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DECLASSIFICATION

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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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ADD 1**

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JUSTCIV 112

ADDENDUM TO OUTCOME OF PROCEEDINGS

from :	Working Party on Civil Law Matters (General Questions)
on :	28 April 2014
Subject :	Summary of discussions

4. Negotiations with Iceland, Norway, Switzerland and Denmark with a view to the conclusion of agreements in the area of service of documents and taking of evidence

The Commission representative informed the Working Party of the latest developments in relation to the negotiations with the Lugano States. He indicated that all the negotiating parties now had a mandate for the negotiations, Switzerland having adopted its mandate in February.¹ The way was thus paved for proper negotiations to start, and the first meeting had been scheduled for June.

¹ The EU mandate of negotiation is set out in 6090/13 JUSTCIV 18 AELE 14 JAIEX 13
RESTREINT UE/RESTRICTED EU.

It was clear from the exchanges of views which had already taken place that Switzerland would insist on some kind of exception for the service in Switzerland of third party debt orders (garnishment orders) from abroad (usually served on a debtor's employer or bank)¹. If no solution was found on this issue, Switzerland might prefer not to have an agreement with the EU and stay with the 1965 Hague Service Convention under which (Article 13(1)) Switzerland could refuse to serve such orders.

The Commission representative therefore asked the Working Party for some guidance on how to proceed. The Commission would of course at this stage stick to the negotiating mandate which aimed at full parallelism between any future Convention and the internal EU regime, but it was important for the Commission to consult Member States on possible fall-back positions.

The Commission representative outlined the possible options: (1) an EU commitment not to serve third party debt orders on addressees located in Switzerland, (2) agreement on a common definition of the "location of assets", (3) provision for a public policy exception like the one in Article 13(1) of the 1965 Hague Service Convention or (4) a carve-out for third party debt orders to accommodate the Swiss concerns.

In his presentation of the various options the Commission representative also outlined the difficulties each of them represented. Option (1) would be very difficult to achieve at EU level. Option (2) was very problematic. The only EU instrument containing such a definition at this stage was Regulation (EC) No 1346/2000 on insolvency proceedings (point (g) of Article 2) and the current discussions relating to the revision of that Regulation clearly showed how difficult it was to agree on the connecting factors to be used for such a definition. Option (3) should be ruled out since a public policy exception would be a huge step backwards for the EU. Option (4) would have to be crafted in a very restrictive way for it to be an acceptable option.

¹ See in this context document 13607/13 JUSTCIV 194 RESTREINT UE/EU RESTRICTED and the working document containing some information from the Swiss authorities distributed at the meeting of the Working Party on Civil Law Matters (General Questions) on 29 October 2013

The Commission representative indicated that option 4 would be the Commission's preferred option as it would be the less harmful. It would however only be acceptable if the carve-out would exempt as few orders as possible and would not exempt orders falling under, in particular, succession law or company law and possibly other areas of law.

The Commission representative pointed out that a completely different option would be to continue the negotiations without Switzerland. This last option was ruled out by delegations, at least at this stage.

As for the other options, delegations indicated that further reflection was needed. For the time being, the negotiating mandate was to be followed.

One delegation pointed out that any future Convention should contain a clause that the Lugano States would have to take over any future changes made to the EU Regulations as part of a revision process.

Two delegations entered scrutiny reservations.

The Chair concluded the debate by inviting the Commission to continue the negotiations with the Lugano partners making use of the room of manouvre given by the mandate of negotiation. It would then have to be considered at a later meeting of the Working Party whether more detailed instructions were needed.
