

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0506/2008

15.12.2008

REPORT

on the amended proposal for a Council decision on the conclusion by the European Community of the Convention on International Interests in Mobile Equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001
(COM(2008)0508 – C6-0329/2008 – 2008/0162(CNS))

Committee on Legal Affairs

Rapporteur: Georgios Papastamkos

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	6
PROCEDURE.....	9

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the amended proposal for a Council decision on the conclusion by the European Community of the Convention on International Interests in Mobile Equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001
(COM(2008)0508 – C6-0329/2008 – 2008/0162(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the amended proposal for a Council decision (COM(2008)0508),
 - having regard to Articles 61(c) and 300(2), first subparagraph of the EC Treaty,
 - having regard to Article 300(3), first subparagraph of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0329/2008),
 - having regard to Rules 51 and 83(7) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0506/2008),
1. Approves conclusion of the Convention;
 2. Instructs its President to forward its position to the Council and the Commission, and to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

1. Background and purpose of the proposal for a Council decision

Under the auspices of the ‘International Institute for the Unification of Private Law’ (UNIDROIT) and the ‘International Civil Aviation Organisation’ (ICAO) a Diplomatic Conference was held in Cape Town from 29 October to 16 November 2001. At this Conference the ‘Convention on International Interests in Mobile Equipment (hereinafter: ‘the Cape Town Convention’) and its Protocol on Matters Specific to Aircraft Equipment (‘the Aircraft Protocol’) were adopted.

Since these are mixed agreements, the Commission presented in 2002 two proposals for the signing and conclusion by the Community of these instruments. These proposals contained the declarations to be made by the Community on the application of specific provisions of both instruments which affect Community law. Following discussions in the Civil Law Committee, the file was sent to COREPER in October 2003, but it did not reach adoption because of a dispute between Spain and the United Kingdom relating to the Gibraltar authorities in the context of mixed agreements. This dispute was solved in December 2007. However the context has substantially changed since the expiry of the deadline for signature, on the one hand, and EU enlargement, on the other. Therefore it was judged necessary to submit an amended proposal.

This issue was raised at the meeting of 3 March 2008 of the Civil Law Committee where the Commission committed itself to prepare an amended proposal for a Council decision which it submitted on 11 August 2008 [COM(2008) 508 final]. The proposal under review replaces and updates the proposals submitted by the Commission in 2002.

2. The international contractual framework

The Cape Town Convention together with the Aircraft Protocol create a new cross-border legal framework in respect of international interests in mobile equipment and related rights and the creation, for this purpose, of an international registration system for the protection thereof.

The Convention under review specifies its scope, provides definitions, lays down the formal preconditions for establishing international interests, provides for judicial remedies in the case of default, deals with issues relating to the international registration system, elucidates the effect of an international interest as against third parties, contains provisions on the assignment of associated rights and international interests (rights of subrogation) and, finally, regulates jurisdiction issues.

The international legal framework is intended to ‘facilitate the financing of high-value aircraft equipment by creating a particularly strong international guarantee for creditors (sellers on credit and institutions supplying credit for such sales) which gives them “absolute” priority over these assets in an international register’ (Commission, SEC(2002) 1308 final/2). The international registration system (International Registry) safeguards the rights arising from the contractual framework under review in the face of claims by third parties (third party effect). A registered interest has priority over other interests subsequently registered (*prior tempore*

prior jure), and over an unregistered interest.

In short, the combined implementation of the Convention and the Aircraft Protocol constitutes an operational regulatory framework working in tandem: ‘This Convention and the Protocol shall be read and interpreted together as a single instrument’ (Article 6 of the Convention). In general, the principle *conventio derogat legi nationali* applies. However, in cases in which uniformity is not sufficiently pronounced, the domestic laws of the applicable legislation have to play a complementary role, in accordance with the rules of the private international law of the state of the presiding judge.

The rule *conventio specialis derogat conventioni generali* applies to prior contractual law.

The Cape Town Convention and its Aircraft Protocol were open for signature until they entered into force. Since the entry into force of the Cape Town Convention on 1 April 2004 and of its Aircraft Protocol on 1 March 2006, the Community has been unable to sign these international instruments and the 2003 proposal for the signing has become obsolete. However, the Community may accede to the Cape Town Convention and Aircraft Protocol by making the relevant declarations.

3. Community powers

Under the Cape Town Convention and its Aircraft Protocol, ‘Regional Economic Integration Organisations’ may become party to these agreements (Articles 48 and XXVII, respectively). The definition of ‘Regional Economic Integration Organisations’ allows the Community to become a party to these two instruments on condition that it obtains the necessary approval of the Community institutions. Any reference in the Convention or the Protocol to ‘Contracting State(s)’ or ‘States Parties’ also applies to the Community when so required by the context (Articles 48(3) and XXVII(3), respectively).

The Community has jurisdiction over certain matters governed by the Convention and its Aircraft Protocol and affecting Council Regulations (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings and (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

The European Community has exclusive jurisdiction over certain matters governed by the Cape Town Convention and its Aircraft Protocol, while Member States are responsible for certain other matters governed by these two instruments. The European Community should therefore accede to the Cape Town Convention and the Aircraft Protocol. Article 48 of the Cape Town Convention and Article XXVII of the Aircraft Protocol provide that at the time of signature a Regional Economic Integration Organisation shall make a declaration specifying the matters governed by the two instruments in question in respect of which Member States have transferred competence to that Organisation. The European Community must therefore make such a declaration when it accedes to these two instruments.

The texts of the Cape Town Convention and the Aircraft Protocol are attached to the amended proposal for a decision.

In the amended proposal for a decision ‘Member State’ means all Member States except for Denmark.

At the time of conclusion of the Cape Town Convention, the Community will make the declaration set out in point 1 of Annex A and the declaration set out in point 1 of Annex B of the amended proposal for a Council decision. At the time of conclusion of the Aircraft Protocol, the Community will make the declaration set out in point II of Annex A and the declaration set out in point II of Annex B of the amended Council proposal.

The declarations covering matters falling within the exclusive jurisdiction of the European Community cover relief pending final determination (Article 55 of the Cape Town Convention and Article X of the Aircraft Protocol), insolvency (Articles XI and XII of the Aircraft Protocol) and the jurisdiction of the place of registration.

4. Your rapporteur’s proposal

The (amended) proposal for a decision is based upon the Treaty establishing the European Community, in particular Article 61(c) in conjunction with Article 300, paragraph 2, first indent, and Article 300, paragraph 3, first indent. In view of the Commission’s proposal and given the desirability of the implementation as rapidly as possible of the provisions of the two instruments concerning matters falling within the exclusive competence of the European Community, your rapporteur proposes that the European Parliament approve ‘the conclusion by the European Community of the Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment, adopted jointly in Cape Town on 16 November 2001’.

PROCEDURE

Title	Convention on International Interests in Mobile Equipment and its Protocol on matters specific to aircraft equipment
References	COM(2008)0508 – C6-0329/2008 – 2008/0162(CNS)
Date of consulting Parliament	24.9.2008
Committee responsible Date announced in plenary	JURI 25.9.2008
Rapporteur(s) Date appointed	Georgios Papastamkos 22.9.2008
Discussed in committee	3.11.2008
Date adopted	15.12.2008
Result of final vote	+ : 13 - : 0 0 : 0
Members present for the final vote	Bert Doorn, Monica Frassoni, Giuseppe Gargani, Othmar Karas, Klaus-Heiner Lehne, Manuel Medina Ortega, Francesco Enrico Speroni, Diana Wallis
Substitute(s) present for the final vote	Costas Botopoulos, Jean-Paul Gauzès, Eva Lichtenberger, Georgios Papastamkos, Ieke van den Burg