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LIMITE

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NOTE

from : Secretariat

to : Working Party on Extension of the Brussels Convention

Subject: Draft Convention on jurisdiction, recognition and enforcement of judgments in matrimonial matters

- Council Act drawing up the Protocol on the interpretation of the Convention by the Court of Justice of the European Communities
-

Delegations will find attached the draft Protocol drawn up on the basis of the political agreement reached within the (JHA) Council at its meeting on 4 and 5 December 1997, conferring on the Court of Justice powers to interpret the Convention on jurisdiction, recognition and enforcement of judgments in matrimonial matters.

COUNCIL ACT
of

drawing up
the Protocol on the interpretation
by the Court of Justice of the European Communities
of the Convention on jurisdiction, recognition and enforcement
of judgments in matrimonial matters

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 44 of the Convention on jurisdiction, recognition and enforcement of judgements in matrimonial 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

For the Council
The President

(¹) The Presidency has just asked the European Parliament for its views on this draft Protocol.

**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 JURISDICTION, RECOGNITION AND ENFORCEMENT
OF JUDGMENTS IN MATRIMONIAL 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 ,

REFERRING to Article 44 of the Convention on jurisdiction, recognition and enforcement of judgements in matrimonial 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 44 of the Convention on jurisdiction, recognition and enforcement of judgements in matrimonial 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. At the time of the notification referred to in Article 9(2), each Member State shall indicate which courts may request the Court of Justice to give preliminary rulings on questions of interpretation.

2. The courts to which this right may be granted shall be:

- either the highest courts of Member States listed in Article 3;
- or the highest courts listed in Article 3 and the other courts of the Member States where they are sitting in an appellate capacity.

ARTICLE 3

1. For the purposes of applying this Protocol, the highest courts of Member States are those listed below: ⁽¹⁾

- in Belgium:
- in Denmark:
- in Germany:
- in Greece:
- in Spain:
- in France:
- in Ireland:
- in Italy:
- in Luxembourg:
- in the Netherlands:
- in Austria:
- in Portugal:

⁽¹⁾ Details to be supplied by the Member States.

- in Finland:
- in Sweden:
- in the United Kingdom:

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

ARTICLE 4

1. Where a question of interpretation is raised in a case pending before one of the highest courts listed in Article 3(1), that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

2. Where such a question is raised before a court sitting in an appellate capacity, that court may, under the conditions laid down in paragraph 1, request the Court of Justice to give a ruling thereon.

ARTICLE 5

The Council, the Commission and the Member States shall have the right to submit to the Court statements of case or written observations in cases brought before it under Article 1.

ARTICLE 6

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 that State conflict with the interpretation given either by the Court of Justice or in a judgment of one of the courts of another Member State referred to in Article 2, if that 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 7

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

ARTICLE 8

This Protocol may not be subject to any reservation.

ARTICLE 9

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 ninety 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 10

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:
 - in a declaration, the conditions for the application of Article 2 with respect to it;
 - 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 3(1).
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 3(2), amendments to the list of highest Courts in Article 3(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 ninety 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 ninety days.

ARTICLE 11

1. Without prejudice to Article 3(2) and Article 10(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 9.

ARTICLE 12

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.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Protocol.

DONE at _____, this _____ day of _____ in the year _____, 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.
