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LIMITE

JUSTPEN 63

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"I/A" ITEM NOTE

from: Secretariat

to: Permanent Representatives Committee/Council

No. prev. doc.: 8815/98 JUSTPEN 59

Subject: **Adoption in the official languages of the Communities of the act drawing up the Convention on Driving Disqualifications**

The Council reached at its meeting on 28 and 29 May 1998 political agreement on the draft Convention on driving disqualifications.⁽¹⁾ A revised version of the draft Convention prepared by the legal linguists following the meeting is set out in document 8383/2/98 JUSTPEN 54 REV 2.

The Permanent Representatives Committee is on that basis invited to recommend to the Council to:

- adopt, by unanimity, the Act drawing up the Convention set out in document 8383/2/98 JUSTPEN 54 REV 2;
- enter the declarations set out under point I of the Annex in the minutes of its meeting;
- take note of the list of items for inclusion in the explanatory report to the Convention set out under point II of the Annex.

⁽¹⁾ See document 9153/98 JUSTPEN 62.

**I. DECLARATIONS FOR ENTRY IN THE COUNCIL MINUTES AT THE ADOPTION OF THE ACT
DRAWING UP THE CONVENTION**

1. "The Council notes that Member States may, when making a declaration pursuant to Article 14(3) of the Convention, reserve the right to make provisions in their national law to the effect that, where a question relating to the interpretation of the Convention is raised in a case pending before a national court or tribunal against whose decision there is no remedy under national law, that court or tribunal will be required to refer the matter to the Court of Justice."
2. "The Council agrees on the need for drawing up measures for the purpose of facilitating the proper operation of the Convention, and in particular Article 12 thereof, and for that purpose requests a report within six months of the signature of the Convention on the questions of data protection arising from this Convention. Proposals on this question shall be submitted to the Council by the competent instances as soon as possible with a view to ensuring that data protection is secured in a satisfactory way, also taking account of progress on the issue of a common approach to this subject within the third pillar."
3. "The Council declares that Article 18 of the Convention is without prejudice to the territorial application of other instruments."

II. THE EXPLANATORY REPORT

The following information will be included in the explanatory report to the Convention:

Concerning Article 1(a)

As a matter of terminology rather than of substance, certain national provisions refer to the "driving licence" rather than to the "right to drive".

In this context driving licence should be understood to mean the national driving licence issued by the relevant authorities of the Member States on the basis of their national legislation.

The term "offence" also refers to the case of multiple offences resulting in a single driving disqualification provided that at least one of the offences arose from conduct referred to in the Annex.

Concerning Article 3

Even though the State of residence should be the State which is principally responsible for giving effect to the driving disqualification, the State which issued the driving licence will be informed of the situation, as it will also be in cases where it is neither the State of the offence nor the State of residence.

Concerning Article 6(1)(e)

The importance of the possibility for the person concerned to use his own language in order to express himself clearly during the proceedings leading to the driving disqualification in the State of the offence will be pointed out in the explanatory report.

Concerning Article 8

All decisions imposing disqualification from driving taken in the State of the offence, including those taken by administrative authorities, are subject to judicial control.

Concerning Article 9

Article 9 does not prevent bilateral arrangements between Member States regarding the translation of documents relating to the application of the Convention.

Concerning Article 12

The explanatory report to the Convention shall contain appropriate explanations regarding Article 12. The Danish delegation has stated that it understands Article 12 as implying that a Member State must have criminal sanctions which it can apply to a driver for driving a motor vehicle in its territory after being disqualified in another Member State, but is not obliged to use a specific national provision concerning driving in the disqualification period.

Concerning the calculation of periods of driving disqualifications

The explanatory report shall contain appropriate explanations on this issue.

Concerning the Convention as a whole

It would be appropriate for the Council's subordinate bodies to monitor closely the implementation and application of the Convention, in particular in view of the practical and technical aspects of the latter.