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(Acts adopted under Title VI of the Treaty on European Union)

EXPLANATORY REPORT ON THE CONVENTION ON DRIVING DISQUALIFICATIONS

(1999/C 211/01)

(Text approved by the Council on 24 June 1999)

Introduction

1. The growth of road traffic across the European Union, encouraged by the single market and the removal of internal frontier controls between most of the Member States, requires a determined collective effort to improve road safety. In particular, it is necessary to ensure that decisions on driving disqualifications are no longer enforced only in the territory of a single Member State, but also throughout the European Union.

2. It had long been recognised that there was disparity of treatment between drivers who are disqualified in their own country from driving and those who are disqualified in a country other than the one in which they are normally resident. In the first case, removing the right to drive prevents the licence holder from driving in any country where the licence previously allowed him to drive. In the second case, however, the disqualification applies only within the country where it was imposed and only for as long as the person is in that country; indeed, the licence, if it has been taken by the authorities of that State, must be returned to the driver when he leaves that country.

3. So whereas in the first case, the driver's actions lead to his being banned from driving in other countries, as well as in his own country (State of residence) where the disqualification was imposed, in the second case it does not; moreover, the driver can immediately drive legally in any other country where the driving licence is accepted.

4. This difference in treatment was not only contrary to the interests of road safety in the European Union but also highly inequitable. Thus, in 1999, the subject was raised by the Dutch Presidency in the Judicial Cooperation Working Group with a view to finding a solution. But it was not until 1995 that the French Presidency tabled the first draft of a Convention, which was then discussed under several Presidencies. Substantial progress was made during the Luxembourg Presidency of 1997 and the Convention was finalised during the 1998 United Kingdom Presidency. In essence, the Convention provides a mechanism whereby a disqualification in respect of the most serious road traffic offences imposed on a driver in a Member State other than his State of residence can be applied in all Member States.

Article 1

This Article defines the terms 'driving disqualification', 'State of the offence', 'State of residence' and 'motor vehicle' for the purposes of the Convention, wherever the terms are used in it.

1.1. The definition of 'driving disqualification' in point (a) recognises the diversity of laws and systems relating to disqualification which are in operation in the Member States. In some countries, a driving disqualification is imposed as a primary measure, for example as part of a criminal penalty; in others, it is a secondary or supplementary measure, perhaps imposed as a consequence of a conviction; in yet others, it may be imposed quite independently of a criminal conviction — even by a completely separate administrative authority purely as a safety measure. For the purposes of the Convention, the term 'driving disqualification' is intended to cover any measure linked to the commission of a road traffic offence [1] which results in the withdrawal or suspension of the driving licence or the right to drive [2]. This excludes the removal of a licence as a result of, for example, exclusively a medical condition or solely on the basis of a so-called point-system. Moreover, the Convention applies only to driving disqualifications which are no longer subject to a right of appeal — either because the appeal process has been used and

(1) The term 'offence' also refers to the case of multiple offences submitted at the same time resulting in a single driving disqualification provided that at least one of the offences involved conduct referred to in the Annex.

(2) As a matter of terminology rather than of substance, some 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.

exhausted or because the normal time limit for an appeal has expired without an appeal being made.

It is noted that at the adoption of the Convention it was understood that all decisions imposing disqualification from driving taken in the State of offence, including those taken by administrative authorities are subject to judicial control.

1.2. Point (b) defines the expression 'State of the offence' as the EU Member State where the road traffic offence which led to the disqualification was committed.

1.3. Point (c) defines the expression 'State of residence' as the Member State where the driver is normally resident within the meaning of Article 9 of Council Directive 91/439/EEC of 29 July 1991 on driving licences [1]. This states as follows:

'For the purpose of this Directive "normal" residence means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.'

1.4. Point (d) defines 'motor vehicle' by reference to Article 3(3) of Directive 91/439/EEC. The definition covers any power driven vehicle that requires a driving licence of any category or subcategory specified in Article 3 of the said Directive, including categories of licences referred to in Article 10 of that Directive.

Article 2

2. Under Article 2, Member States accept an obligation to cooperate in accordance with the provisions of the Convention so as to achieve the objective that drivers who are disqualified in a Member State other than their State of residence should not be able to escape the effects of their disqualification simply by leaving the State 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).

Article 3

3.1. Article 3 establishes the mechanism which triggers the enforcement process provided for in the Convention, namely a compulsory notification from the State of the offence to the State of residence of the disqualification it has imposed. Paragraph 1 provides that the notification shall be given 'without delay'. It is important that the State of residence should be able to take action as quickly as possible, both in the interests of road safety and in order to minimise delays in enforcing the disqualification. No specific time limit is laid down within which the notification is to be sent, but it is expected that Member States will put in place mechanisms that fulfil the spirit of this Article and ensure a speedy notification.

3.2. Paragraph 2 of Article 3 allows Member States to agree with each other that notifications pursuant to paragraph 1 shall not be made in certain cases in which Article 6(2)(a) would apply. Point (a) of Article 6(2) provides that the State of residence may refuse to give effect to the driving disqualification if the conduct for which a disqualification has been imposed in the State of the offence does not constitute an offence under the law of the State of residence — i.e. there is no dual criminalty. The purpose of paragraph 2 of Article 3 is to avoid unnecessary notifications in circumstances where it is known that the State of residence would always choose not to enforce a disqualification because of the lack of dual criminality.

3.3. As a consequence of Article 8 of Directive 91/439/EEC, the Member State to be notified pursuant to Article 3 of the Convention may be a Member State other than that which issued the driving licence concerned. It was therefore understood at the adoption of the Convention that in such cases the Member State which issued the licence would be informed of the situation by the State of residence.

Article 4

4.1. The Convention sets out three possible ways in which Member States when acting as a State of residence can give effect to decisions imposing disqualification. These are described in paragraph 1. Under paragraph 1 Member States are under the obligation to give effect to the decision imposing disqualification from driving without delay. This is particularly important in those cases where decisions imposing disqualification from driving take effect immediately or after any period for appeal has expired in the State of the offence, in view of the obligation of the State of residence to take into account any part of a period of the driving disqualification which has already been served in that State. This is essential to minimise any superfluous administrative efforts and will lead to an effective implementation of the Convention.

4.2. The first possible way of enforcing disqualifications (point (a) of paragraph 1) is by direct execution of the decision imposing the disqualification. In effect, the State of residence recognises the decision taken in the State of the offence and is able to give effect to it with a minimum of formality and without the need for the decision to be endorsed or confirmed in any way by a court in the State of residence. The only condition imposed on the State of residence when directly executing the decision of the State of the offence is that it must take into account — i.e. deduct — any part of the period of disqualification which has already been served in the State of the offence. It should be able to calculate this from the information provided to it by the State of the offence in accordance with the fifth indent of Article 8(1).

4.3. The second possible method of enforcing disqualifications is set out in point (b) of paragraph 1 — indirect execution of the decision imposing disqualification via a judicial or administrative decision. This method of enforcement allows the decisions of the State of the offence to be endorsed or confirmed by a judicial or administrative authority in the State of residence. Precisely how this result is to be achieved is left to the Member State to decide and is likely to vary, according to different domestic systems.

4.4. The third method of enforcement (point (c) of paragraph 1) is by conversion of the decision imposing disqualification into a judicial or administrative decision of its own, thereby in effect replacing the decision of the State of the offence by a new decision of the State of residence.

4.5. Enforcement under Article 4(1)(b) or (c) is subject to a number of conditions which are laid down in paragraphs 2 and 3 respectively. These are designed, for the most part, to give flexibility to cater for differences in laws in the Member States. Apart from the requirement to take into account any part of the disqualification period which has already been served — a requirement which is common to all three methods of enforcement — none of the other conditions in paragraphs 2 and 3 need to be laid down in respect of the first method of enforcement, since direct enforcement allows no latitude for variation of either the period or the nature of a disqualification.

4.6. In the case of enforcement under point (b) of paragraph 1 (indirect execution), three requirements are specified in paragraph (2):

(a) Any part of the period of disqualification already served in the State of the offence must be taken into account (i.e. deducted from the original period imposed). In case of a reduction of the duration of the driving disqualification pursuant to point (b), this point shall be applied on the basis of the reduced period.

(b) The State of residence may reduce the length of the disqualification imposed if that period is longer than the maximum period which may be imposed under its own law; but it may only reduce it to the maximum period imposable under its law.

(c) The State of residence may not extend the period of disqualification imposed by the State of the offence. This follows a principle which is well-established in conventions providing for transfer of sentences — namely that the receiving country may reduce the sentence but may not increase it or take action which aggravates the penal position of the person concerned.

4.7. In the case of enforcement under paragraph 1(c) (conversion), five requirements are specified in paragraph 3:

(a) The State of residence shall be bound by the facts as established in the decision imposing disqualification reached in the State of the offence. This means that the State of residence is not entitled to challenge the basis of the disqualification; that remains a matter for the State of the offence. Since, by virtue of Article 1(a), only disqualifications which are no longer subject to a right of appeal can be notified, the driver should already have had an opportunity to challenge the decision in the State of the offence. If, however, he sought in the State of residence to argue that he had not had an opportunity to defend himself in the State of the offence, the State of residence would need to address Articles 6(1)(e) and 8(3).

(b) The State of residence, when converting the disqualification, must take into account any part of the period of the disqualification imposed by the State of the offence which has already been served in the State of the offence. In case of a reduction of the duration of the driving disqualification pursuant to point (c), this point shall be applied on the basis of the reduced period.

(c) In converting, the State of residence is entitled to reduce the duration of the driving disqualification in order to bring it into line with the sort of period which, under its national law, would have been applied in the case in question, had that case been dealt with wholly in the State of residence.

(d) As in cases of enforcement under paragraph 2, the State of residence, when converting the disqualification, may not extend its duration.

(e) The State of residence is also debarred, when converting, from replacing the disqualification by a fine or any other measure. This restriction is included to prevent the nature of the measure being changed.

4.8. Paragraph (4) requires the State of residence, where necessary, to determine the date from which it will enforce the disqualification which has been notified to it. This provision was considered to be necessary for some Member States for the purpose of the enforcement of disqualifications notified to them by Member States which in accordance with their national law may not have started enforcing the disqualification at the time of the notification for the following reasons, either that the driver left the State of the offence very quickly before substantive action could be taken, or that the driving licence was not available by the time he left. (In some countries, a starting date for enforcement in the State of the offence cannot be set until the authorities have taken possession of the driving licence, so where no date has been set by the State of the offence, it is necessary for the State of residence to do so).

4.9. Paragraph 5 requires each Member State, when giving the notification referred to in Article 15(2) of the Convention, to indicate in a declaration which of the three methods of enforcement set out in paragraph 1 it intends to apply in its capacity as a State of residence.

This paragraph allows a declaration which has been made to be replaced at any time by a new declaration.

It is also possible for a Member State to declare that it will apply one of these procedures as a general rule, but that it will apply another of these procedures in certain cases, to be specified in its declaration by reference to objective criteria. For example, a Member state could declare that it will apply paragraph 1(a) (direct execution) in general, but that it will apply paragraph 1(b) (indirect execution) in cases where the duration of the driving disqualification imposed by the State of the offence exceeds the maximum term provided for acts of the same kind in the Member State making the declaration.

Article 5

5. The purpose of Article 5 is to make it clear that a State of residence, having given effect to a disqualification imposed on one of its own residents by a State of offence, is not debarred from taking any additional road safety measures that it considers appropriate and that are permitted under its own legislation. Articles 4(2)(c) and 4(3)(d) exclude the possibility of the State of residence extending the duration of the particular disqualification which is notified to it and which has been imposed in respect of a particular offence or offences. In some Member States, the imposition of corrective road safety measures (including disqualification) on drivers is not necessarily linked to conviction for an offence. In these Member States, it may already be possible for such measures to be imposed when it becomes known that a resident licence holder has offended or committed other acts abroad in a way that reflects on the safety of that person as a driver. Such a country's ability to take that action is not curtailed by the Convention.

Article 6

6.1. Article 6 sets out the only reasons which justify a refusal by a State of residence to give effect to a notification sent by a State of offence. Paragraph 1 of Article 6 sets out the circumstances in which the State of residence must refuse to give effect to a driving disqualification which is notified to it. Paragraph 2 sets out circumstances where the State of residence may refuse to do so.

6.2. The mandatory conditions for refusal mentioned in Article 6(1) are:

(a) Where the driving disqualification has already been fully enforced in the State of the offence. Clearly there is nothing further for the State of residence to do.

(b) Where the person who is the subject of a notification has already had a disqualification imposed on him in the State of residence for the same acts and that disqualification has been or is being enforced.

(c) Where the offender would have benefited from a general pardon or amnesty in the State of residence if the acts he committed in the State of the offence had been committed within the State of residence. This kind of provision is common to a number of Conventions dealing with the transfer of sentences.

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

(e) Where in a particular case, after the State of residence has received information supplied under Article 8, that State considers that the person concerned has not had an adequate opportunity to defend himself. Article 8 contains the information which must be sent by the State of the offence to the State of residence with a notification under Article 3. This includes, where the person concerned did not appear personally or was not represented at the proceedings, evidence that the person had been duly notified of the proceedings in accordance with the law of the State of the offence. Paragraph 3 of Article 8 allows the possibility for the State of residence to ask the State of the offence to provide supplementary information, if the State of residence considers on receipt of information received under paragraph 1 and 2 of Article 8 that

it is insufficient to allow it to take a decision pursuant to the Convention and in particular where there is doubt that the person has had an adequate opportunity to defend himself. For example, the State of residence may wish to be satisfied that it was possible for the person concerned to use his own language in order to express himself clearly during the proceedings leading to the driving disqualification.

Point (e) is not intended to permit general challenges to the systems of law or judicial procedure of other Member States.

6.3. The circumstances referred to in Article 6(2) where a State of residence has discretion under the Convention to refuse to give effect to a disqualification notified to it are:

(a) Where there is no dual criminality — i.e. where the conduct for which the disqualification was imposed is not an offence under the law of the State of residence.

(b) Where the period of disqualification left unserved by the time the State of residence has received the notification and is in the position to enforce it is less than one month. This means that the State of residence can refuse to give effect to a disqualification notified to it if it is foreseeable that at the time of the possible commencement of enforcement the period of disqualification left unserved will be less than one month. This discretion is included to avoid disproportionate effort; but it is open to a State of residence to enforce short periods of disqualification if it so chooses.

(c) Where the acts giving rise to the disqualification, through offences in both States, are not offences for which disqualification can be imposed under the law of the State of residence.

6.4. Paragraph 3 allows a Member State, when giving the notification referred to in Article 15(2), to declare that it will always take advantage of the discretion under paragraph 2 to refuse to enforce disqualifications in some or all of the circumstances set out under paragraph 2. Where such a declaration has been made, other Member States are then in a position where they do not have to notify disqualifications caught by the declaration. A State which has made a declaration may withdraw it at any time. The provision should be seen in the context of the differences between the systems of the Member States regarding the duration of disqualifications applied in relation to different offences and the ways in which decisions imposing disqualifications are executed.

Article 7

7. Article 7 deals with the practical arrangements for the handling of notifications given under Article 3. Under paragraph 1, the competent authority in the State of offence is to send the notification of a disqualification to the central authority of the State of residence. Paragraph 2 requires each Member State, when giving the notification provided for in Article 15(2) of the Convention, to specify these authorities. It may designate one or more central authorities as the recipients of notifications. It must also specify the competent authorities who will be responsible for submitting the notifications. It is entirely for each Member State to decide for itself who these various authorities should be. It does not, for example, follow that a central authority for the purpose of this Convention will be same authority as that for the purpose of other Conventions such as the 1959 European Convention on Mutual Assistance in Criminal Matters.

Article 8

8.1. Article 8 deals with the information which must be provided by the State of the offence when sending a notification under Article 3.

8.2. The details, set out in paragraph 1, are as follows:

— details serving to locate the person disqualified from driving.

The intention here is to provide information which will enable the State of residence to locate the person, so that it can enforce the disqualification. The information required will obviously include (where available) the full name, date of birth, address in the State of residence, any other regular address (for example, if the driver is actually working for a period in a country other than the State of residence). It will also be useful if the driving licence number is given (though this is unnecessary if the driving licence itself is available and is being sent on to the State of residence by the State of offence under the final indent of paragraph 1),

— 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.

It is likely that in all Member States, the 'decision' imposing a driving disqualification will contain details of the offence, the legal provisions relating to it, and the circumstances of the particular offence but if not, this information should also be provided with the decision,

— an attestation that it is final.

Since by virtue of Article 1(a), only disqualifications which are no longer subject to a right of appeal are to be notified under Article 3, it is necessary for confirmation to be given to the State of residence that the disqualification is indeed a final one and no longer subject to appeal,

— 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 State of the offence should in every case give the fullest possible information to the State of residence which will enable the latter to know the length of the disqualification, when it started to be enforced and, when, according to the original decision of the State of the offence, the disqualification is due to end (subject to any reduction in the period permitted under Article 4(2)(b) or 4(3)(c)),

— the driving licence, if it has been seized.

Where the licence has been seized, and not returned to the driver, it must be sent under Article 8 of the Convention to the State of residence. This will provide a good deal of the information required to be sent under Article 8.

8.3. Paragraph 2 recognises that there will be occasions when the driver was not present either personally or represented at the proceedings where he was disqualified. All Member States have domestic provisions laying down rules governing the notification of proceedings to defendants. The effect of paragraph 2, in addition to the information required under paragraph 1, is that the State of the offence must provide evidence that the person has been duly notified of the proceedings in accordance with its law, in any case where the person did not appear personally or was not represented.

8.4. Paragraph 3 recognises the possibility that, even when information required under paragraphs 1 and 2 is provided, it may still not be possible to reach a decision on the notification. This holds true, in particular, in a case where the competent authorities of the State of residence have doubts concerning whether the person has had an adequate opportunity to defend himself. In that situation, the State of residence shall seek supplementary information from the State of the offence, which is obliged to provide that without delay. It will be a matter for the discretion of the authorities in the State of residence whether such doubt exists. However, where it does, the supplementary information will be needed in order to enable the State of residence to consider whether, under Article 6(1)(e), the person has had an adequate opportunity to defend himself and whether it should therefore refuse to give effect to the disqualification.

Article 9

9.1. Article 9 concerns the translation of notifications and accompanying material and the certification of the documents. It mirrors Articles 16 and 17 of the European Convention on Mutual Assistance in Criminal Matters of 1959.

9.2. Paragraph 1 lays down the principle that translations of material supplied by the State of the offence to the State of residence shall not be required. This does not prevent bilateral arrangements between Member States regarding the translation of documents relating to the application of the Convention.

Paragraph 2 gives Member States the right to derogate from the principle by enabling them to make a declaration, when giving the notification referred to in Article 15(2), specifying that the documents referred to in paragraph 1 must be accompanied by a translation into one of the official languages of the institutions of the European Communities.

9.3. Paragraph 3 provides that in general, the documents referred to in paragraph 1 need not be certified. The one exception is the certified copy of the decision imposing a driving disqualification, referred to in the second indent of Article 8(1).

Article 10

10. This Article provides for the State of the offence to receive feedback from the State of residence about what it has done with the notification sent to it. The information must include any decision taken on the notification, any decision taken in respect of enforcement (for example any shortening of the disqualification period in accordance with Article 4). In addition, where it refuses to give effect to a driving disqualification under any of the grounds permitted in Article 6, it must give reasons to the State of the offence. This information will be directly relevant to the exercise by the State of the offence of its right under Article 11(1) to continue enforcing the original period of disqualification in its own territory. The information may also be relevant for the application of the second sentence of Article 6(3).

Article 11

11.1. Paragraph 1 preserves the right of the State of offence, in cases where, for example, the State of residence has reduced the original duration of the disqualification, to enforce, in the State of the offence, the full period of the

original disqualification. In practice, that means that the driver, having served the reduced period of disqualification, ordered by the State of residence, in accordance with Article 4(2)(b) or (3)(c), would be able to drive in the State of residence. In addition, but for Article 11(1), he would also be able to drive elsewhere. However, paragraph 1 gives the State of the offence the right to maintain on its own territory the original period of disqualification. Paragraph 2 allows any Member State, when giving the notification referred to in Article 15(2), to state that it will not apply paragraph 1 of Article 11 in its capacity of the State of the offence. Clearly it is important that the driver should know what his position is in relation to the State of the offence and whether or not, once he has completed serving his disqualification in the State of residence, he is still liable if he drives again in the State of the offence during the original duration of the disqualification. Paragraph 4 therefore requires a State of offence which proposes to apply paragraph 1 to notify the person of this fact when it notifies him of its decision to disqualify him. Paragraph 4 also requires the State of the offence to confirm in the notification given under Article 3, that it has given such notice to the driver.

11.2. Paragraph 3 places a requirement on the State of the offence and the State of residence to exercise their responsibilities under the Convention in such a way as to ensure that the total period of disqualification served in the two States does not exceed the period originally set by the State of the offence. This re-enforces the need specified in Article 8(1), fifth indent, for the State of the offence to provide information about starting and expiry dates, where known.

Article 12

12. This Article requires every Member State to adopt necessary measures to enable it to penalise the driving of a motor vehicle in its territory by a driver disqualified from driving by the State of residence under the Convention. Every Member State has provision in its law penalising driving whilst the person is disqualified by that country. However, this Article requires States to be able to penalise driving in its territory whilst the driver is disqualified by another country (i.e. the State of residence). The Council noted at the adoption of the Convention that the Danish delegation understands Article 12 as implying that the Member State must have 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.

Article 13

13. This Article provides that costs resulting from implementing the Convention will be borne in the Member State in which they occur.

Article 14

14. This Article is concerned with the role of the Court of Justice of the European Communities in relation to the Convention. It has to the widest extent possible been drawn up on the basis of already existing provisions on the jurisdiction of the Court of Justice in other instruments adopted under Title VI of the Treaty on European Union.

Paragraph 1 confers jurisdiction on the Court of Justice of the European Communities to rule on disputes between Member States concerning the interpretation or application of the Convention. That jurisdiction only arises, however, where such a dispute cannot be settled by the Council within six months of its being referred to the Council by any Member State.

The Court of Justice can also rule on any dispute between Member States and the Commission regarding the interpretation or application of the Convention. In that situation there is no requirement to seek settlement of the dispute within the Council.

Paragraph 2 enables any Member State to make a declaration to the effect that it accepts the jurisdiction of the Court of Justice to give preliminary rulings on the interpretation of the Convention. A Member State may make such a declaration when ratifying or acceding to the Convention, or at a later stage.

Paragraph 3 requires a Member State making a declaration under paragraph 2 to specify whether preliminary rulings can be sought only by its courts or tribunals against whose decisions there is no judicial remedy (subparagraph (a)) or by all courts or tribunals within its jurisdiction (subparagraph (b)). Moreover, the paragraph sets out the conditions under which a preliminary ruling can be requested. In that context the relevant court or tribunal must require a ruling on a question concerning the interpretation of the Convention to enable it to give judgment in a case pending before it.

Paragraph 4 provides for the application of the Statute of the Court of Justice and its Rules of Procedure in respect of

proceedings before the Court under this Article. In addition it permits any Member State, whether or not it has made a declaration under paragraph 2, to submit statements of case or written observations to the Court in cases which arise under paragraph 3.

Article 15

15. Under this Article the entry into force of the Convention will take place in accordance with the standard provisions established for such matters by the Council of the European Union.

The Convention will enter into force 90 days after notification of deposit of the instrument of adoption by the last of the fifteen States which were Members of the European Union when the Council Act establishing the Convention was adopted on 17 June 1998.

As in the case of judicial cooperation arrangements concluded earlier between the Member States, paragraph 4 provides that any Member State, may, at the time of adoption or at a later date, declare that as far as it is concerned the Convention will apply in advance in its relations with any other Member States which have made the same declaration. These declarations take effect 90 days after the date of their deposit.

Member States may not, however, declare that the Court of Justice has jurisdiction in respect of the Convention during the period of advance application as this will require full entry into force of the Convention following its adoption by the fifteen Member States.

It should also be noted that paragraph 5 provides that the Convention will only apply in relation to offences committed after the Convention enters into force or from the date on which, in accordance with paragraph 4, it becomes applicable between the Member States concerned.

Article 16

16. This Article permits any State which becomes a member of the European Union to accede to the Convention and carries out the procedures for such accession. However, a State which is not a member of the European Union may not accede to the Convention.

If the Convention has already entered into force when the new Member State accedes, it will come into force with respect to that State 90 days after the deposit of its instrument of accession. If the Convention is not in force 90 days after the deposit of the new Member State's instrument, it will come into force for that State, as for all other Member States, under the conditions set out in Article 15(3). In that case the acceding State may make a declaration of advance application.

The accession of a new Member State will not be a condition for the entry into force of the Convention as regards the other States which were members of the Union when the Council Act establishing the Convention was adopted.

Article 17

17. The purpose of this Article is to make it clear that no reservations are permitted to the Convention.

Article 18

18. This Article establishes the territorial scope of the application of the Convention for the United Kingdom.

Article 19

19. In accordance with this Article, the Secretary-General of the Council is the depositary of the Convention.

The Secretary-General is required to publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, declarations and also any other notification concerning the Convention.

Monitoring

20. In view of the practical and technical issues which may arise in implementation of this Convention, the Council has at the adoption of the Convention noted that it would be appropriate for its implementation and application to be closely monitored by the Council's subordinate bodies.

I

(Information)

COUNCIL

DECISION No 1/1999 OF THE EU/ICELAND AND NORWAY MIXED COMMITTEE ESTABLISHED BY THE AGREEMENT CONCLUDED BY THE COUNCIL OF THE EUROPEAN UNION AND THE REPUBLIC OF ICELAND AND THE KINGDOM OF NORWAY CONCERNING THE LATTERS' ASSOCIATION IN THE IMPLEMENTATION, APPLICATION AND DEVELOPMENT OF THE SCHENGEN *ACQUIS*

of 29 June 1999

adopting its Rules of Procedure

(1999/C 211/02)

THE MIXED COMMITTEE,

Having regard to the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association in the implementation, application and development of the Schengen *acquis* (hereinafter 'the Agreement'), and in particular Article 3(2) thereof,

HAS DECIDED AS FOLLOWS:

Article 1

The Mixed Committee shall be composed of representatives of the Governments of the Republic of Iceland (hereinafter 'Iceland') and the Kingdom of Norway (herinafter 'Norway'), the members of the Council of the European Union (hereinafter 'the Council') and the Commission of the European Communities (hereinafter 'the Commission').

The Committee shall be chaired:

— at the level of experts:

  by the delegation representing the member of the Council holding the Presidency,

— at the level of senior officials and Ministers:

  in the first six months of the year: by the delegation representing the member of the Council holding the Presidency;

  in the second six months of the year: alternately, by the delegation representing the Government of Iceland and by the delegation representing the Government of Norway.

The delegation representing the member of the Council holding the Presidency may cede the chair of the Mixed Committee to the delegation which will hold the next Council Presidency.

Article 2

The Mixed Committee shall meet at the seat of the Council in Brussels.

When the Council meets in a different place pursuant to its Rules of Procedure, the Mixed Committee shall also meet at ministerial level there.

In exceptional circumstances and for duly substantiated reasons, the Mixed Committee may decide unanimously to hold a meeting elsewhere.

Article 3

Meetings of the Mixed Committee shall not be public, unless the Mixed Committee unanimously decides otherwise.

Article 4

The Mixed Committee shall meet, at any appropriate level, when convened by its Chairman on his own initiative or at the request of one of its members.

Meetings of the Mixed Committee at ministerial level shall normally be convened for the day of a Council meeting dealing with issues in the area covered by Article 1 of the Agreement.

Article 5

The Mixed Committee at ministerial level shall be composed of representatives of Iceland and Norway and the members of the Council at ministerial level, authorised to commit the governments of their States, and a member of the Commission.

The presence of at least eleven members of the Mixed Committee at ministerial level, including the delegations of Iceland, Norway and the Commission, is required to enable the Mixed Committee to take decisions.

Meetings of the Mixed Committee at ministerial level shall be prepared by the Mixed Committee at senior official level. All items on the provisonal agenda for a meeting of the Mixed Committee at ministerial level shall be examined in advance by the Mixed Committee at senior official level, which shall endeavour to reach agreement at its level. If necessary, such items are to be submitted to the Mixed Committee at ministerial level.

Article 6

The Chairman shall draw up the provisional agenda for each meeting. The provisional agenda shall contain the item in respect of which a meeting has been requested in accordance with Article 4. The invitation to the meeting and the provisional agenda shall be forwarded to the addressees mentioned in Article 9 in due time before the meeting. The agenda shall be accompanied by all the necessary working documents.

Without prejudice to the rights of Iceland and Norway laid down in Article 4 of the Agreement, the agenda shall be adopted unanimously by the Mixed Committee at the beginning of each meeting and the Mixed Committee may decide unanimously to include in the agenda an item which does not appear on the provisional agenda. The delegations representing the United Kingdom and Ireland may not oppose the unanimity which is required to place on the agenda an item relating to the area covered by Article 1 of the Agreement, in which those States do not participate.

Article 7

The working documents for the Mixed Committee shall be drawn up in the languages of the Council, unless the Mixed Committee unanimously decides otherwise.

Article 8

Minutes of each meeting of the Mixed Committee at ministerial level shall be drawn up by the General Secretariat of the Council, under the responsibility of the Chairman, and forwarded to the delegations.

The minutes shall, as a general rule, indicate in respect of each item on the agenda:

— the documents submitted to the Mixed Committee,

— the conclusions and decisions reached by the Mixed Committee,

— the statements whose entry is requested by a delegation.

Any delegation may request that more details be inserted in the minutes regarding any item on the agenda.

The minutes shall be adopted unanimously by the Mixed Committee. The Mixed Committee may use a written procedure.

Article 9

Notifications made by the President in accordance with these Rules of Procedure shall be addressed to the missions of Iceland and Norway to the European Union, to the representations of the Member States of the European Union and to the Commission.

Correspondence to the Mixed Committee shall be sent to its President, at the address of the General Secretariat of the Council (Council of the European Union, Rue de la Loi/Wetstraat 175, B-1048 Brussels).

Article 10

The detailed arrangements for handling requests by the public to the Mixed Committee for access to its documents shall be identical to those which the Council has adopted in respect of its own documents.

Article 11

The secretariat of the Mixed Committee shall be provided by the General Secretariat of the Council.

Article 12

The deliberations of the Mixed Committee shall be confidential, unless the Mixed Committee decides otherwise.

The rules of the Council on measures for the protection of classified information applicable to the General Secretariat of the Council shall also apply to the protection of classified information to be used by the Mixed Committee.

Article 13

Where the Mixed Committee has been notified on the basis of the provisions of Article 8(4) of the Agreement, any decision by the Mixed Committee to continue the Agreement shall require unanimity.

Where the termination of the Agreement results from non-acceptance of an act or a measure which does not apply to Ireland and/or the United Kingdom, their representatives may not oppose unanimity.

Article 14

Where the Mixed Committee has been notified of a dispute in accordance with the provisions of Article 11 of the Agreement, the dispute shall be placed on the provisional agenda for the Mixed Committee at ministerial level.

Decisions by the Mixed Committee on settlement of disputes shall be taken unanimously.

Where the settlement of a dispute relates to the interpretation or application of a provision which does not apply to Ireland and/or the United Kingdom, their representatives may not oppose unanimity.

Article 15

Decisions of the Mixed Committee relating to procedural questions, except for those for which these Rules of Procedure require unanimity, shall be taken by a majority of its delegations.

Amendments to these Rules of Procedure shall be adopted unanimously by the Mixed Committee at ministerial level.

Article 16

This Decision shall take effect on the date of its adoption.

Article 17

This Decision shall be published in the *Official Journal of the European Communities*. Iceland and Norway shall be responsible for its official publication in their respective countries.

Done at Brussels, 29 June 1999.

For the Mixed Committee

The Chairman

O. SCHILY

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1. **Joint statement by all members of the Mixed Committee in respect of Article 4 of the Rules of Procedure:**

   'If the Council of the European Union intends to take a decision referred to in Article 8(1) of the Agreement relating to the adoption of new binding acts or measures which will deviate in substance from a common view of the Mixed Committee relating to the same acts or measures, the Mixed Committee shall, as a general rule, be convened prior to such decision in order to discuss, in accordance with Article 4 of the Agreement the foreseen changes.'

2. **Joint statement by all members of the Mixed Committee in respect of Article 6(2) of the Rules of Procedure:**

   'It is the common understanding of the members of the Mixed Committee that no objection will be raised concerning the adoption of the agenda in respect of items which fall within the scope of the Agreement.'

COMMISSION

Euro exchange rates [1]

22 July 1999

(1999/C 211/03)

1 euro	=	7,4428	Danish krone
	=	325,15	Greek drachma
	=	8,7795	Swedish krona
	=	0,6642	Pound sterling
	=	1,0499	United States dollar
	=	1,5776	Canadian dollar
	=	124,06	Japanese yen
	=	1,6068	Swiss franc
	=	8,271	Norwegian krone
	=	77,7735	Icelandic króna [2]
	=	1,6199	Australian dollar
	=	1,9818	New Zealand dollar
	=	6,38496	South African rand [2]

(1) *Source:* reference exchange rate published by the ECB.

(2) *Source:* Commission.

Prior notification of a concentration

(Case No IV/M.1637 — DB Investments/SPP/Öhman)

(1999/C 211/04)

(Text with EEA relevance)

1. On 9 July 1999, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (1), as last amended by Regulation (EC) No 1310/97 (2), by which the undertakings DB Investments (AXM) Limited (DBI) a wholly owned subsidiary of Deutsche Bank, Försäkringsbolaget SPP ömsesidigt (SPP) and Öhman Real Estate Fund No 1 AB (Öhman) acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the undertaking Fastighetsaktiebolaget Backlund (Backlunda) and Fastighetsaktiebolaget Minos (Minos), currently owned by Postens Pensionsstiftelse 1996.

2. The business activities of the undertakings concerned are:

— Deutsche Bank: full service bank,

— DBI: special investment vehicle formed for the purpose of the notified transaction and wholly owned by Deutsche Bank,

— SPP: pension insurance,

— Öhman: special investment company formed for the purpose of making long-term investments in real estate and being a wholly owned subsidiary of E. Öhman J:or Fondkommission AB which is a Swedish securities institution (stockbroker),

— Backlunda and Minos: own, maintain and operate real estate mainly used within the Swedish Post Group in different areas throughout Sweden.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1637 — DB Investments/SPP/Öhman, to:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

(1) OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

(2) OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

Prior notification of a concentration

(Case No IV/M.1629 — Knorr-Bremse/Mannesmann)

(1999/C 211/05)

(Text with EEA relevance)

1. On 16 July 1999, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (1), as last amended by Regulation (EC) No 1310/97 (2), by which the undertaking Knorr-Bremse Systeme für Schienenfahrzeuge GmbH (Knorr-Bremse), belonging to the group Knorr-Bremse and Rexroth Mecman GmbH (Rexroth), controlled by the Mannesmann group, acquire, within the meaning of Article 3(1)(b) of the Regulation, joint control of the newly created company Knorr-Bremse-MRP Systeme für Schienenfahrzeuge GmbH & Co. KG (K-B MRP) constituting a joint venture.

2. The business activities of the undertakings concerned are:

— Knorr-Bremse: electro-pneumatic and hydraulic brake systems for track vehicles, parts and equipment for track vehicles and fixed emergency brake facilities,

— Rexroth: hydraulic brake systems and brake components,

— K-B MRP: pneumatic brake systems and brake components.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference IV/M.1629 — Knorr-Bremse/Mannesmann, to:

European Commission,
Directorate-General for Competition (DG IV),
Directorate B — Merger Task Force,
Avenue de Cortenberg/Kortenberglaan 150,
B-1040 Brussels.

(1) OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

(2) OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

Non-opposition to a notified concentration

(Case No IV/M.1527 — OTTO Versand/Freemans)

(1999/C 211/06)

(Text with EEA relevance)

On 16 June 1999, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),

— in electronic form in the 'CEN' version of the CELEX database, under document number 399M1527. CELEX is the computerised documentation system of European Community law; for more information concerning subscriptions please contact:

EUR-OP,
Information, Marketing and Public Relations (OP/4B),
2, rue Mercier,
L-2985 Luxembourg.
Tel. (352) 29 29-42455, fax (352) 29 29-42763.

III

(Notices)

COMMISSION

OPEN COMPETITION COM/A/21/98 — PRINCIPAL ADMINISTRATORS (A 5/A 4)

of Swedish nationality

LIST OF SUITABLE CANDIDATES

(1999/C 211/07)

Publication as announced in point VIII.3 of the Notice of Competition COM/A/21/98 (OJ C 408 A of 29 December 1998).

AHNLID, Anders
ANDERSSON, Claes-Axel
ASTBERG, Stig Magnus
BLADH, Roland
BOMAN, Lars
ENEGREN, Johan
ENEQUIST, Gunnar
FLODIN, Ulrika
FRYDMAN, Jan Eric
HAGSTRÖM, Olle
HANSSON, Carl-Johan
HÖSTRUP, Jesper
JOHANSSON, Eva
JONSSON, Ulf Lennart
KARLSTRÖM, Haakan
MAGNUSSON, Lars Jörgen
MATTHIESSEN, Jens Anders
MÖLLERSTRÖM, Olof
NÄSSLIN, Elisabeth
OLSON, Krister
PALM, Aasa
RAMSAY, May Ann
SEMNEBY, Hans Peter
SVEDÄNG, Karl Frederik
TOREHALL, Eva Pauline
TRAUNG, Margareta
TYNELL, Alice
WALLDEN, Axel
WEDIN, Jörgen Nils
WIGEMARK, Lars