντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από το παρόν πρωτόκολλο.

In witness whereof, the undersigned Plenipotentiaries have signed this Protocol.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent protocole.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an bPrótacal seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce al presente protocollo.

Ten blijke waarvan de ondergetekende gevolmachtigden hun handtekening onder dit Protocol hebben gesteld.

Em fé do que, os plenipotenciários abaixo assinados apuseram as suas assinaturas no presente protocolo.

Tämän vakuudeksi alla mainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän pöytäkirjan.

Till bevis härpå har undertecknade befullmäktigade undertecknat detta protokoll.

Hecho en Bruselas, el veintiséis de mayo de mil novecientos noventa y siete, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, finesa, francesa, griega, irlandesa, italiana, neerlandesa, portuguesa y sueca, cuyos textos son igualmente auténticos y que será depositado en los archivos de la Secretaría General del Consejo de la Unión Europea.

Udfærdiget i Bruxelles, den seksogtyvende maj nitten hundrede og syvoghalvfems, i ét eksemplar på dansk, engelsk, finsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk, svensk og tysk, hvilke tekster alle har samme gyldighed og er deponeret i arkiverne i Generalsekretariatet for Rådet for Den Europæiske Union.

Geschehen zu Brüssel am sechsundzwanzigsten Mai neunzehnhundertsiebenundneunzig in einer Urschrift in dänischer, deutscher, englischer, finnischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer, schwedischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

Έγινε στις Βρυξέλλες, στις είκοσι έξι Μαΐου χίλια εννιακόσια ενενήντα επτά, σε ένα μόνο αντίτυπο, στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική, πορτογαλική, σουηδική και φινλανδική γλώσσα, όλα δε τα κείμενα είναι εξίσου αυθεντικά και κατατίθενται στα αρχεία της Γενικής Γραμματείας του Συμβουλίου της Ευρωπαϊκής Ένωσης.

Done at Brussels, on the twenty-sixth day of May in the year one thousand nine hundred and ninety-seven, in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

Fait à Bruxelles, le vingt-six mai mil neuf cent quatre-vingt-dix-sept, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, finnoise, française, grecque, irlandaise, italienne, néerlandaise, portugaise et suédoise, tous ces textes faisant également foi, exemplaire qui est déposé dans les archives du Secrétariat général du Conseil de l'Union européenne.

Arna dhéanamh sa Bhruiséil, an séú lá is fiche de Bhealtaine sa bhliain míle naoi gcéad nócha a seacht, i scríbhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, san Fhionlainnis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis, sa Spáinnis agus sa tSualainnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar an scríbhinn bhunaidh sin a thaisceadh i gcartlann Ardrúnaíocht Chomhairle an Aontais Eorpaigh.

Fatto a Bruxelles, addì ventisei maggio millenovecentonovantasette, in unico esemplare in lingua danese, finlandese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola, svedese e tedesca, i testi di ciascuna di queste lingue facenti ugualmente fede, esemplare depositato negli archivi del Segretariato generale del Consiglio dell'Unione europea.

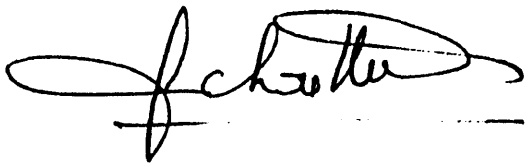
Gedaan te Brussel, de zesentwintigste mei negentienhonderd zevenennegentig, in één exemplaar in de Deense, de Duitse, de Engelse, de Finse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse, de Portugese, de Spaanse en de Zweedse taal, zijnde alle teksten gelijkelijk authentiek, dat wordt neergelegd in het archief van het Secretariaat-generaal van de Raad van de Europese Unie.

Feito em Bruxelas, em vinte e seis de Maio de mil novecentos e noventa e sete, em exemplar único, nas línguas alemã, dinamarquesa, espanhola, finlandesa, francesa, grega, inglesa, irlandesa, italiana, neerlandesa, portuguesa e sueca, fazendo igualmente fé todos os textos, depositado nos arquivos do Secretariado-Geral do Conselho da União Europeia.

Tehty Brysselissä kahdentenakymmenentenäkuudentena päivänä toukokuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän yhtenä ainoana kappaleena englannin, espanjan, hollannin, iirin, italian, kreikan, portugalin, ranskan, ruotsin, saksan, suomen ja tanskan kielellä kaikkien näiden tekstien ollessa yhtä todistusvoimaiset, ja se talletetaan Euroopan unionin neuvoston pääsihteeristön arkistoon.

Utfärdat i Bryssel den tjugosjätte maj nittonhundranittiosju i ett enda exemplar på danska, engelska, finska, franska, grekiska, iriska, italienska, nederländska, portugisiska, spanska, svenska och tyska, varvid alla texter är lika giltiga, och deponerat i arkiven vid generalsekretariatet för Europeiska unionens råd.

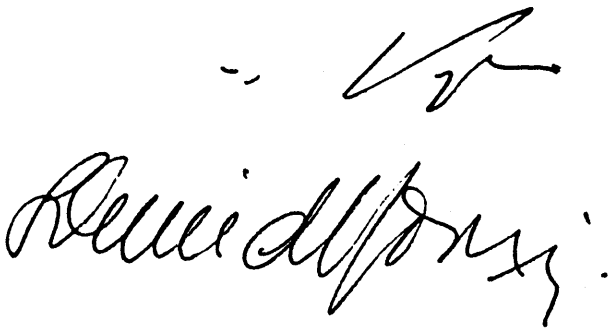
Pour le gouvernement du royaume de Belgique
Voor de regering van het Koninkrijk België
Für die Regierung des Königreichs Belgien



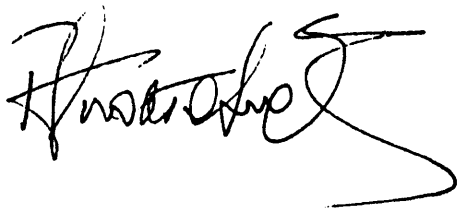
For regeringen for Kongeriget Danmark



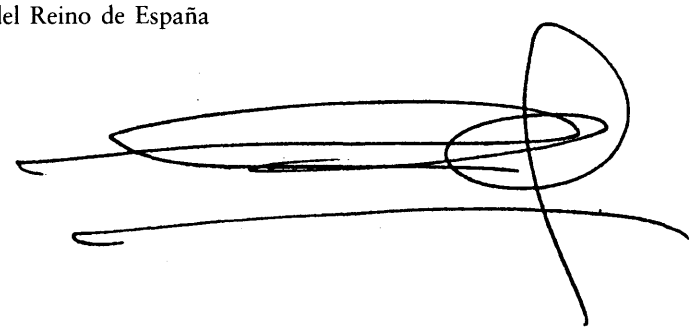
Für die Regierung der Bundesrepublik Deutschland



Για την κυβέρνηση της Ελληνικής Δημοκρατίας



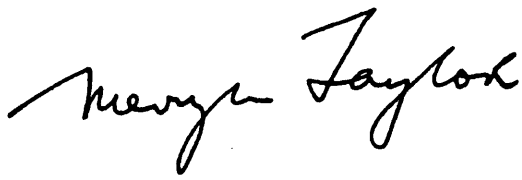
Por el Gobierno del Reino de España



Pour le gouvernement de la République française



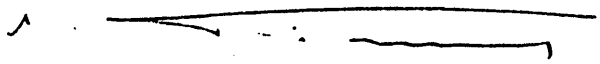
Thar ceann Rialtas na hÉireann
For the Government of Ireland



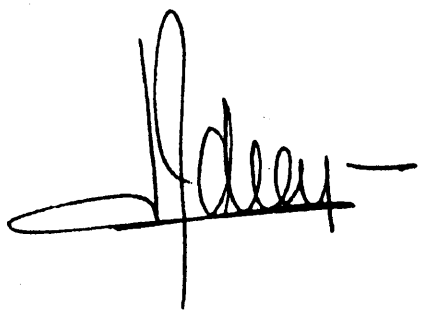
Per il governo della Repubblica italiana



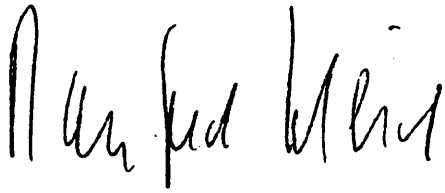
Pour le gouvernement du grand-duché de Luxembourg



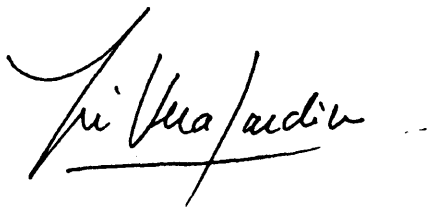
Voor de regering van het Koninkrijk der Nederlanden



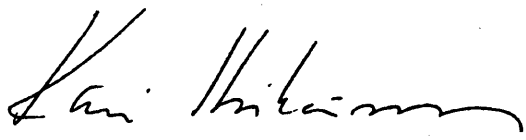
Für die Regierung der Republik Österreich



Pelo Governo da República Portuguesa



Suomen hallituksen puolesta
På finska regeringens vägnar



På Konungariket Sveriges vägnar



For the Government of the United Kingdom of Great Britain and Northern Ireland

