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DRAFT REPORT

on the draft Convention on driving disqualifications
(5217/98 - C4-0061/98 - 98/0901 (CNS))

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mrs Viviane Reding

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By letter of 15 January 1998 the Presidency of the Council of the European Union consulted the European Parliament, in accordance with Article K.6(2) of the EU Treaty, on the draft Convention on driving disqualifications (5217/98 - C4-0061/98 - 98/0901 (CNS)).

At the sitting of 29 January 1998 the President of Parliament announced that he had referred this proposal to the Committee on Civil Liberties and Internal Affairs as the committee responsible and to the Committee on Transport and Tourism for its opinion.

At its meeting of 4/5 February 1998 the Committee on Civil Liberties and Internal Affairs appointed Mrs Viviane Reding rapporteur

It considered the draft Convention and the draft report at its meetings of 18/19 March 1998 and 30 March 1998.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: .., chairman/acting chairman; .. (and ..), vice-chairman/chairmen; ..., rapporteur; .., .. (for ...), .. (for ... pursuant to Rules 138(2)), . and .

The opinion of the Committee on Transport and Tourism is attached.

The report was tabled on ..

The deadline for tabling amendments will be indicated in the draft agenda for the part-session at which the report is to be considered.

A

LEGISLATIVE PROPOSAL

Draft Convention on driving disqualifications
(5217/98 - C4-0061/98 - 98/0901 (CNS))

The draft is approved subject to the following amendments.

Council text	Amendments by Parliament
(Amendment 1) Article 2a(1)	
1 The State of the offence shall without delay notify the State of residence of any driving disqualification imposed for an offence arising from conduct referred to in the Annex.	1 The State of the offence shall without delay, and at the latest within seven working days, notify the State of residence of any driving disqualification imposed for an offence arising from conduct referred to in the Annex.
(Amendment 2) Article 3(5)	
5 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.	5 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 not be replaced by a new declaration unless it replaces the procedure described under (c) by one of the procedures described under (b) and (a), or the procedure described under (b) by the procedure described under (a).
(Amendment 3) Article 3(6)(new)	
	6. If the State of residence applies one of the procedures referred to in paragraph 1(b) and paragraph 1(c), it shall undertake to ensure that an administrative or judicial decision is made within four weeks of receipt of the notification from the State of the offence.

(Amendment 4)
Article 4(1)(b)

(b) The offender has already had an order made against him in the State of residence for the same acts and that order has been or is being enforced.	Deleted

(Amendment 5)
Article 4(1)(ca)(new)

	(ca) driving disqualification is not a measure available under the legislation of that State for the acts giving rise to the driving disqualification imposed by the State of the offence.

(Amendment 6)
Article 4(1)(cb)(new)

	(cb) the period of limitation for the measure would have expired under its own legislation;

(Amendment 7)
Article 4(1)(cc)(new)

	(cc) it considers that the person concerned has not had an adequate opportunity, notably on account of language problems, to defend himself.

(Amendment 8)
Article 4(2)(c)

(c) driving disqualification is not a measure available under the legislation of that State for the acts giving rise to the driving disqualification imposed by the State of the offence;	Deleted

(Amendment 9)
Article 4(2)(d)

(d) the period of limitation for the measure would have expired under its own legislation;	Deleted

(Amendment 10)
Article 4(2)(e)

(e) it considers that the person concerned has not had an adequate opportunity to defend himself;	Deleted.

(Amendment 11)
Article 8

Any Member State may, when giving the notification referred to in Article 12(2), reserve the right to execute within its territory any decision notified by it in accordance with Article 2a(1) for the period not covered by execution in accordance with Article 3 of the decision by the State of residence.	Deleted.

(Amendment 12)
Article 9

Each Member State shall adopt the measures necessary to penalize the driving of a motor vehicle during the period for which the driver is disqualified from driving in implementation of this Convention.	Each Member State shall adopt the measures necessary to penalize the driving of a motor vehicle during the period for which the driver is disqualified from driving by an administrative or judicial decision of the State of residence, in implementation of this Convention.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying the European Parliament's opinion on the draft Convention on driving disqualifications
(5217/98 - C4-0061/98 - 98/0901 (CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Council proposal (5217/98 - 98/0901 (CNS)),

- having been consulted by the Council pursuant to Article K.6(2) of the Treaty on European Union (C4-0061/98),

- having regard to Rule 58 of its Rules of Procedure,

- having regard to the report of the Committee on Civil Liberties and Internal Affairs (A4-0000/96),

1. Approves the Council proposal, subject to Parliament's amendments;

2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

3 Instructs its President to forward this opinion to the Council and Commission.

B.
EXPLANATORY STATEMENT

In 1995 45 000 citizens of the European Union were killed and at 1.6 million were injured in road accidents. As well as the suffering and distress caused by these accidents, we also need to consider the costs they engender: every person killed costs the European Union about ECU 1 m. These figures are unacceptable and demand that effective efforts are made to reduce one of the principal causes of mortality in the European Union.

These striking figures conceal a wide variety of situations and circumstances. Those killed include drivers of cars and their passengers but also motor cyclists, cyclists and pedestrians. The causes of these accidents include mechanical defects in the cars, the carelessness of victims or drivers, speed, tiredness, the influence of medicines and also the effects of alcohol or drugs.

The authorities tackle these causes in very different ways, combining prevention and punishment. Prevention takes the form of campaigns to raise awareness of the problems of driving under the influence of alcohol, the fight against illegal drugs, compulsory technical inspections of vehicles, improving road signs, maintaining road networks, making the use of seat belts compulsory, improving passive and active safety systems in vehicles, etc. These preventive measures are intended to improve road safety in general.

Member States also impose penalties on persons who fail to comply with the rules laid down by the highway code. These penalties can range from a fine for a minor offence to disqualification for very serious offences. The rules applied by the Member States on disqualification from driving diverge very widely and their approximation would no doubt be conducive to greater transparency. Pending such an initiative, the Convention proposed by the Council introduces European-level recognition by the State of residence of a decision to disqualify a person from driving imposed in another Member State.

The Convention drawn up by the Council

As things stand at present, a driver whose driving licence is withdrawn in another Member State of the Union following a serious offence can continue to drive a vehicle in all of the other Member States, including his State of residence. The aim of the Convention is precisely to ensure that the driving disqualification imposed in another Member State will apply, on certain conditions, in the State of residence and subsequently in all of the Member States of the Union. The aim is primarily to combat cross-frontier recidivism, made easier at present by the legal vacuum surrounding driving disqualification.

It is important to support the Council's efforts on this matter, which is further complicated by the fact that national rules differ very widely according to the Member State. The free movement of persons, which has made great progress and is one of the pillars of the people's Europe, must not be used as a safe-conduct for reckless drivers. After several years of discussion in the Council, the document submitted to us is extremely well balanced and reflects a clear desire to reach a viable agreement.

The Convention applies to driving disqualification decided on by the relevant authorities of a Member State as punishment for an offence against driving regulations (reckless or dangerous driving, hit and run, driving under the influence of alcohol or drugs, refusal to submit to alcohol and drug tests,

speeding, driving a vehicle whilst disqualified, and any other offence for which a driving disqualification has been imposed of a duration of six months or more).

After taking the driving disqualification decision (in accordance with the administrative or judicial procedures followed in the State of the offence) the State of the offence must notify the State of residence of the decision and the latter must in principle recognize and apply that decision.

However, in order to take account of the reservations expressed by certain Member States with regard to preservation of their sovereignty and the differing situations relating to the respective powers and responsibilities of the administrative and judicial authorities, three procedures have been defined for the response to the decision by the State of the offence:

- the first (Article 3(1(a)), the simplest procedure, consists in recognizing the decision as such and executing it immediately;

- the second (Article 3(1(b)) consists in executing the decision as such via a judicial or administrative decision;

- the third (Article 3(1(c)), the most complex procedure, consists in taking due note of the decision of the State of the offence and then substituting a new administrative or judicial decision for that decision.

Article 4 makes provision for cases in which the State of residence must or may refuse to give effect to the decision of which it is notified by the State of the offence, in particular where driving disqualification is not a penalty available in the legislation of the State of residence for the giving rise to the discrimination acts, or where it is shown that the driver of the vehicle has not had an adequate opportunity to defend himself.

While Parliament can support the objectives of the Convention, there are a number of points which need to be clarified.

A swift procedure

Given that the administrative or judicial authorities of the State of residence do not need to take a decision on the substance of the case, but only on the matter of whether to apply the Convention or not, and if so, in what way; given also the duration of the procedure which culminated in the driving disqualification in the State of the offence, it would seem reasonable to reduce to a minimum the period in which the authorities of the State of residence must give their decision.

The time limit within which the State of the offence must notify the State of residence (Article 2a(1)) has thus been set at seven working days. A time limit of four weeks has been set for the decision-making procedures laid down in Article 3(1)(b)(execution via a judicial or administrative decision) and (c) (substituting a new judicial or administrative decision for the decision): these procedures are more complex and potentially lengthier than straightforward application of the decision of the State of the offence under (a) and must therefore be accompanied by time limits.

It should be noted, moreover, that there is no need to provide for further time limits for appeal procedures since this option was already provided in the State of the offence. Furthermore, as the changes which the competent authorities of the State of residence might decide on may only entail

reducing the penalty imposed by the State of the offence, and may therefore only be to the benefit of the person concerned, there is no legal need to provide for appeals procedures. Under these circumstances the decisions may in all cases be taken quickly

A transparent, simple procedure

The inherent principle of this Convention is the willingness of the State of residence to enforce a driving disqualification decision taken by another Member State. Consequently, the direct execution of that decision in the State of residence (the procedure described in Article 3(1)(a)) is assuredly the simplest, quickest procedure and the one which best adheres to that principle. The other two procedures make allowance for the at times highly divergent situations in the Member States as regards which authorities are responsible.

Under Article 12(2), the Member States must let it be known in a declaration which of the procedures laid down in Article 3(1) they intend to apply. It would therefore seem reasonable to decide that any new declaration replacing that initial declaration may only entail simplification, i.e. replace the procedure under (c) (new judicial or administrative procedure being substituted for that of the State of the offence) by the procedure under (b) (judicial or administrative implementing decision), or by the procedure under (a) (direct execution).

An enforceable procedure

Article 4 of the Convention regulates the cases in which the State of residence must (paragraph 1) or may (paragraph 2) refuse to give effect to the driving disqualification. In the interests of practical enforceability, certain observations must be made in this regard.

- Article 4(1) (b):
  It would seem scarcely acceptable for an offender having been disqualified from driving in another Member State to remain unpunished for the offence on the ground that proceedings are being taken against him in his State of residence for similar acts. That would be contrary to the whole principle of this Convention that an offender should not be allowed to escape punishment simply by returning to his home country This paragraph must therefore be deleted.
- Article 8.
  For the same reasons of practical applicability, the provisions laid down in Article 8, the purpose of which is to enable the State of the offence, where appropriate, to execute the period of disqualification not covered by the State of residence, are rather academic and would lead to complications, particularly as regards supervision. The aim of this Convention is to solve a problem caused by the increased freedom of movement of persons, not to slow down or obstruct such free movement by means of new frontier control procedures. In the interests of simplification and practical application, this Article should be deleted.
- Article 9
  In the interests of clarity and comprehensibility, it must be explicitly specified in Article 9 that the Member States of the Union will not penalize the driving of a motor vehicle until a judicial or administrative decision to implement the driving disqualification has been made by the State of residence.

A fair procedure

- Article 4(2) (c)
  This provision, which provides for the possibility of refusal to give effect to a decision in the State of residence if driving disqualification is not a penalty available under its legislation for the acts concerned, must be incorporated among the conditions giving rise to a compulsory refusal to give effect to the decision: it is legally inconceivable to impose a penalty for which there is no provision in national legislation. Any attempt to implement such a measure would inevitably lead to application of the Convention being blocked. The same point applies *mutatis mutandis* to the period of limitation (Article 4(2)(d)): the state of residence must refuse to give effect to the decision if there is a period of limitation for the acts concerned in its national legislation.

- Article 4(2))(e):
  The right of defence is a basic right and must be respected even if that might undermine the effectiveness of an administrative procedure. Consequently, where the State of residence recognizes that the person concerned has not had an adequate opportunity to defend himself, the refusal must be compulsory In cases where the Convention applies to offences committed in other Member States of the Union, the language barrier is no doubt the most likely cause of problems encountered in defending oneself and must therefore be referred to explicitly

Conclusions

The rapporteur recommends that, subject to the amendments proposed, Parliament should deliver a favourable opinion on this Convention, which, without claiming to be perfect, constitutes an important step in the right direction.