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NOTE

from: Presidency

to : Council (JHA)

Subject: Draft statement by the Spanish Presidency to the Council (JHA) concerning the draft Convention on scope, jurisdiction and the enforcement of judgments in matrimonial matters

**DRAFT STATEMENT BY THE SPANISH PRESIDENCY TO THE COUNCIL (JHA)
CONCERNING THE DRAFT CONVENTION ON SCOPE,
JURISDICTION AND THE ENFORCEMENT OF
JUDGMENTS IN MATRIMONIAL MATTERS**

Work during the Spanish Presidency on extending the Brussels Convention to cover Family Law has prompted the following conclusions:

1. An undertaking was given by the Presidency to provide the JHA Council on 23 November 1995 with a text extending the 1968 Brussels Convention to cover proceedings relating to the invalidity of a marriage, divorce and the legal separation of spouses and the exercise of authority over and custody of the children of both spouses.

This undertaking was itself based on the political undertaking given publicly by the Ministers for Justice of the Member States at an open meeting to work towards the same end.

However, despite the existence of a political undertaking, the Working Party has been blocked by a number of countries which do not have any real political will to reach agreement on including the exercise of authority and custody concerning such children in the scope of the Convention.

2. The divergences which have emerged between Member States as regards devising a system for rules to include the exercise of authority and custody of the children in the scope of the Convention are justified neither by the differences which exist between the internal regulations of Member States nor by an absence of technical proposals on this matter.

3. Since, however, it is to be assumed that all Member States wish to be parties to this Convention, negotiations must continue pursuant to Article K.3(2)(c) of the TEU so that all fifteen Member States of the Union can accede thereto.
4. In continuing negotiations, it will be necessary to keep in mind the fact that the future Convention must complement and be compatible with work currently in progress at The Hague Conference on International Private Law on revising the 1961 Convention concerning the Protection of Infants.

This does not however in any way mean that our work must reflect and await the outcome of discussions in The Hague, since the Presidency feels that such an approach would seriously undermine the concept of civil cooperation as a matter of common interest pursuant to Title VI of the TEU.

5. For these reasons, the Spanish Presidency proposes adopting a new approach to further work, which will make it possible to achieve concrete results. That approach starts with a political proposal: let us ask for greater political decisiveness from some of the Member States.

Secondly, in order to facilitate the Working Party's political brief and entitle it to play its technical role, it is proposed that a flexible Convention be drawn up with the following structure

Title I: Scope

Title II: Jurisdiction regarding the invalidity of a marriage, divorce and separation

Title III:	Jurisdiction regarding the exercise of parental authority
Title IV:	Provisional measures
Title V:	Provisions for the application of rules of jurisdiction
Title VI:	Recognition and enforcement of judgments
Title VII:	General provisions
Title VIII:	Final provisions.

6. Member States will be able to enter reservations only on the provisions in Title III and any provisions relating thereto. Such reservations would be valid for a five year period, which could be extended for successive periods of the same duration by express declaration of the Member States to that effect made at the place of deposit of the Convention.

The Spanish Presidency thinks this approach the best way of making progress with discussions and is convinced that this draft is both necessary and useful in order to facilitate the life of Europe's citizens and develop a genuine European Legal Area.
