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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.

RESTREINT UE



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NOTE

from : Presidency

to : Committee on Civil Law Matters (General Questions)

No. prev. doc. : DS 695/04 (RESTREINT UE)

Subject : Draft guidelines relating to the negotiations, within the framework of the United Nations Commission for International Trade Law (UNCITRAL), for an instrument on the international carriage of goods.

1. The services of the Commission submitted to the Council a Working document relating to the negotiations, within the framework of the United Nations Commission for International Trade Law (UNCITRAL), for an instrument on the international carriage of goods.
2. The Committee on Civil Law Matters (General Questions) examined this question during its meeting on 18 October 2004. In the light of the comments expressed by delegations, both orally and in writing, the Presidency submits these draft guidelines for the negotiations which should be considered during the next meeting of the Committee on Civil Law Matters (General Questions) on 16 November 2004.

RESTREINT UE

3. The Commission has announced its intention to present a draft recommendation for a Council Decision authorising the Commission to negotiate this instrument on the carriage of goods. Considering that such a Decision cannot be taken before the next session of the working group of the UNCITRAL, which be held in Vienna from November 29th to December 10th, and since it is clear that the draft instrument negotiated within the framework of the UNCITRAL contains provisions which fall within the exclusive competence of the Community, the Presidency believes that it is useful to have an agreement on some flexible guidelines for the next session of the negotiations.
4. The Presidency considers that it is necessary to ask the Commission to take into account those guidelines when it will participate in the Vienna meeting.
5. The Committee on Civil Law Matters (General Questions) is called upon to consider the draft guidelines set out in Annex.

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Draft Guidelines

1. **It shall be endeavoured to favour the establishment of a future Convention on the international carriage of goods within the framework of the United Nations Commission for International Trade Law (UNCITRAL).**
2. It shall be ensured that the interests of the Community are safeguarded in the future instrument on the international carriage of goods, negotiated within the framework of the United Nations Commission for the International Trade Law. **Due account shall be taken to the need to seek a balance between the interests of the parties involved.**
3. (...) **It shall be endeavoured to negotiate provisions concerning jurisdiction in the (...) future instrument. In particular,**
 - a) **it shall, in the first place, be endeavoured to have provisions in the future instrument on jurisdiction that are as close as possible with those (...) contained in Council Regulation (EC) n° 44/2001 of 22 December 2000;**
 - b) **failing that, alternative solutions should be found with a view to ensuring that the future instrument contains a limited number of rules on jurisdiction, including on prorogation of jurisdiction, that would adequately safeguard the interests of the parties involved and promote widespread ratification. In any case, it shall be endeavoured to avoid that the place of the signature of the contract, as well as the courts in a State Party at which the carrying vessel or any other vessel owned by the carrier may have been arrested, could serve as connecting factors.**

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[c) It should be accepted to negotiate a provision on lis pendens, along the lines of what is provided for in Articles 27 and 28 of Council Regulation (EC) No 44/2001 of 22 December 2000.]

4. If the jurisdiction rules contained in the future instrument were not sufficiently in conformity with the interests of the Community, the future instrument shall include 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.
5. (...) On the assumption that jurisdiction rules are introduced, it shall be ensured that the future instrument contains appropriate provisions authorizing the Community to become a party to it.

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