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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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RESTREINT UE

JUSTCIV 231

NOTE

from :	Finnish 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

Finland remains of the view that the provisions of the envisaged Hague Convention on Choice of Court Clauses are not entirely within the limits of exclusive community competence. Hence the Convention is a mixed convention.

As to the working methods to be employed in the course of negotiations in the Hague Finland emphasises the need for flexibility. It is in the interest of both the Community and its Member States that the envisaged Convention is not only politically acceptable but also of high standard in terms of substance and technical detail.

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In view of the preparatory stage of work and the working methods traditionally employed in negotiations within the Hague Conference, these objectives are best attained by ensuring that all delegations are entitled to fully participate in the debate. This guarantees that full advantage is taken of the expertise represented in the Commission's as well as the Member States' delegations. This would, of course, not prejudice the need for interventions being made on behalf of the Community. Indeed, such co-ordinated interventions by the Commission or the Presidency may well prove to be necessary in the course of negotiations. Needless to say, the negotiating directives must be respected under all circumstances.

Lastly, Finland would like to ask for the following amendments to be made to the Draft Negotiating Directives:

(b) Delete the brackets and add to the text in brackets the words below which are in italics *...* "non exclusive choice of court clauses i.e. which provide that the jurisdiction of the chosen court shall not be exclusive or which designate several courts.

(d) Delete option 2 in the second indent. The language of the New York Convention is "unless it (i.e. the court) finds that the said agreement (i.e. the arbitration agreement) is null and void, inoperative or incapable of being performed." At least any detailed provision on substantive validity or applicable law as to substantive validity must be avoided.

(f) Second paragraph. This is not a "non-recognition Convention". The paragraph should read. "In addition, it should be considered whether the Convention ought to.....

3. Add the word "also" before the word Community in the current text.