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EUROPEAN UNION
THE COUNCIL

Brussels, 14 May 1997

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LIMITE

JUSTPEN 37

OUTCOME OF PROCEEDINGS

of : Working Party on Disqualification from Driving

on : 16 April 1997

No. prev. doc.: 6810/96 JUSTPEN 53

Subject: Draft Convention on driving disqualifications

The Working Party on Disqualification from Driving examined the draft Convention set out in 6810/96 JUSTPEN 53 at its meeting on 16 April 1997.

The modified text emerging from the proceedings, with observations made by delegations in footnotes to the text, is set out in Annexes I and II.

The Danish, German, Irish and United Kingdom delegations have maintained a general scrutiny reservation on the draft Convention.

The Danish, Greek and Swedish delegations have laid down a linguistic scrutiny reservation on the draft.

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ANNEX I

DRAFT

COUNCIL ACT

of .....

drawing up the Convention on Driving Disqualifications

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2)(c) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the giving effect to driving disqualifications as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

Having decided that the Convention, the text of which is given in the Annex and which is signed today by the Representatives of the Governments of the Member States of the Union, is hereby drawn up;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels, the

For the Council
The President

DRAFT CONVENTION
DRAWN UP ON THE BASIS OF ARTICLE K.3
OF THE TREATY ON EUROPEAN UNION,
ON DRIVING DISQUALIFICATIONS

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

Referring to the Council Act of.....

Having regard to the Community legislation on driving licenses;

Whereas it is of the utmost importance for road traffic safety that effect is given to driving disqualifications by adequate means;

Whereas drivers in many cases, as a result of the increasing international road traffic, are disqualified from driving in a Member State other that in which they normally reside;

Whereas, in principle, such drivers should not escape the effects of the driving disqualification when leaving the State of the offence;

Whereas the State of residence should therefore, in respect of certain offences and under certain conditions, give effect to driving disqualifications imposed by another Member State;

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

For the purposes of this Convention:

(a) "*driving disqualification*" means any measure related to the commission of a road traffic offence which results in withdrawal or suspension of the right to drive of a driver of a motor vehicle. The measure may constitute either a primary, secondary or supplementary penalty or a safety measure and may have been taken either by a judicial authority or by an administrative authority;

(b) "*final driving disqualification*" means any driving disqualification which is no longer subject to appeal;

(c) "*State of the offence*" means the Member State within whose territory a road-traffic offence was committed, giving rise to a final driving disqualification;

(d) "*State of residence*" means the Member State within whose territory the person who has been disqualified from driving is normally resident within the meaning of Article 9 of Directive 91/439/EEC;

(e) "*motor vehicle*" means any self-propelled road vehicle running on a road under its own power – other than rail-borne vehicles – for which a driving licence is required.

Article 2

The Member States hereby undertake to co-operate, in accordance with the provisions of this Convention, with the objective that drivers who are disqualified from driving in a Member State other than that in which they normally reside should not escape the effects of the disqualification when they leave the State of the offence.

Article 2a

1. The State of the offence shall without delay notify the State of residence of any final driving disqualification imposed for any (...) offence arising from conduct referred to in the Annex. [1]

2. Each Member State may agree with other Member States that notification to it pursuant to paragraph 1 shall not take place in certain cases in which Article 4(1)(a) would apply. [2]

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[1] The French delegation has retained a reservation on Article 2a(1) as it considered that:
- the text should provide for the direct execution in the State of residence of the driving disqualification imposed by the State of the offence;
- the words "any offence arising from conduct referred to in the Annex" should be replaced by "one or more of the offences listed in the Annex". The list of types of conduct in the Annex should be replaced by a list of offences.

[2] Text proposed by the Presidency in the light of comments made for further consideration.

Article 3

1. The State of residence which has been notified pursuant to Article 2a, shall give effect to the driving disqualification in one of the following ways :

   (a) imposing, on the basis of a decision taken in the State of the offence, a driving disqualification of the same duration as that ordered by the State of the offence, or

   [(b)[1] imposing a driving disqualification which its competent authorities could have imposed under its law if the offence had been committed in its territory.]

2. The State of residence:

   (a) Shall take into account the period of the driving disqualification imposed by the State of the offence which has already been served in that State;

   (b) May reduce the duration of the driving disqualification to the maximum term provided for the offence under its legislation.

3. In case of application of the procedure referred to in paragraph 1 (b), the State of residence:

   (a) Shall be bound by the facts and the findings on those facts referred to in the notification given pursuant to Article 2a or in the disqualification order itself;

   (b) (...) [2]

   (c) May not replace the driving disqualification by a fine or any other measure.

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(1) To be discussed in the light of the new Article 3a.
(2) See footnote (1), page 8.

4. When giving the notification referred to in Article 12(2), each Member State shall indicate in a declaration which of the procedures described in paragraph 1 it intends to apply in its capacity as a State of residence. The declaration made may be replaced by a new declaration at any time.

Article 3a

The giving effect to a driving disqualification pursuant to Article 3 shall be without prejudice to other road safety measures that the State of residence may take under its law. [1]

Article 4

1. The State of residence shall refuse to give effect to the driving disqualification only when :

(a) the conduct for which the driving disqualification has been imposed in the State of the offence does not constitute an offence under the law of the State of residence;[2]

(b) (...)[3]

(c) the offender has already had a final order made against him in respect of the same occurrence and that order had been enforced or is in the process of being enforced, or

(d) the offender would have benefited from a general pardon or amnesty in the State of residence if the acts had been committed in the territory of that State, or

(e) the period of limitation for the measure would have expired under its own legislation.

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(1) On the basis of comments made by delegations, the Presidency proposes to replace Article 3(3)(b) of 6810/96 JUSTPEN 53 with this new Article.

(2) The French delegation has called for the deletion of Article 4(1)(a) as this provision would be superfluous if the list of types of conduct in the Annex was changed to a list of offences as requested by the same delegation (see footnote (1), page 6).

(3) In the light of the debate, the Presidency proposes to transfer the text of paragraph 1(b) to paragraph 3.

2. (...)

3. The State of residence may refuse to give effect to the driving disqualification when:

- the duration of that disqualification is less than one month;[1]

- driving disqualification is not a measure available under the legislation of that State for the offence giving rise to the driving disqualification imposed by the State of the offence.[2]

4.[3] [When giving the notification referred to in Article 12(2) or at any other time, any Member State may declare that it will always apply paragraph 3. When such a declaration has been made, the other Member States are not obliged to notify final driving disqualifications of a duration of less than one month pursuant to Article 2a to the Member State having made the declaration. Declarations made may be withdrawn at any time.]

Article 5

1. The competent authority of the State of the offence shall forward the notification referred to in Article 2a to the central authority of the State of residence.

2. For the purposes of paragraph 1, when giving the notification referred to in Article 12(2), each Member State shall indicate:

(a) the central authority or central authorities which it designates ;

(b) the competent authorities responsible for submitting the notifications referred to in Article 2a.

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(1) The Austrian delegation has laid down a reservation on paragraph 3 as the one month rule according to that delegation would imply that driving disqualifications imposed in Austria only in very few cases would be given effect to in the State of residence. The delegation thought in particular, that paragraph 3 should not apply to points 3 (alcohol) and 4 (speed) of the Annex.
Scrutiny reservation by the United Kingdom delegation on the period of one month.

(2) See footnote (3), page 8.

(3) Reservation from the German and Austrian delegations.

Article 6

1. The notification referred to in Article 2a shall be accompanied by:

   - the original or a certified copy of the driving disqualification order;

   - a brief statement of the circumstances and a reference to the legal provisions in the State of the offence on the basis of which the driving disqualification was imposed, if these are not given in the order;

   - an attestation that it is final;

   - information on to which extent the driving disqualification imposed by the State of the offence has been served in that State;

   - the driving license where it has been seized.

2. If the information communicated in accordance with paragraph 1 is found to be insufficient to allow a decision to be taken pursuant to this convention, the competent authorities of the State of residence shall request the competent authorities of the State of the offence to provide the necessary supplementary information without delay.

3. When giving the notification referred to in Article 12(2) any Member State may declare that where the person against whom the driving disqualification has been imposed did not appear personally or was not represented at the proceedings, notifications to it pursuant to Article 2a shall be accompanied by an assurance that the person has received due notice of the proceedings in accordance with the law of the State of offence.

Article 6a

1. Subject to the provisions of paragraphs 2 and 3, no translation of the notifications referred to in Article 2a or of the accompanying material referred to in Article 6 or of any other documents relating to the application of the present Convention, shall be required.

2. Any Member State may, when giving the notification referred to in Article 12(2), declare that the documents referred to in paragraph 1 shall be accompanied by a translation into one of the official languages of the European Communities indicated in the declaration.

3. Without prejudice to Article 6(1), first indent, the documents referred to in paragraph 1 do not need to be certified.

Article 7 [1]

1. The State of residence shall inform the State of the offence of any decision taken in respect of a notification given pursuant to Article 2a and, where it refuses to give effect to a driving disqualification pursuant to Article 4, the reasons for the refusal.

Article 8

(deleted)

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[1] The French delegation has retained a reservation and called for the re-introduction of the former paragraph 2 of Article 7 which read as follows (see 4558/96 JUSTPEN 14):
"2. The State of the offence shall be re-enabled to give effect to a driving disqualification in its territory only if the State of residence has not enforced the disqualification."

Article 9 [1]

(deleted)

Article 10

Costs incurred in implementing this Convention shall be borne in the Member State in which they occur.

Article 11

(deleted)

Article 12

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of their institutional requirements for adopting this Convention.

3. This Convention shall enter into force 90 days after the notification referred to in paragraph 2 by the last Member State to fulfil this formality.

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[1] Article 9 contained an obligation for Member States to adopt the measures necessary to penalize the driving of a motor vehicle during the period for which the driver is disqualified from driving (see 4963/96 JUSTPEN 19). As all Member States already had taken the measures referred to, Article 9 was deleted.
The Presidency has proposed the inclusion of the following information in the explanatory report to the Convention:

> Member States agree that driving when disqualified from driving should be punishable, even where the disqualification has been imposed by another Member State. All Member States already have measures in place to that effect. Member States therefore agree that the inclusion of a provision in the Convention on the issue is not necessary.

The French delegation has retained a scrutiny reservation on the deletion of Article 9.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2, or at any later date, declare that with respect to itself the Convention shall apply to its relations with Member States that have made the same declaration. Such declarations apply from 90 days after the date of their deposit.

5. This Convention and declarations made in respect of it shall be applicable only to offenses committed after its entry into force between the Member States concerned.

Article 13

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period 90 days.

5. Article 12(4) shall apply to acceding Member States.

Article 14

1.[1] No reservation shall be authorized with the exception of those provided for in Article ....

2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary receives the notification.

Article 15

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the **Official Journal of the European Communities** information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

Done at ....., this ..... in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

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(1) Reservation by the German delegation, linked with the examination of the Annex to the Convention.

ANNEX TO THE CONVENTION [1]

1. Reckless or dangerous driving (whether or not resulting in death, injury or serious risk). [2]

2. Wilful failure to carry out the obligations placed on drivers after being involved in a road accident (hit-and-run driving).

3. Driving a vehicle while under the influence of alcohol or other substances affecting or diminishing the mental and physical abilities of a driver.
   Refusal to submit to alcohol and drug tests.

4. Driving a vehicle faster than the permitted speed.

5. Driving a vehicle whilst disqualified.

6. [3] Other conduct constituting an offence for which a driving disqualification of a duration of 6 months [4] or more has been imposed by the State of the offence.

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(1) Reservation on the Annex by the French delegation. See footnote (1), page 6.

(2) Reservation by the Greek delegation on the inclusion of reckless or dangerous driving not resulting in death, injury or serious risk.

(3) Reservation by the Austrian delegation. This delegation considers that point 6 combined with the other parts of the text (Articles 2a and 4) and the Austrian legislation (normally resulting in driving disqualifications of short duration) may lead to an imbalance where very few Austrian decisions would be given effect to in other Member States compared with the number of notifications Austria would receive under the Convention. It was agreed to reexamine this point at the next meeting of the Working Party in the context of the new wording of Articles 2a and 4.

(4) The Spanish delegation has laid down a scrutiny reservation on the period of 6 months and expressed a preference for a shorter period. Several other delegations observed that they would not be able to accept a shorter period. The Spanish delegation proposed by way of compromise the introduction of a provision whereby Member States could declare that they, subject to the principle of reciprocity, would apply a shorter period. It was agreed to examine this suggestion at the next meeting of the Working Party.

THE EXPLANATORY REPORT

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

On Article 1(a)

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

On Article 2a

Even though the State of residence should be the main responsible for giving effect to the driving disqualification, it might be useful to inform the State having issued the driving license as well in cases where that State was neither the State of the offence nor the State of residence.

This question may be examined at a later stage when some experience has been gained regarding the application of the Convention.

On Article 6a

Article 6a does not prevent bilateral arrangements between Member States regarding translation of documents relating to the application of the Convention.

On the Convention

The Working Party agreed that it would be appropriate to carry out a close monitoring within the structures of the Council of the implementation and application of the Convention, in particular for the reason of the practical and technical aspects of the Convention.