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## DECLASSIFICATION

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of document: 13811/14 ADD 1 RESTREINT UE/EU RESTRICTED  
dated: 27 October 2014  
new status: Public  
Subject: Summary of discussions

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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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Brussels, 27 October 2014

13811/14

ADD 1

**RESTREINT UE/EU RESTRICTED**

**JUSTCIV 237**

### **ADDENDUM TO OUTCOME OF PROCEEDINGS**

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from : Working Party on Civil Law Matters (General Questions)  
on : 26 September 2014  
Subject : Summary of discussions

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### **3. Relations with the Hague Conference**

#### **(a) The Judgments Project**

The Commission representative presented the information note set out in document 13248/14 JUSTCIV 223 **RESTREINT UE/EU RESTRICTED**. She explained that it was important for the Commission to get some input from the Member States on the questions listed in the note for it to be able to prepare properly for the upcoming meeting of the Working Group in Hong Kong from 6 to 11 October 2014. The intention was to prepare an informal note for the meeting setting out some possible compromises so as to allow the work to progress in a positive direction.

She indicated from the outset that jurisdiction was clearly an issue which could not be left aside and that all Member States seemed to carry out some kind of control of the jurisdiction exercised by the court of origin before recognising and enforcing a judgment from a third State. Some form of jurisdictional filters would therefore be needed in a possible future convention. The question was then how broad a system of recognition and enforcement would be acceptable for the EU. Should the criterion be that if an EU court would have exercised jurisdiction in a particular case, the ensuing judgment given by the court of a third State should be recognised and enforced, or would the EU be in a position to accept different grounds or wider grounds of jurisdiction than those which apply at EU level, or, possibly, would the EU wish to exclude specific grounds of jurisdiction and thus not recognise and enforce certain judgments from a third State although given by a court exercising jurisdiction on a ground known in the EU ?

Some delegations indicated from the outset that they had no final position yet. Some indicated that they might provide written comments later.

The AT delegation pointed out that it was incorrect to list Austria in footnote 2 on page 2 and in the first bullet point on page 3 and asked for the deletion of the reference.

The delegations which took the floor generally declared themselves open for trying out solutions with filters which did not mirror completely the internal EU grounds of jurisdiction acknowledging that it would be difficult to achieve a worldwide convention if no flexibility was shown. However, they all stressed that whatever jurisdictional filters were eventually retained, legal certainty was of paramount importance. No vague connecting factors would be acceptable as this would leave too much leeway for interpretation by the individual judge. Predictability was of the essence.

A number of delegations rallied behind the solution outlined in point 2(b) and footnote 1. They were willing to consider "the place of conclusion of the contract" as connecting factor in contract matters but agreed that certain safeguards like the ones listed in the point would have to be ensured. They stressed that without a common court to ensure a uniform interpretation of the "place of performance of the contract", like the ECJ at EU level, it would be difficult to apply "the place of performance" as a connecting factor at worldwide level.

Several delegations warned against "the place of injury" as a connecting factor for tort and pleaded for a narrower - indirect - rule in the future convention. Sticking to the EU rules of jurisdiction on tort as filters would entail that the EU Member States would have to recognise and enforce very broadly "unwanted" tort judgments from third States.

One delegation pointed out that tort judgments was not the only contentious issue. Another difficult matter was the recognition and enforcement of product liability judgments from a third State.

Given the wish to have as much predictability as possible in the future convention some delegations expressed doubts as to providing for "carrying on substantial activity" as a connecting factor even though such a connecting factor could cover both contractual and non-contractual matters.

The Commission representative suggested that it might be worth working on the "carrying on business" as connecting factor provided that sufficient guidance could be given to the court as to how to interpret the concept.

One delegation pointed out that it was important to ensure that the recognition and enforcement process did not become too costly for the judgment creditor as that would be tantamount to failing court users and businesses.

With regard to the US and the CH proposals attached as Annexes 2 and 3 to the information note, there was a broad tendency for rejecting the CH proposal as being too cumbersome. However, the idea of branch jurisdiction might be retained. Retained might also be the idea of bilateralisation although in a different form (see below). There was more support for the US proposal although the proposal to some seemed too limited.

Some delegations warned against too many references to national law (present in both proposals) as that would be a source of legal uncertainty.

Commenting on the US and CH proposal the Commission representative pointed to a fundamental difference in the way the two referred to national law. Under the US proposal the reference was to the national rules of jurisdiction, under the CH proposal the reference was to the national rules on recognition and enforcement. She stressed that it would not be possible entirely to avoid a reference to national law even if the future convention were to list a great number of jurisdictional filters. However, it should be made entirely clear to which rules of which State reference was made.

The Commission representative stressed that the defendant's forum (as proposed by the US) in itself was unproblematic and would lead to no greater problems as far as recognition and enforcement were concerned as enforcement in most cases would be sought in the defendant's State. However, defendant's forum combined with the *forum non conveniens* rule observed by the US courts could lead to situations where an EU claimant having sued a US defendant before a US court would subsequently be denied access to that court by way of the application of the *forum non conveniens* rule. She therefore stressed that the future convention would have to ensure, if the defendant's forum was retained as a criterion, that an EU claimant would not be turned away from the defendant's home court.

On the idea of bilateralisation, delegations indicated that this would be unfortunate, but something that might have to be accepted if the EU wanted a worldwide convention. If there would be no possibilities for opt-outs/opt-ins in the future convention the result might well be a very narrow convention applying only between few Contracting States. Several delegations stressed however that all accepted jurisdictional filters would have to be listed in the Convention, possibly in a separate section which would then be subject to declarations of opt-in/opt-out by Contracting States. To ensure transparency as to what applied between which Contracting States a website would have to be designed.

One delegation raised the issue of procedural guarantees arguing that it was also important to control, at the stage of recognition and enforcement of a judgment, that the rights of the defence had been observed by the court of origin.

The Commission representative indicated that that aspect would of course be dealt with in the future convention. That it was not discussed now was due to the fact that this was only about jurisdictional filters.

The Chair and the Commission representative thanked delegations for the valuable input. The Commission representative indicated that she would now draft an informal note on the basis of that input to be submitted to the Working Group for discussions at the meeting in Hong Kong early October. The Working Party on Civil Law Matters (General Questions) would be informed of the outcome of the meeting in due course.

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