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ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPEISKA GEMENSKAPERNAS DOMSTOL



POS BENDRIJŲ TEISINGUMO TEISMAS
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
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SÚDNY DVOR EURÓPSKYCH SPOLOČENSTEV
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Opinion 1/03 of the Court

**THE EUROPEAN COMMUNITY HAS EXCLUSIVE COMPETENCE TO
CONCLUDE THE NEW LUGANO CONVENTION**

Both the rules on jurisdiction and those on the recognition and enforcement of judgments in civil and commercial matters affect the Community rules applicable in those domains.

Article 300 of the EC Treaty provides that the European Parliament, the Council, the Commission or a Member State may obtain the **opinion** of the Court of Justice of the European Communities as to whether an agreement envisaged between the Community and one or more non-member States or international organisations is compatible with the provisions of that Treaty.

The Brussels Convention¹ is the first instrument adopted by the Member States of the Community governing conflicts of national jurisdiction and the enforcement of judgments in civil and commercial matters. Subsequently the Member States of the Community and those of the European Free Trade Association (EFTA), with the exception of Liechtenstein, concluded **the Lugano Convention**² in order to create between them a system similar to that of the Brussels Convention.

After the entry into force of the Treaty of Amsterdam, which conferred on the Community new powers relating to judicial cooperation in civil matters, the Council adopted a

¹ The Convention of Brussels on jurisdiction and the enforcement of judgments in civil and commercial matters concluded at Brussels on 27 September 1968 (OJ 1978 L 304, p. 34).

² The Convention of Lugano on jurisdiction and the enforcement of judgments in civil and commercial matters, done at Lugano on 16 September 1988 (OJ 1988 L 319, p. 9).

regulation³ replacing the Brussels Convention as between all the Member States of the Community with the exception of Denmark⁴.

Next, the Council authorised the Commission to begin negotiations for the purposes of the adoption of a new convention between the Community and the EFTA countries (the new Lugano Convention) to replace, with reference to the subject-matter and purpose of the regulation, the Lugano Convention. However, it decided to submit a request to the Court for an opinion as to whether competence to conclude the new Lugano Convention was exclusive to the Community or shared with the Member States.

The Court first recalls the principle that where common rules have been adopted the Member States no longer have the right to undertake obligations with non-member countries which affect those rules⁵. It goes on to state that a comprehensive and detailed analysis must be carried out to determine whether the Community has the competence to conclude an international agreement and whether that competence is exclusive. In doing so, account must be taken not only of the area covered by the Community rules and by the provisions of the agreement envisaged, in so far as the latter are known, but also of the nature and content of those rules and provisions, to ensure that the agreement is not capable of undermining the uniform and consistent application of the Community rules and the proper functioning of the system which they establish.

Next, the Court observes that **the rules on conflict of jurisdiction** in international agreements concluded by Member States or by the Community with non-member States necessarily establish criteria of jurisdiction not only in non-member States but also in the Member States, and consequently cover matters governed by the regulation. Examination of the provisions of the new Lugano Convention reveals that they **affect** the uniform and consistent application of the regulation and the proper functioning of the system it establishes.

Lastly, the Court concludes that because of the unified and coherent system which the regulation establishes for **the recognition and enforcement of judgments**, an agreement such as the new Lugano Convention containing provisions on the jurisdiction of the courts or on the recognition and enforcement of judgments **is capable of affecting that system**. That is because the Convention sets out the principle that a judgment given in a Contracting State is to be recognised in the other Contracting States without any special procedure being required. Such a principle affects the Community rules since **it enlarges the scope of recognition of judicial decisions**, thus increasing the number of cases in which judgments delivered by courts of countries not members of the Community whose jurisdiction does not arise from the application of the regulation will be recognised.

It follows from all those considerations that **the new Lugano Convention would affect the uniform and consistent application of the Community rules** as regards both the

³ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

⁴ Under the Protocol on the position of Denmark annexed to the EC Treaty Regulation No 44/2001 does not apply to that country.

⁵ Case 22/70 *Commission v Council* [1971] ECR 263, 'ERTA'.

jurisdiction of courts and the recognition and enforcement of judgments and the proper functioning of the unified system established by those rules.

In those circumstances the Court holds that **the European Community has exclusive competence to conclude the new Lugano Convention.**

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Languages available: All

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=1/03>

It can usually be consulted after midday (CET) on the day of delivery.

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