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**NOTE**

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| From:    | Presidency   |
| To:      | Delegations  |
| Subject: | Meeting of the Standing Committee of the 2007 Lugano Convention (1-2 June 2022, Berne)<br>- Coordinated position of the European Union |

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**I. INTRODUCTION**

1. The forthcoming Meeting of the Standing Committee of the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as well as a meeting of experts, will take place in Berne, on 1 and 2 June 2022.
2. An agenda and documentation pertaining to the 2022 meeting of experts and Standing committee meeting of the Lugano Convention was circulated to all delegations on 13 May 2022, as document 8900/22 ADD 1.

3. The Standing Committee is set up by Article 4 of Protocol 2 on the uniform interpretation of the Convention and on the Standing Committee. The Standing Committee is the institutional organ of the Convention which carries out certain tasks pursuant to Article 4 of Protocol 2 to the Convention, such as the consideration of the accession of new States, a consultation on the revision of the Convention, the acceptance of new authentic languages. It is composed of the representatives of the Contracting Parties. The meeting of Experts, which is convened under Article 5 of Protocol 2, is aimed at exchanging views on the functioning of the Convention, including on the development of the case-law and new legislation that may influence the application of the Convention. It is composed of experts of the Contracting Parties, of the States bound by this Convention, of the Court of Justice of the EU, and of the European Free Trade Association, and other experts whose presence is deemed appropriate.
4. The Working Party on Civil Law Matters (General Questions) discussed at its meeting on 17 May 2022 the draft coordinated position for the meeting of experts and the Standing Committee presented by the Commission services. This paper sets out the coordinated position of the European Union discussed and agreed upon during that meeting.

**II. COORDINATED POSITION OF THE EUROPEAN UNION ON CERTAIN ISSUES LISTES UNDER THE DRAFT AGENDA OF THE MEETING OF EXPERTS**

**A. ITEM 3. A) DISCUSSION ABOUT CASE-LAW AS WELL AS CHALLENGES IN GENERAL RELATED TO THE APPLICATION OF THE LUGANO CONVENTION OR THE PARALLEL EUROPEAN INSTRUMENTS WITH RESPECT TO TRANSITIONAL PROVISIONS AND TO THE UNITED KINGDOM AFTER BREXIT (TRANSITIONAL PROVISIONS, SCOPE OF APPLICATION IN TIME).**

5. It is suggested, following the discussion of possible national case-law, from the EU perspective to refer to the detailed transitional provisions provided in the EU-UK Withdrawal Agreement, which apply concerning relevant EU instruments, including Brussels Ia and Maintenance Regulations, in particular Article 67 of the Withdrawal Agreement on “Jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities”.

**B. ITEM 3. B) ON RECOGNITION ON MAINTENANCE AGREEMENTS**

6. This item addresses the problem that Swiss maintenance agreements are not recognized in Norway and Germany (with examples provided). As a consequence, the draft agenda considers that it would be helpful if the Experts could discuss and, if clear, confirm that such maintenance titles can and should be enforced according to article 57 of the Lugano Convention or the corresponding provision of the 1988 Lugano Convention. It is suggested that such a recommendation could be used in the future by the maintenance creditor when facing difficulties with enforcement abroad. It is also suggested that the Experts could issue a statement confirming that “Maintenance agreements concluded before administrative authorities (such as the Swiss guardianship authorities or authorities for the protection of children and adults, which examine the maintenance agreement on the merits) or authenticated by them are authentic instruments within the meaning of the Lugano Conventions of 1988 and 2007”.

7. It is suggested that the European Union does not take a position on whether maintenance agreements concluded before administrative authorities (such as the Swiss guardianship authorities or authorities for the protection of children and adults, which examine the maintenance agreement on the merits) or authenticated by them are authentic instruments within the meaning of the Lugano Conventions of 1988 and 2007, pending further analysis of the consequences of such a position.

**C. ITEM 3. C) ON ANNEX V/VI**

8. This item refers to the experience of the Swiss Central Authority for Maintenance enforcement, according to which Annex V is often not filled out correctly, despite its important role for recognition and enforcement: e.g. the date of service is missing or not correct; the Annex is not established by the competent authority (but e.g. by the creditor, which may be a public authority that became creditor by subrogation) or the name of the parties to whom legal aid has been granted is not filled out<sup>1</sup>. Consequently, it is suggested that the Experts might discuss what can be done in order to improve the correct establishment of Annex V by the state of origin, and e.g. elaborate recommendations with best practices/errors to avoid, which then could be brought to the attention of courts and authorities establishing or dealing with Annexes V/VI.
9. It is suggested to agree that the European Union can support developing guidance.

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<sup>1</sup> See pages 35-36 of doc. ST 8900/22 ADD1.

#### **D. ITEM 6. B) ON MAINTENANCE REGULATION**

10. This item aims to discuss whether it seems necessary to adapt the Lugano Convention, in order to restore some parallelism with the situation inside the EU, i.e. incorporating art. 64 of the EU maintenance regulation into the Lugano Convention. It is pointed out that under the 2007 Lugano Convention, the validity of forum agreements is regulated by the “general” provision on choice of forum agreements of article 23, this provision also applying to forum agreements regarding maintenance. Under the Maintenance Regulation, forum agreements are covered by Article 4 of the Maintenance Regulation and are not binding upon the minor. Such limitation is not contained in the Lugano Convention. As a consequence, forum agreements might be considered binding upon a minor in the non-EU States while they will be considered *not binding* upon a minor in the EU jurisdiction: this may result in a negative conflict of jurisdiction.
11. The draft document suggests that Experts discuss whether these conflicts should be addressed, and in the affirmative how e.g. precedence could be given to the Lugano Convention; a Protocol to the Lugano Convention could clarify the relationship between the instruments. The issue could be addressed in a Lugano III. The Maintenance Regulation could be amended. Awareness could be raised inside the EU institutions so that no further conflicts with the Lugano Convention are created when EU instruments are drafted. As international agreements with non-EU countries (such as the Lugano Convention) “are an integral part of EU law” and “their legal force is superior to secondary legislation, which must therefore comply with them”, one way forward would be a recommendation by the Experts that “in case of conflicts, the Maintenance Regulation must be interpreted in a way as to give precedence to the Lugano Convention”.
12. It is suggested that the European Union does not make any commitment concerning this point. The Maintenance Regulation is currently not under review and no commitment can be made regarding such a review (no such review is in the planning during the current Commission’s mandate). However, the relationship between the Maintenance Regulation and the Lugano Convention can be discussed and possibly further explored.

**E. ITEM 6. C) ON GENERAL DATA PROTECTION REGULATION**

13. This item concerns the impact of Articles 78 and 79 of the General Data Protection Regulation (GDPR) and its recital 147 on defendants in states bound only by the Lugano Convention.
14. The relationship between the rules on jurisdiction set out in the GDPR and Brussels Ia Regulation is a subject in the ongoing evaluation of application of Brussels Ia Regulation. In that context, for example, it is being explored in a legal study launched by the Commission in preparation of a report to the European Parliament, the Council and the European Economic and Social Committee on the application of the Regulation.
15. It is suggested to take the position that this item could be further explored, but no conclusions can be drawn or possible recommendations made at this stage.

**III. COORDINATED POSITION ON CERTAIN ISSUES LISTED UNDER THE DRAFT AGENDA OF THE STANDING COMMITTEE**

**A. ITEM 3: DISCUSSION ABOUT A POTENTIAL REVISION OF THE LUGANO CONVENTION (FUTURE “LUGANO III”) WITHIN THE STANDING COMMITTEE**

16. The item concerns the question whether the Lugano Convention should be adapted to Brussels Ia Regulation 1215/2012, in order to ensure parallelism between the two instruments. During the 2013 and 2017 meetings, some representatives of Contracting Parties had argued that revision of Lugano Convention is premature due to a short time after its entry into force in 2011. Nowadays some Contracting Parties are more open to such a revision, more than 10 years after the entry into force of the 2007 Lugano Convention and several years of operation of Brussels Ia Regulation. The Agenda proposes to discuss the timeline for a potential recast and the next steps to be taken.

17. The Commission is currently assessing the need to review the Brussels Ia Regulation and has recently launched the preparatory work with a legal study on the application of the Regulation. The study will be followed by a report to the European Parliament, the Council and the European Economic and Social Committee on the application of the Regulation, to be adopted possibly in 2023 or early 2024. That report may conclude that there is a need to amend the Regulation.
18. The Commission considers that discussions on revision of the Lugano Convention should wait for the conclusions on the need to review the Regulation. Launching the work on the adaptation of the Lugano Convention should not precede the review of Brussels Ia Regulation, otherwise new discrepancies may arise.
19. It is suggested that the European Union expresses its support for a medium-term revision of the Lugano Convention, once it has become clear whether or not Brussels Ia Regulation will be revised, and in what areas. The Union will not, however, take a position at this stage on whether to pursue a total or partial alignment of the two texts.

**B. ITEM 4. A) MISCELLANEOUS & INFORMAL EXCHANGE WITHIN THE STANDING COMMITTEE – DISCUSSION ABOUT CRITERIA FOR ACCESSION**

20. Article 72 of the Convention sets out formal obligations of a third state wishing to become a Contracting Party to the Convention in terms of providing the information required for the application of the Convention. However, the Convention does not set out formal criteria for accession to the Convention by a third State.
21. It is suggested that the European Union opposes formalising criteria for accession to the Convention.

**C. ITEM 4.C) MISCELLANEOUS & INFORMAL EXCHANGE WITHIN THE  
STANDING COMMITTEE – REPORT**

22. The Draft Agenda proposes to discuss whether a report from the meeting should be published, due to relevance of some subjects to the larger public. It can be, for example a summary report, stating that a given issue was discussed and possible conclusion of such a discussion. It may cover only some of the topics discussed, those which are relevant to the wider public. In the past, short statements have been published on some of the meetings, informing that a Standing Committee took place and indicating some topics that were discussed.
23. The lack of full parallelism between the Lugano Convention and Brussels Ia Regulation is indeed a substantive legal issue, which is a subject of wider interest and legal debates. A summary report on discussion of that subject in the Standing Committee is therefore desirable. On the other hand, the discussion on the criteria for accession is informal and it is therefore not recommended to report on that point.
24. It is suggested that the European Union endorses publishing the information on the discussion on the future of the Convention, but not on the informal discussions on the criteria for accession.