

8383/98

LIMITE

JUSTPEN 54

N O T E

Subject: Council Act drawing up the Convention on Driving Disqualifications

Delegations will find attached the above text, as finalized by the Legal Linguistic experts' working party.

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 of effect to driving disqualifications as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty;

HAS DECIDED that the Convention, the text of which is set out 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,

For the Council
The President

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

WHEREAS it is of the utmost importance for road safety within the European Union that a Union-wide effect be given to driving disqualifications by adequate means;

WHEREAS as a result of the free movement of persons and the increasing international road traffic, disqualifications from driving are frequently imposed by a Member State other than that in which the driver normally resides;

WHEREAS having regard to Council Directive 91/439/EEC of 29 July 1991 on driving licences ⁽¹⁾, national provisions on the withdrawal, suspension and cancellation of driving licences should be applied by the Member State in whose territory the licence holder has his or her normal residence;

WHEREAS drivers disqualified from driving in a Member State other than that of their normal residence ought not to escape the effects of such measure when present in a Member State other than that of the offence;

⁽¹⁾ OJ L 237, 24.8.1991, p. 1. Directive as last amended by Directive 97/26/EC (OJ L 150, 7.6.1997, p. 41).

WHEREAS the Member State of residence of the licence holder should therefore, in respect of offences considered particularly serious and under certain conditions, give effect to driving disqualifications imposed by another Member State by taking measures entailing the withdrawal, suspension or cancellation of his or her driving licence;

WHEREAS the fact that the Member State of residence has given effect to such a disqualification imposed by another Member State, should entail the consequence that the necessary measures are taken to penalize the act of driving a motor vehicle during the period of the disqualification under the laws of any Member State of the European Union in whose territory this may occur,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

For the purposes of this Convention:

- (a) "driving disqualification" shall mean 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 and which is no longer subject to a right of appeal. 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) "State of the offence" shall mean the Member State within the territory of which the road traffic offence that has given rise to a driving disqualification was committed;
- (c) "State of residence" shall mean the Member State within the territory of which the person who has been disqualified from driving is normally resident within the meaning of Article 9 of Directive 91/439/EEC;
- (d) "motor vehicle" shall mean any vehicle covered by the definition in Article 3(3) of Directive 91/439/EEC.

ARTICLE 2

The Member States hereby undertake to cooperate, 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 their disqualification when they leave the State of the offence.

ARTICLE 3

1. The State of the offence shall without delay notify the central authority of the State of residence of any driving disqualification imposed for an offence arising from conduct referred to in the Annex.

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 6(2)(a) would apply.

ARTICLE 4

1. Subject to Article 6, the State of residence which has been notified pursuant to Article 3 shall without delay give effect to the decision imposing disqualification from driving taken in the State of the offence in one of the following ways:

- (a) by directly executing the decision imposing disqualification from driving, while taking into account any part of the period of disqualification imposed by the State of the offence which has already been served in the latter, or
- (b) by executing the decision imposing disqualification from driving via a judicial or administrative decision in accordance with the conditions laid down in paragraph 2, or
- (c) by converting the decision imposing disqualification from driving into a judicial or administrative decision of its own, thus, without prejudice to Article 11, substituting for the decision by the State of the offence a new decision in accordance with the conditions laid down in paragraph 3.

2. If it applies the procedure laid down in paragraph 1(b) the State of residence:
 - (a) shall take into account any part of 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 but only to the maximum term provided for acts of the same kind under its national law;
 - (c) shall not extend the duration of the driving disqualification imposed by the State of the offence.
3. If it applies the procedure laid down in paragraph 1(c) the State of residence:
 - (a) shall be bound by the facts as established insofar as they are stated explicitly or implicitly in the decision imposing disqualification from driving in the State of the offence;
 - (b) shall take into account any part of the period of the driving disqualification imposed by the State of the offence which has already been served in that State;
 - (c) may reduce the duration of the driving disqualification to align it to the duration which according to its national law would have been applied for the case in question;

(d) shall not extend the duration of the driving disqualification imposed by the State of the offence;

(e) may not replace the driving disqualification by a fine or any other measure.

4. When giving effect to a driving disqualification under this Article, the State of residence shall, where necessary, determine a date from which it will enforce the driving disqualification.

5. When giving the notification referred to in Article 15(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 5

Giving effect to a driving disqualification pursuant to Article 4 shall be without prejudice to any additional road safety measures that the State of residence may take under its own legislation.

ARTICLE 6

1. The State of residence shall refuse to give effect to the driving disqualification where:
 - (a) the driving disqualification has already been fully enforced in the State of the offence;
 - (b) the offender has already had a driving disqualification imposed on him in the State of residence for the same acts and that disqualification has been or is being enforced;
 - (c) the offender would have benefited from a general pardon or amnesty in the State of residence if the acts had been committed within the territory of that State;
 - (d) the period of limitation for the measure would have expired under its own legislation.
2. The State of residence may refuse to give effect to the driving disqualification if:
 - (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;
 - (b) the remaining period of disqualification which could be enforced in the State of residence is less than one month;

- (c) driving disqualification is not a measure available under the legislation of the State of residence for the acts giving rise to the driving disqualification imposed by the State of the offence;
- (d) if, in the circumstances of the particular case, after receiving any information supplied under Article 8, it considers that the person concerned has not had an adequate opportunity to defend himself.

3. When giving the notification referred to in Article 15(2) or at any other time, any Member State may declare that it will always apply paragraph 2 of this Article in part or in full. When such a declaration has been made, the other Member States shall not be obliged to communicate driving disqualifications such as referred to in that declaration pursuant to Article 3 to the Member State that has made the declaration. Any Member State may withdraw its declaration at any time.

ARTICLE 7

For the purposes of Article 3, when giving the notification referred to in Article 15(2), each Member State shall indicate its central authority or central authorities.

ARTICLE 8

1. The notification referred to in Article 3 shall be accompanied by:

- details serving to locate the person disqualified from driving;
- the original or a certified copy of the decision imposing a driving disqualification;
- 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 decision;
- an attestation that it is final;
- information regarding the enforcement of the driving disqualification in the State of the offence, including the length of the disqualification and, where known, the dates on which the disqualification starts and expires;
- the driving licence, if it has been seized.

2. Where the person on whom the driving disqualification has been imposed did not appear personally or was not represented at the proceedings, notifications pursuant to Article 3 must be accompanied by evidence that the person has been duly notified of the proceedings in accordance with the law of the State of offence.

3. If the information communicated in accordance with paragraphs 1 and 2 is found to be insufficient to allow a decision to be taken pursuant to this Convention, in particular where, in the circumstances of the particular case, there is doubt whether the person concerned has had an adequate opportunity to defend himself, 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.

ARTICLE 9

1. Subject to paragraphs 2 and 3, no translation of the notifications referred to in Article 3 or of the accompanying material referred to in Article 8 or of any other documents relating to the application of this Convention shall be required.

2. Any Member State may, when giving the notification referred to in Article 15(2), declare that the documents referred to in paragraph 1 forwarded to it by the State of the offence must be accompanied by a translation into one of the official languages of the European Communities indicated in its declaration.

3. Except for the document referred to in the second indent of Article 8(1), the documents referred to in paragraph 1 of this Article need not be certified.

ARTICLE 10

The State of residence shall inform the State of the offence of any decision taken in respect of a notification given pursuant to Article 3 and in respect of enforcement and, where it refuses to give effect to a driving disqualification pursuant to Article 6, of the reasons for its refusal.

ARTICLE 11

1. The right of the State of the offence to execute in its territory the full period of the driving disqualification determined by the State of the offence shall not be affected by the decision of the State of residence.
2. When giving the notification referred to in Article 15(2), any Member State may indicate that it will not apply paragraph 1 of this Article in its capacity as the State of the offence.
3. The State of the offence and the State of residence shall exercise their responsibilities under the Convention in such a way as to ensure that the total period of disqualification, taking into account any period of disqualification which is served for the offence concerned in the State of residence, does not exceed the period of disqualification originally determined by the State of the offence.

4. When notifying the person concerned of the decision to disqualify, a State of the offence which proposes to apply paragraph 1 shall at the same time inform the person of this fact, and shall confirm in the notification given in accordance with Article 3 to the State of residence that it has done so.

ARTICLE 12

Each Member State shall adopt the measures necessary to enable it to penalize the driving of a motor vehicle in its territory when the driver is disqualified from driving by the State of residence in implementation of this Convention.

ARTICLE 13

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

ARTICLE 14

1. The Court of Justice of the European Communities shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of this Convention whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or application of this Convention.

2. Any Member State shall be able to accept, through a declaration made when giving the notification referred to in Article 15(2) or at any later date, the jurisdiction of the Court of Justice to give preliminary rulings on the interpretation of this Convention.

3. A Member State making a declaration pursuant to paragraph 2 shall specify that either:

- (a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of this Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, or
- (b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of this Convention if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

4. The Statute of the Court of Justice of the European Community and its Rules of Procedure shall apply. Any Member State, whether or not it has made a declaration pursuant to paragraph 2, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 3.

ARTICLE 15

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 constitutional requirements for adopting this Convention.
3. This Convention shall enter into force ninety days after the notification referred to in paragraph 2 by the Member State which, being a Member of the European Union on the date of the adoption by the Council of the act drawing up this Convention, is the last to fulfil this formality.
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, except Article 14, shall apply to its relations with Member States that have made the same declaration. Such declarations shall apply as from ninety days after the date of their deposit.
5. This Convention and declarations made in respect of it shall be applicable only to offences committed after the entry into force of the Convention or from the date on which the Convention has become applicable between the Member States concerned.

ARTICLE 16

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 Secretary-General of the Council of the European Union.
4. This Convention shall enter into force with respect to any State that accedes to it ninety 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 those ninety days.
5. Article 15(4) shall apply to acceding Member States.

ARTICLE 17

No reservation may be entered in respect of this Convention.

ARTICLE 18

As regards the United Kingdom, the provisions of this Convention shall apply only to the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 19

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 being deposited in the archives of the General Secretariat of the Council of the European Union.

CONDUCT COVERED BY ARTICLE 3 OF THE CONVENTION

1. Reckless or dangerous driving (whether or not resulting in death, injury or serious risk).
2. Wilful failure to carry out the obligations placed on drivers after being involved in road accidents (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. Other conduct constituting an offence for which a driving disqualification has been imposed by the State of the offence
 - of a duration of six months or more,
 - of a duration of less than six months where that has been agreed bilaterally between the Member States concerned.