

The MAC Protocol and the EU ratification process

Advancing the MAC Protocol-Shaping
the future of EU equipment financing

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Summary

- I. Introduction: the common EU area of justice concerning judicial cooperation in civil matters
- II. The EU exclusive external competence
- III. EU international agreements
- IV. The EU and the Cape Town System

I. Introduction: The common European area of justice - Art.81 TFEU

"New" policy area: introduced by the Treaty of Amsterdam (entered into force 1 May 1999)

But very intense production of legislative instruments:

- Civil & commercial (jurisdiction, recognition, enforcement of decisions)
- Judicial cooperation (service of documents, taking of evidence)
- Family law (jurisdiction, recognition, enforcement of decisions)
- Applicable Law
- Insolvency

II. The EU exclusive external competence

- The EU is competent externally to the extent that it has adopted legislation internally on the same/similar subject matter and there is a potential risk of the affectation of the *acquis*
- EJC Opinion 1/03 of 7 February 2006 "Lugano" and ECJ Opinion 1/13 of 14 October 2014 "Hague 1980 Child Abduction Convention"
- This case-law has also been codified in the EU Treaties (Article 3(2) TFEU)
- The EU has acquired the exclusive competence to negotiate and conclude international agreements in matters affecting the provisions of the EU instruments in civil and commercial matters, including family law matters



III. EU international agreements

Different types of agreements in Union Law

- A. Agreements concluded by the EU only ("EU-only")

- B. "Mixed" Agreements, concluded by the EU and by the Member States
 - a) Bilateral Mixed Agreements
 - b) Multilateral Mixed Agreements



Different types of EU agreements

EU only agreements: Agreements with third states or international organisations

- concluded by the Union (and/or Euratom) itself, or
- concluded by the Member States acting on behalf of the Union

Bilateral mixed agreements: between "of the one part" the Union (and Euratom) and its Member States, acting jointly, and "of the other part" a third country or international organisation

Examples : Association agreements; Cooperation and Partnership agreements, Aviation agreements, European Economic Area (EEA)

Multilateral Mixed Agreements

'Multilateral' : agreements concluded by the Union and by (all or some) of its Member States and by third countries, whereby in principle all Contracting Parties have rights and obligations against each other

Examples : most WTO agreements; some Conventions of the Council of Europe; the Paris agreement on climate change; certain regional fisheries conventions; the **Cape Town Convention** and its **Protocols**



IV. The EU and the Cape Town System

The EU has exclusive external competence on some provisions of the Cape Town Convention and its Protocols

Member States retain their competence for the other provisions

The Cape Town Convention and its Protocols include a REIO clause allowing the EU to become a Contracting Party



EU initiatives in relation to the Cape Town System

Accession to the **Cape Town Convention** and the **Aircraft Protocol** (28.4.2009)

Signature of the **Rail Protocol** (10.12.2009)

Approval of the **Rail Protocol** (18.12.2014)

Negotiation and adoption at the Diplomatic Conference (2012) of the **Space Protocol**

Negotiation (2017) and adoption at the Diplomatic Conference (2019) of the **MAC Protocol**

Signature of the MAC Protocol (September 2022)

Legal consequences

EU Member States are allowed to sign and ratify the Cape Town Convention, the Aircraft Protocol and the Rail Protocol

EU Member States are allowed to sign the MAC Protocol

No EU initiative yet towards the Space Protocol



The EU ratification/approval of the MAC Protocol: state of play

No EU MS has signed the MAC Protocol after the EU signature in September 2022

No EU Member State has so far expressed its readiness to ratify

Need to justify the Commission initiative

Examples: Rail Protocol; UNCITRAL Convention on the Judicial Sale of Ships



The procedure

Proposal from the Commission

To be discussed at the Council Working Party on Civil Law Matters and at the Committee on Legal Affairs of the European Parliament

Consent by the European Parliament (adoption by the Plenary)

Final adoption of the Decision by the Council

Deposit by the EU of the instrument of ratification/approval

Thank you for your attention!

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