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THE COUNCIL

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**"I/A" ITEM NOTE**

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from: Permanent Representatives Committee

to : Council

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Subject: **Organization of work in preparation for revision of the Brussels and  
Lugano Conventions**

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1. At its meeting on 12 November 1997, Coreper examined the draft work programme for the revision of the Brussels Convention of 1968 and the Lugano Convention of 1988, submitted to it in a Presidency note (see 11537/97 JUSTCIV 74).
2. At the same meeting Coreper agreed to the draft work programme as set out in the Annex hereto.
3. It is proposed that the draft work programme be submitted to the Council for approval.

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REVISION OF THE BRUSSELS CONVENTION OF 1968 <sup>(1)</sup> AND THE LUGANO  
CONVENTION OF 1988 <sup>(2)</sup>

A. Organization of work

1. Ad hoc Working Party

An ad hoc Working Party is hereby set up consisting of Member States' representatives and extended to include representatives of EFTA States party to the Lugano Convention (Switzerland, Norway and Iceland). The Commission will play a full part in the discussions.

The Working Party's proceedings will be organized along the lines set out below.

**Meetings**

In the light of the envisaged priorities and deadlines <sup>(3)</sup>, the Working Party will meet every three months, beginning in January 1998, according to the following timetable:

- January 1998 (Brussels)
- April 1998 (Brussels)
- end of June, beginning of July 1998 (Brussels)
- mid-September 1998 (in an EFTA State to be determined)
- December 1998 (Brussels).

Dates for 1999 will depend on the progress of the discussions. It is therefore premature to set them at this stage.

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(1) Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

(2) Convention parallel to the Brussels Convention of 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

(3) 1998 and possibly early 1999 (see point B below).

Each meeting will last four to five days, as necessary. The meetings in Brussels will take place at the Council Secretariat.

### **Bureau**

A bureau is hereby set up, composed of three individuals, which should remain in place throughout the revision proceedings.

Gustave MÖLLER (Finland) will chair the Working Party,  
Monique JAMETTI-GREINER (Switzerland) will be his deputy and  
Fausto POCAR (Italy) will act as rapporteur.

The Council Secretariat will act as the secretariat for the revision work, in cooperation with the depositary of the Lugano Convention (Switzerland).

### **Rules governing the use of languages**

The rules governing the use of working languages both in Brussels and at the meeting in mid-September 1998 in an EFTA State will be the same as those applying during discussions within the Council. The Secretariat will thus also be responsible for the translation of texts produced by Switzerland, Norway and Iceland (provided the translation is from one official language into another).

In addition, consideration should be given to possibilities of providing interpretation into the Union languages at the meeting in mid-September 1998.

## Observers

Observers will attend only the meetings of the ad hoc Working Party , but in no event meetings of the Working Party limited to the fifteen Member States (see point A.2 below).

### - Third countries

Poland will be invited as an observer to the Joint Working Party, as all the Contracting States to the Lugano Convention have agreed to Poland's accession to the Convention.

In addition, the possibility has not been ruled out of considering whether third countries might take part in proceedings as observers, depending on the guidelines on Agenda 2000 to be set by the European Council in December 1997.

### - Other observers

The Court of Justice and the European Free Trade Association, which currently have observer status at meetings of the Lugano Convention Standing Committee, will take part in the meetings of the ad hoc Working Party as observers.

A representative of the Hague Conference on Private International Law will also take part in the ad hoc Working Party meetings as an observer.

## **Reimbursement of the travel expenses of Member States' delegates**

The travel expenses of Member States' delegates will be reimbursed in accordance with the Decision of the Secretary-General of the Council on the subject.

Accordingly, a maximum of two persons per delegation (three for the delegation holding the Presidency) will be eligible for the reimbursement of travel expenses for working party meetings.

Given that the Chairman (Finland) and the rapporteur (Italy) have duties which are different from those of the delegations, the Mertens Group will be asked, in accordance with the Decision of the Secretary-General of the Council, to increase from two to three the number of persons eligible for the reimbursement of travel expenses for the Finnish and Italian delegations.

### **2. Working Party limited to fifteen Member States**

The Working Party on Extension of the Brussels Convention:

- will ensure coordination between Member States during the enlarged negotiations;
- will be able to consider whether there is a need to take special measures which may go further in the context of the Brussels Convention and which could therefore be different from those adopted in the context of the Lugano Convention.

### **B. Timetable and priorities**

It has been agreed that the following guidelines and priorities should be set for the discussions, bearing in mind that the list should not be considered exhaustive. In addition, the order of the Articles should not be seen as establishing an order of priorities.

## 1. General guidelines

- (i) During the negotiations it is suggested that all aspects of revision should respect the basic principles and objectives of the Brussels Convention.
- (ii) The revision exercise should take into account the case-law of the Court of Justice, although the revision process should not necessarily constitute consolidation of that case-law.

In addition, it was considered appropriate that, for the work on the Lugano Convention, account be taken of relevant decisions of the national courts mentioned in Article 2 of Protocol No 2 to that Convention.

- (iii) Any proposal relating to revision should be examined with a view to its potential usefulness in the operation of the Convention.
- (iv) Moreover, preparations should be conducted with a view to the revision exercise starting in January 1998 and being completed, if possible, at the end of 1998 or the beginning of 1999.

## 2. Priorities

It is suggested that the following aspects be selected as priorities:

- (i) practical aspects of application of the Convention and updating of some of these provisions (Brussels and Lugano Conventions):
  - Article 1
  - Articles 2, 52 and 53
  - scope in relation to persons and territorial scope, in particular Articles 17, 18, 19 and 20
  - Articles 4 and 59
  - Article 5(1) and (3)
  - Article 6(1)
  - Articles 13, 14 and 15
  - Article 16(1)
  - Articles 17 and 19
  - Article 20(2) and (3)
  - Articles 21 and 22 (and their relationship with Article 17)
  - Article 24
  - Articles 27 and 28
  - Article 38
  - Articles 31 et seq. (taking into consideration the current debates on the feasibility of a European Enforcement Order)
  - Article IV of the Protocol
  - collective interests of consumers;

- (ii) Correction of certain technical aspects and alignment on the 1980 Rome and 1988 Lugano Conventions:
  - Article 22
  - coordination with the 1980 Rome and 1988 Lugano Conventions
  - linguistic differences between the texts
  - simplification of the machinery for the adoption of the Convention [see Articles 3, 32, 37, 40 and 41]
  - Article 58.
  
- (iii) Specific aspects relating to the Lugano Convention and which differ from the Brussels Convention, where they are not mentioned in (i):
  - accession procedure (Articles 62 and 63)
  - technical amendments (Articles 54, third paragraph; 54a(1); 54a(7); 54b(2); 55; 57(4)).

### 3. Other questions

Examination of all the other suggestions for the revision of the Brussels Convention will wait until those Articles regarded as priorities have been dealt with.

### C. Follow-up

A working document will be drafted by the incoming United Kingdom Presidency, the General Secretariat of the Council and Switzerland, depositary of the Lugano Convention.

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