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Subject: Draft recommendation for a Council Decision authorising the Commission, on behalf of the European Community, to open negotiations for the adoption of a Convention on Maintenance Obligations in 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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THE EUROPEAN UNION**

Brussels, 2 April 2004

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JUSTCIV 58

"I/A" ITEM NOTE

from : General Secretariat of the Council
to : Coreper II/Council

No. prev. doc: 7223/04 JUSTCIV 42 (RESTREINT UE)
No. Cion prop. : 8187/03 JUSTCIV 60 (RESTREINT UE)

Subject : Draft recommendation for a Council Decision authorising the Commission, on behalf of the European Community, to open negotiations for the adoption of a Convention on Maintenance Obligations in the Hague Conference on Private International Law

1. On 4 April 2003, the Commission submitted to the Council a draft mandate for negotiations for the adoption of a Convention on maintenance obligations in the Hague Conference of Private International Law.
2. The draft mandate was considered by the Committee on Civil Law Matters (General Questions) The Committee reached agreement on a text for a mandate, which is set out in the Annex to this document.

RESTREINT UE

3. The preparatory work shows that the Draft Hague Convention will affect Community legislation, notably, Regulation (EC) n° 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.
4. At this stage it appears that not all areas to be covered by the future Hague Convention fall within the exclusive competence of the European Community. The future Convention should thus be a mixed-type agreement since currently there are no Community instruments on conflict of laws and there is no specific instrument relating to administrative cooperation in the area of maintenance obligations.
5. It is recalled that this Decision is without prejudice to the extent of Community competence in the context of the negotiation of the future Hague instrument, pending the opinion of the Court of Justice which is to be delivered in respect of the negotiations of the new Lugano Convention.
6. It is also recalled that, in accordance with Article 10 of the Treaty establishing the European Community, Member States shall take all appropriate measures to ensure the fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.
7. The United Kingdom and Ireland will take part in the adoption and application of this Decision.
8. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption and application of this Decision, and is not bound by it or subject to its application.

RESTREINT UE

9. In this context, Coreper/Council is invited to:
- (a) authorise the Commission, for matters falling within the exclusive competence of the Community, to open negotiations for the adoption of a future Convention on maintenance obligations within the framework of the Hague Conference on Private International Law;
 - (b) decide that the Commission shall conduct these negotiations on behalf of the European Community, as regards matters mentioned in paragraph a), in consultation with a special committee of representatives of the Member States, called upon to assist it in its task in accordance with the attached negotiating directives;
 - (c) adopt the negotiating directives as set out in the Annex;
 - (d) take note that the Commission will report on the outcome of the negotiations to the Council.
10. For matters not mentioned in paragraph 9 (a), as for example those relating to applicable law, Member States shall coordinate their views in order to reach an agreed position. Where such positions have been agreed, they may be the subject of statements by the Presidency-in-office of the Council and/or the Commission.

Draft Negotiating Directives

1. The Commission shall endeavour to reach an agreement in order to establish a future Convention on maintenance obligations within the framework of the Hague Conference on Private International Law. Such an instrument should be structured to combine the maximum efficiency with the flexibility necessary to achieve widespread ratification.
2. The Commission shall ensure that Community interests are safeguarded in the future Convention.
3. In particular,
 - (a) As a first priority the Commission shall endeavour to negotiate a Convention relating to the enforcement and recognition of maintenance obligations¹, in particular with regard to spousal maintenance and maintenance for children.

The Commission shall make efforts to ensure that the system of recognition and enforcement of maintenance obligations is no stricter than that provided for in the 1973 Hague Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations and should explore the possibilities for simplifying that system further.

¹ In accordance with the recommendation of the 1999 Hague Special Commission, such a convention should also contain, as an essential element, provisions relating to administrative cooperation.

RESTREINT UE

- (b) The Commission shall explore the possibility of a Convention that would include rules on jurisdiction with the possibility of including a provision which would enable an "opt in" in respect of such rules.
 - (c) The Commission shall ensure that:
 - (i) the future Convention should give due consideration to questions related to legal aid;
 - (ii) the future instrument includes one or more clauses enabling Member States of the European Community to apply, in their mutual relations, in accordance with the Treaty establishing the European Community, the relevant Community law;
 - (iii) the future Convention contains provisions enabling the Community to accede to it.
4. The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

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