

PROTOCOL drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests

THE HIGH CONTRACTING PARTIES,

HAVE AGREED on the following provisions, which shall be annexed to the Convention:

Article 1

The Court of Justice of the European Communities shall have jurisdiction, pursuant to the conditions laid down in this Protocol, to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the Protocol to that Convention drawn up on 27 September 1996¹, hereinafter referred to as 'the first Protocol'.

Article 2

1. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol to that Convention pursuant to the conditions specified in either paragraph 2 (a) or paragraph 2 (b).

2. A Member State making a declaration pursuant to paragraph 1 may specify that either:

(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, or

(b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

¹ OJ No C 313, 23. 10. 1996, p. 1

Article 3

1. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of that Court of Justice shall apply.
2. In accordance with the Statute of the Court of Justice of the European Communities, any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise pursuant to Article 1.

Article 4

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 and communicate to him any declaration made pursuant to Article 2.
3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. However, it shall at the earliest enter into force at the same time as the Convention on the protection of the European Communities' financial interests.

Article 5

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. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
4. 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 the entry into force of this Protocol if the latter has not yet come into force when the said period of 90 days expires.

Article 6

Any State that becomes a member of the European Union and accedes to the Convention on the protection of the European Communities' financial interests in accordance with Article 12 thereof shall accept the provisions of this Protocol.

Article 7

1. Amendments to this Protocol may be proposed by any Member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council.
2. Amendments shall be established by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.
3. Amendments thus established shall enter into force in accordance with the provisions of Article 4.

Article 8

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.

Done at Brussels, this twenty-ninth day of November in the year one thousand nine hundred and ninety-six, 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.

DECLARATION concerning the simultaneous adoption of the Convention on the protection of the European Communities' financial interests and the Protocol on the interpretation by way of preliminary rulings, by the Court of Justice of the European Communities, of that Convention

The representatives of the Governments of the Member States of the European Union meeting within the Council,

At the time of the signing of the Council Act drawing up the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests,

Wishing to ensure that the said Convention is interpreted as effectively and uniformly as possible as from its entry into force,

Declare themselves willing to take appropriate steps to ensure that the national procedures for adopting the Convention on the protection of the European Communities' financial interests and the Protocol concerning its interpretation are completed simultaneously at the earliest opportunity.

Done at Brussels on the twenty-ninth day of November in the year one thousand nine hundred and ninety-six.

Declaration made pursuant to Article 2

At the time of the signing of this Protocol, the following declared that they accepted the jurisdiction of the Court of Justice of the European Communities in accordance with the procedures laid down in Article 2:

The French Republic, Ireland and the Portuguese Republic in accordance with the procedures laid down in Article 2 (2) (a);

The Federal Republic of Germany, the Hellenic Republic, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, in accordance with the procedures laid down in Article 2 (2) (b).

DECLARATION

The Federal Republic of Germany, the Hellenic Republic, the Kingdom of the Netherlands and the Republic of Austria, reserve the right to make provision in their national law to the effect that, where a question relating to the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto is raised in a case pending before a national court or tribunal against whose decision there is no judicial remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice.

For the Kingdom of Denmark and the Kingdom of Spain, the declaration(s) will be made at the time of adoption.