Council of the
European Union

**Brussels, 11 November 2019**
**(OR. en)**

**16112/14**
**ADD 1 DCL 1**

**JUSTCIV 311**

**DECLASSIFICATION**

| | |
|---|---|
| of document: | 16112/14 ADD 1 RESTREINT UE/EU RESTRICTED |
| dated: | 5 December 2014 |
| new status: | Public |
| Subject: | Summary of discussions |

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

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

Council of the European Union

Brussels, 5 December 2014

16112/14
ADD 1

RESTREINT UE/EU RESTRICTED

JUSTCIV 311



**OUTCOME OF PROCEEDINGS**

| | |
|---|---|
| from : | Working Party on Civil Law Matters (General Questions) |
| on : | 12 November 2014 |
| Subject : | Summary of discussions |

**3. Relations with the Hague Conference**

**(a) Proposals for Council Decisions on the declarations of acceptance by the Member States, in the interest of the European Union, of the accession of certain States to the 1980 Hague Convention on the Civil Aspects of International Child Abduction**

The Commission representative thanked the Presidency for having put the eight proposals back on the agenda following the Court's opinion of 14 October 2014 (documents 5306/12 JUSTCIV 9 (Andorra), 5307/12 JUSTCIV 10 (Seychelles), 5308/12 JUSTCIV 11 (the Russian Federation), 5309/12 JUSTCIV 12 (Albania), 5310/12 JUSTCIV 13 (Singapore), 5311/12 JUSTCIV 14 (Morocco), 5312/12 JUSTCIV 15 (Armenia) and 5218/12 JUSTCIV 7 (Gabon)).

He indicated that for the time being the discussions had to focus on the eight proposals on the table each of which needed to be examined on its own merits, but that there were other past accessions which would have to be dealt with and there would be future accessions. The Commission was interested in working closely with the Member States in order to find pragmatic solutions. The Commission would also be willing to elaborate on its thinking for each of the eight proposals and would be interested in hearing the experiences of those Member States which were already applying the Convention in their relations with some of the third States concerned.

A number of delegations took the floor to express their concerns about the situation created by the Court's opinion given that unanimity on the acceptance of the eight acceding States might be difficult to achieve and that without unanimity all acceptances would be blocked. Several delegations highlighted that it would be in the interest of children that the Convention became applicable between as many Member States as possible and as many third States as possible and called for pragmatic solutions to be found to avoid a deadlock.

Some delegations suggested setting up an experts' committee to examine how to find workable solutions for the future.

Several Member States stressed that they applied a number of criteria at national level when assessing whether or not a given acceding State should be accepted, such as, for instance, the human rights situation in the given State, the legal procedures in place, the capacity to implement the Convention and to apply it properly and the possibility for citizens to obtain legal aid. They therefore called for national authorities to be involved in any assessment of acceding States.

Several delegations wanted to know how those Member States which had already accepted one or more of the acceding eight States could, at this late stage, make the declaration set out in the proposed Decisions,

The representative of the Council Legal Service indicated that already made acceptances would remain valid and could not be put in doubt and that it would be appropriate to inform The Hague Conference accordingly. The Commission representative indicated that the Commission shared that view and did indeed intend to inform The Hague.

It was pointed out that to achieve a uniform application of the Convention in the relations between the EU and third States, which was the aim of the eight proposals, it would be necessary to invite certain third States which had not accepted the accession to the Convention of some of the newer EU Member States subject to the acceptance procedure to do so.

The Commission representative explained why the Commission had only made proposals relating to the eight acceding States currently being discussed, the reason being that 2007 had been chosen as the cut-off date as by then the exclusive external competence of the EU had been established by the application of the Brussels IIa Regulation and opinion 1/03 of the Court of Justice relating to the conclusion of the Lugano Convention. With regard to qualified declarations of acceptance like the ones proposed for Russia and Gabon, the Commission had received confirmation from the Depositary that such declarations were possible. As for an assessment of the eight States, the Commission had gathered information on each of them. For Andorra, Seychelles and Singapore the Permanent Bureau was aware of no particular problems, Albania was being assessed as part of the enlargement procedure, Armenia as part of the neighbourhood process and Morocco was covered by the Euromed Justice Project and also benefited from assistance from Taiex. As for Russia, the EU had consistently invited it to accede to the Convention in all bilateral contacts for many years. Since the Commission submitted its proposals, Russia had designated its Central Authority and should therefore now be in a position to apply the Convention. As for Gabon, several Member States had already accepted its accession although Gabon had not designated a Central Authority as required under the Convention. For Gabon therefore, the Commission had proposed a qualified declaration of acceptance.

The Chair proposed to move on to a detailed examination of one of the eight proposal, the proposal concerning Armenia set out in document 5312/12.

Several delegations raised doubts as to whether it was legally correct to address the decisions to all Member States when several Member States had in fact already accepted a number of the eight acceding States. They feared that this would put in question the already made acceptances, which had to be avoided at all costs. They therefore called for addressing only those Member States which had not yet accepted a given acceding State, for instance by way of Decisions authorising specific Member States to accept a given acceding State in the interest of the Union and to make the proposed declaration.

One delegation objected to any detailed examination of any of the proposals as long as it was not clear what the mechanism would be. Other delegations agreed that such an examination was premature at this stage.

Some delegations entered scrutiny reservations.

In the light of the various interventions the Chair postponed the detailed examination and indicated that further reflections were needed on how to proceed.

He announced that the consultation of the European Parliament on the eight proposals which had been put on hold pending the Court's opinion would now be launched.

## 4. UNCITRAL

### (a) Outcome of the 30th session of Working Group III: Online Dispute Resolution (ODR), Vienna, 20 to 24 October 2014

The Commission representative informed the Working Party of the outcome of the abovementioned session.

He explained that the Working Group, as instructed by the UNCITRAL Commission at its 47th session in July 2014, had first addressed a couple of fundamental issues: the response of the draft ODR rules to the needs of developing countries and those facing post-conflict situations, in particular with regard to the need for an arbitration phase to be part of the process; the effects of ODR on consumer protection; and effective implementation mechanisms of ODR outcomes.

In this context the Working Group had had a general discussion on the most controversial issue of the negotiations, namely whether an arbitration phase was needed for designing a global standard on ODR and if (and how) arbitration could serve as an ODR outcome that was enforceable internationally. The EU position on this question was that arbitration does not provide a realistic means of dispute resolution in low value disputes given the high costs of enforcing arbitral awards. Furthermore, strong doubts were expressed as to whether a procedural outcome under "track I" of the draft UNCITRAL ODR Rules could in effect be considered as an "arbitral award" under the 1958 New York Convention. These analyses were shared by a broad majority of the Working Group (including Canada, Japan, South Korea and Thailand). Only the US, Columbia and Honduras continued to advocate that the ODR rules needed to provide for arbitration as the last phase of the procedure and to allow for pre-dispute arbitration agreements.

After this general discussion, the Working Group examined four compromise proposals: the "Two-track implementation proposal", also called the "Annex solution" (tabled by the EU delegation at the 27th Working Group session in May 2013), a US/Colombian proposal, an Israeli proposal and a Chinese proposal (the latter three were tabled at the 30th session).

The EU delegation was able to provide further clarifications to the Working Group on the functioning of the "Two-track implementation proposal", in particular on how the Annex could be established and maintained.

The US/Columbian proposal was identified as not preventing that also consumers from jurisdictions that do not allow for pre-dispute arbitration agreements could get entangled in pre-dispute arbitration agreements and could be confronted with arbitral awards. It was pointed out that this would have a negative effect on consumers' confidence in shopping online and would thus undermine one of the main objectives of the project (namely to enhance the confidence in online trade). The US/Columbian proposal and also the Israeli proposal received only limited support.

The Chinese proposal was perceived as a very interesting compromise solution and met with strong support from the vast majority of the Working Group. This proposal suggested that the parties could choose by a "second click" after the facilitated settlement phase whether they would like to go to arbitration as a third stage of the procedure or to a non-arbitration outcome. This proposal would also allow for the application of the EU *acquis*. However, the US made clear that they could show no flexibility as regards pre-dispute arbitration agreements and that this choice would have to be made pre-dispute.

In the light of the strong support from the Working Group for the Chinese proposal, the Working Group instructed the UNCITRAL Secretariat to rework the Chinese proposal and to prepare discussion papers on that basis for the next session. At that session, the Working Group will have before it also a working paper from Columbia on credit charge backs (one specific mechanism of compliance with ODR outcomes). That latter issue was brought up at the very last minute of the 30th session and has not yet been discussed by the Working Group. However, the Chair (despite scrutiny reservations from several States) concluded that this paper (still to be submitted) should be put on the agenda of the next session.

The next session will be held in New York from 9 to 13 February 2015. The relevant meeting documents should be available on the UNCITRAL website before Christmas.

In the interventions following this presentation by the Commission representative, delegations thanked the Commission and expressed full support for the approach taken by the EU in the negotiations. They stressed the need for (continued) close coordination before the next session and also underlined that it was now for the US to show flexibility in order to allow the Working Group to make progress.

The Chair indicated that the next session would be prepared in the next meeting of the Working Party on General Questions which would take place under the Latvian Presidency.