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Subject: Recommendation for a Council decision authorising the Commission, acting on behalf of the European Community, to open negotiations with a view to adopting a Convention on Choice of Court Clauses within the framework of the Hague Conference on Private International Law

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



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Brussels, 31 October 2003

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RESTREINT UE

JUSTCIV 227

NOTE

from :	Swedish delegation
to :	Committee on Civil Law Matters (General questions)
No. prev. doc.	14013/03 JUSTCIV 214 (RESTREINT UE)
No. Cion prop. :	12208/03 JUSTCIV 146 (RESTREINT UE)
Subject :	Recommendation for a Council decision authorising the Commission, acting on behalf of the European Community, to open negotiations with a view to adopting a Convention on Choice of Court Clauses within the framework of the Hague Conference on Private International Law

The Member States have been invited to submit written comments on doc. 14013/03 JUSTCIV 214 (RESTREINT UE) and the working method to be employed during the negotiations.

Working method

Sweden is not prepared to accept an authorisation for the Commission to negotiate, with the assistance of a special committee, a Convention on Choice of Court Clauses. We do not see any reason to deviate from the established practice with regard to the working method in Hague. In previous Council decisions regarding negotiations on this matter in Hague, reference has been made to the Joint Council and Commission Statement which was approved by the Council at its meeting on 22 December 2000, when it adopted Regulation (EC) No 44/2001.

RESTREINT UE

The working method according to this statement was designed to ensure the continuity of the current negotiations and was without prejudice to the scope of the Community's external powers. In Sweden's point of view, it is still necessary to ensure the continuity of the negotiations by providing that the Presidency-in-Office of the Council and the Commission shall state the Community positions and by allowing Member States to express their own views. Furthermore, there has not yet been any decision on the limits and nature of the Community's external competence. The question is pending before the Court of Justice in the case concerning external competence with regard to a revised Lugano Convention (AVIS 1/03).

From Sweden's point of view, it would be acceptable to have the following reference in the decision:

“the negotiations necessary for the adoption of a Convention on Choice of Court Clauses with the Hague Conference on Private International Law will be conducted according to the procedures laid down in point 4 of the Joint Council and Commission Statement on the negotiations within the framework of the Hague Conference on Private International Law”.

Draft negotiating directives

Sweden's views on the draft negotiating directives are as follows. In general, the draft negotiating directives concerning subject matters are acceptable to Sweden. The proposed directives are open and give room for flexibility during the negotiations. Subject to the right to make additional comments on the subject matters during the forthcoming proceedings, especially on the meeting of the Civil Law Committee on 4 November 2003, our preliminary remarks are as follows.

1(b) - the proposed text within brackets appears to be a practical solution to the issue of non-exclusive clauses.

1 (c) –the added reference to article 22 (4) of the Brussels I Regulation makes it clearer what the aim of the negotiations should be. It might, nevertheless, be possible to amend the text in order to refer more explicitly to the protection of the exclusive jurisdiction of courts.

RESTREINT UE

1 (d) -we are open to both options in the second indent.

1 (e) and (f) – the new texts appear to be reasonable compromises.

3 - with regard to the question of the external competence, point 3, as amended, reads as follows:

“The text of the Convention will have to be adapted in such a way as to reflect the fact that the Community is a contracting party to the Convention.”

The amended text does not, in our view, imply that any position has been taken as to whether also the Member States of the European Union shall become contracting parties to the Convention. There appeared to be a common understanding at the meeting in the Civil Law Committee on 21 October 2003 that this will be left as an open question. A final position by the Council on this matter will depend on political considerations as well as on the outcome of the case concerning external competence with regard to the Lugano Convention which is pending before the Court of Justice (AVIS 1/03). For these reasons, we do not see any need for a statement declaring that the decision is without prejudice to and has no legal consequences for the question of whether the Convention will constitute a mixed agreement or an agreement based on exclusive external Community competence.

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