



Council of the European Union  
General Secretariat

Brussels, 29 September 2017

CM 4300/17

JUSTCIV  
PROCED

### COMMUNICATION

#### WRITTEN PROCEDURE

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Subject: END OF WRITTEN PROCEDURE for the adoption of:  
COUNCIL DECISION authorising the Commission to negotiate instruments  
on the enforcement of international commercial settlement agreements  
resulting from conciliation in the framework of the United Nations  
Commission on International Trade Law (UNCITRAL) (ST 12176/17 (REV  
1 (EN)) + ADD 1 EU RESTRICTED)

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Delegations are hereby informed that the written procedure initiated on 27 September 2017 (CM 4252/17) was successfully completed on 29 September 2017.

26 delegations (BE, BG, CZ, DE, EE, IE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, PL, PT, RO, SI, SK, FI, SE, UK) answered with "YES". The AT delegation answered with "NO". DK, in accordance with Protocol No 22 annexed to the Treaties, is not taking part in the adoption of this Decision.

The result of the written procedure is therefore that the Council Decision as set out in 12176/17 JUSTCIV 205 (REV 1 (EN)) and the negotiating directives set out in the addendum to this Council Decision (12176/17 JUSTCIV 205 ADD 1 + COR 1 (SV) RESTREINT UE/EU RESTRICTED) have been adopted.

**The following unilateral declarations and statements were made:**

**Joint Statement by the delegations of France, Spain, Hungary, the Netherlands,  
Luxembourg, Austria and Italy**

France, Spain, Hungary, the Netherlands, Luxembourg, Austria and Italy underline that the fact that the future negotiations in the framework of UNCITRAL relate to issues falling under Article 81 (2) TFEU is not sufficient to confer external competence to the Union in these matters. In this case, the Union has external competence only in the case where the conclusion of an international agreement may affect common rules or alter their scope.

They recall that recognition and enforcement of international commercial settlement agreements resulting from conciliation are still governed by national law of Member States.

They consider that Member States are therefore also competent to participate actively alongside the European Commission and in accordance with the principle of sincere cooperation, in the negotiations in the framework of the UNCITRAL. In this regard, the directives included in Annex are without prejudice to the assessment of the division of competences between the Union and the Member States, which, if relevant, will have to be re-examined in depth at the end of the negotiations in view of the final text of the Convention.

**Statement by the Republic of Austria**

In addition to our joint statement together with the Republic of France, the Kingdom of the Netherlands, the Kingdom of Spain, the Grand Duchy of Luxembourg, Hungary, the Italian Republic and Austria, Austria recalls its position and concerns concerning the negotiating directives laid down in its comments of 7 September 2017 (11997/17 JUSTCIV 199) and during the latest meetings of the Working Party on Civil Law Matters.

Austria therefore urges the Commission and the Member States to further considerate and reflect the directives included in the Annex (12176/17 JUSTCIV 205 ADD 1 **RESTREINT UE/EU RESTRICTED**), so as to assure that any future instrument does not restrict companies' or citizens' rights of access to courts, but ensures that their highly valuable standards as laid down respectively in Article 6 of the European Convention on Human Rights and Article 47 of the Charta of Fundamental Human Rights of the European Union are maintained.

In particular, sufficiently high standards for the whole mediation process and the quality and neutrality of the mediator need to be elaborated. The scope of application of the future instrument needs to be narrowed and sufficient defences need to be installed in order to prevent from any misuse to the disadvantage of the more vulnerable party. For the same reason, an enforcing system without any legal control in the State of origin should not be accepted without similar guarantees.

### **Statement by the United Kingdom**

While the United Kingdom can support the adoption of the Council Decision authorising the negotiation at UNCITRAL on both a Model Law and a Convention dealing with the enforcement of international commercial settlement agreements, like a number of other Member States it does not accept that the case has been made for there being EU exclusive competence in this area.

In addition, in accordance with the provisions of Protocol 21 to the Treaties, the United Kingdom has notified the President of the Council that it wished to take part in the adoption of this Decision, and considers the inclusion of the word "therefore" in the text of Recital 6 to be inaccurate. The fact that the United Kingdom is taking part in Regulation 1215/2012 does not, in its view, render inoperative the provisions of Protocol 21.