



Council of the  
European Union

Brussels, 3 June 2019  
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JUSTCIV 233

## DECLASSIFICATION

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of document:	14265/03 RESTREINT UE/EU RESTRICTED
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Subject:	Comments put forward by Spain concerning the negotiating directives for a Hague Convention on choice-of-court clauses

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

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

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# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 November 2003 (05.11)  
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**14265/03**

**RESTREINT UE**

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## **NOTE**

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from:	Spanish delegation
to:	Committee on Civil Law Matters
No. prev. doc.:	14013/03 JUSTCIV 214 (RESTREINT UE)
No. Cion prop.:	12208/03 JUSTCIV 146 (RESTREINT UE)
Subject:	Comments put forward by Spain concerning the negotiating directives for a Hague Convention on choice-of-court clauses

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1. Generally speaking, this is a much more satisfactory version than the one originally considered and it reflects discussions at the meeting on 21 October 2003. The comments below deal only with points which should be addressed in a particular way or other than as proposed.
2. In paragraph 1(b), reference should be made, from the outset, to the possibility of including non-exclusive choice-of-court clauses in the Convention, as they can be seen to be widely used in practice. In our view, this should be done by means of the first part of the passage in square brackets, i.e. from "If, in the course of ..." to "several States".

## RESTREINT UE

On the other hand, we consider that the second part, referring to non-inclusion of *lis pendens* rules or provisions for declining jurisdiction, should be omitted. We do not think that part appropriate, as it obscures the meaning of the sentence. We would prefer the arrangement proposed by the informal working group, whereby non-exclusive choice-of-court clauses would be dealt with under enforcement only. There is no need to refer to *forum non conveniens* in this subparagraph, as subparagraph (e) already contains a general provision.

3. In paragraph 1(d), we can agree to the part concerning formal validity. As regards substantive validity, Spain has previously advocated a flexible arrangement and is therefore in favour of the first option, establishing a parallel with the 1958 New York Convention.
4. In paragraph 3, it needs to be made clear that the Community is to be a contracting party, but not on its own. This point has to be seen in conjunction with paragraph 6 below.
5. In paragraph 4, it would seem appropriate to include Denmark, as it is bound by the Brussels Convention. On the other hand, we do not think it appropriate to add a reference to exclusive jurisdiction, since all sources of such jurisdiction included in the Brussels I Regulation fall outside the scope of the Convention being prepared in The Hague. We could therefore only agree to the inclusion of a more qualified reference in case any of those sources of exclusive jurisdiction were finally to be brought within the scope of the prospective Convention.
6. The version submitted to us contains the negotiating directives only, not the actual authorisation to negotiate, which is an important issue, as the Commission proposal would have the Commission negotiate alone on behalf of the Community, exclusively empowered to negotiate and conclude the Convention.

## RESTREINT UE

In Spain's contention, competence to negotiate and conclude the Convention is shared between the Member States and the Community, as repeatedly asserted, particularly in the case of the Lugano Convention. The Commission's grounds for maintaining this to be an exclusive competence will not stand up, as domestic legislation is not to be completely replaced by Community legislation.

We would therefore suggest proceeding as in previous negotiations, on the basis of competence shared between the Community and the Member States, the limited scope of the prospective Hague Convention being no reason for any change of mind. As a result, the Presidency and the Commission should speak for the Community at the meeting in December 2003. We also take the view that, while remaining within the negotiating directives, Member States' representatives should be able to speak on specific aspects of the text being drawn up.

Drafting work will unquestionably stand to gain from this, as it is not in the interests of either the Community or the Hague Conference to squander the intellectual firepower deployable by Member States' representatives, bearing in mind both the active part consistently played by European countries and their numerical weight in an organisation composed of just 60 states. The process would also be facilitated by the Commission's proposal for a one-day coordinating meeting in Brussels prior to the meeting in The Hague.