



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

COPEN 10

COVER NOTE

from : The Permanent Representative of the Federal Republic of Germany,
Dr Wilhelm Schönfelder
date of receipt : 5 March 2001
to : Secretary-General of the Council of the European Union, Mr Javier SOLANA
Subject : Note from the Federal Republic of Germany
– Initiative of the Federal Republic of Germany for a Council act establishing an
agreement on cooperation between the Member States of the European Union
in proceedings for road traffic offences and the enforcement of financial
penalties

Sir,

I have the honour to forward you an initiative of the Federal Republic of Germany for a Council act establishing an agreement on cooperation between the Member States of the European Union in proceedings for road traffic offences and the enforcement of financial penalties, pursuant to Article 31(a) and Article 34(2)(d) of the Treaty on European Union ¹.

Yours sincerely,

Dr Wilhelm Schönfelder

¹ The proposal is attached to this note. An explanatory note on the initiative will be forwarded shortly.

COUNCIL ACT

of

establishing in accordance with Article 34
of the Treaty on European Union
the Agreement on Cooperation between the Member States
of the European Union in Proceedings for Road Traffic Offences
and the Enforcement of Financial Penalties

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(d) thereof,

Having regard to the initiative of the Federal Republic of Germany,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) For the purposes of achieving the objectives of the Union the rules on cooperation between the Member States of the European Union in proceedings for road traffic offences and the enforcement of financial penalties should be improved, and an Agreement, as set out in the Annex hereto, should be established to that end.

- (2) The Agreement falls within the scope of Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis ¹.
- (3) The procedures set out in the Agreement concluded by the Council of the European Union with the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis (hereinafter the "Association Agreement") ² have been observed in respect of the present Agreement.
- (4) When the adoption of this Act is notified to the Republic of Iceland and the Kingdom of Norway in accordance with Article 8(2)(a) of the Association Agreement, those two States will be informed in particular of the contents of Article 24 on entry into force for Iceland and Norway and will be invited to submit, at the time they inform the Council and the Commission of the fulfilment of their constitutional requirements, the relevant statements under Article 25(2) of the present Agreement,

HAS DECIDED that the Agreement, the text of which is given in the Annex and which has been signed today by the Representatives of the Governments of the Member States of the Union, is hereby established,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements,

¹ OJ L 176, 10.7.1999, p. 31.

² OJ L 176, 10.7.1999, p. 36.

INVITES the Member States to begin the procedures applicable for that purpose before
[1 June 2001].

Done at _____ ,

For the Council

The President

AGREEMENT
ESTABLISHED BY THE COUNCIL
IN ACCORDANCE WITH ARTICLE 34
OF THE TREATY ON EUROPEAN UNION
ON COOPERATION BETWEEN THE MEMBER STATES
OF THE EUROPEAN UNION
IN PROCEEDINGS FOR ROAD TRAFFIC OFFENCES
AND THE ENFORCEMENT OF FINANCIAL PENALTIES

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

REFERRING to the Council Act establishing the Agreement on Cooperation between the Member States of the European Union in Proceedings for Road Traffic Offences and the Enforcement of Financial Penalties,

WISHING to improve judicial cooperation in criminal matters between the Member States of the Union, without prejudice to the rules protecting individual freedom,

WHEREAS [...] citizens of the Member States also commit road traffic offences when staying in the territory of a Member State other than that in whose territory they habitually reside,

WHEREAS it has been shown that it is not always possible, in spite of sustained efforts to clamp down on road traffic offences, to establish the identity of the perpetrators before they return to the territory of the Member State where they habitually reside and to enforce financial penalties in respect of the offences committed,

CONVINCED that cooperation between the Member States in this field is desirable, despite the fact that different authorities are responsible for enforcement in those States,

EXPRESSING their confidence in the structure and functioning of their legal systems and in the ability of all Member States to guarantee a fair trial,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

TITLE I
GENERAL PROVISIONS

ARTICLE 1
[...]

1. The purpose of this Agreement is to *facilitate assistance with enforcement and* supplement the provisions of:
 - (a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the "European Mutual Assistance Convention";
 - (b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
 - (c) the provisions on mutual assistance in criminal matters of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the "Schengen Convention").
2. This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

ARTICLE 2

[...]

For the purposes of this Agreement:

- (a) "road traffic offence" shall mean conduct which infringes road traffic regulations and which is considered a criminal or administrative offence, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- (b) "financial penalty" shall mean the obligation to pay a sum of money in respect of a road traffic offence, the amount of which is assessed by the judicial or administrative authorities of the Member States;
- (c) "competent authority" shall mean the judicial or administrative authority of the Member States responsible for proceedings for road traffic offences and enforcing financial penalties in respect thereof;
- (d) "decision" shall mean an act by the competent authorities of one of the Member States establishing a road traffic offence in respect of which a financial penalty has been imposed on a person, against which an appeal may be or could have been lodged;
- (e) "requesting authority" shall mean the competent authority of the Member State in whose territory the road traffic offence was committed;
- (f) "requested authority" shall mean the competent authority of the Member State in whose territory the person suspected of having committed a road traffic offence or upon whom a financial penalty has been imposed in respect thereof either resides or has his habitual residence;

- (g) "requesting Member State" shall mean the Member State in whose territory a decision has been delivered in respect of a person who either resides or has his habitual residence in the territory of another Member State;
- (h) "requested Member State" shall mean the Member State in whose territory a person in respect of whom a decision has been delivered in the territory of another Member State either resides or has his habitual residence.

TITLE II

PRINCIPLES

ARTICLE 3

1. The Member States undertake to accord each other the widest possible cooperation in proceedings for road traffic offences and the enforcement of decisions in respect thereof in accordance with the provisions of this Agreement.

2. Title IV of this Agreement shall not apply:

- (a) to the enforcement of a decision which includes a custodial sentence as the main penalty;
- (b) to road traffic offences which coincide with offences that are not related to road traffic only, unless the road traffic offence is prosecuted separately or exclusively.

TITLE III

COOPERATION IN PROCEEDINGS FOR ROAD TRAFFIC OFFENCES

ARTICLE 4

1. The competent authorities may, by communicating a vehicle registration number through their national vehicle registration authorities, request information from the national vehicle registration authorities of the other Member States concerning the type and make of the corresponding motor vehicle as well as the identity and address of the person or persons with whom the motor vehicle in question was registered when the road traffic offence was committed.
2. The vehicle registration authorities of the Member States shall directly send each other the information referred to in paragraph 1 with a view to transmission to the competent authority. They shall also send the name and address of the requested authority if it is a different authority.
3. A Member State may designate another central authority for the exchange of the information referred to in paragraph 2.
4. The relevant provisions of the Schengen Convention, in particular Articles 126 to 128 thereof, shall apply to the transmission of personal data in accordance with paragraph 1.

ARTICLE 5

1. The requesting authority may send all communications concerning the consequences and decisions relating to the road traffic offence directly to the persons suspected of having committed a road traffic offence. The provisions of Article 5 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union shall, irrespective of its entry into force, apply by analogy.

2. The communications and decisions referred to in paragraph 1 shall contain or be accompanied by all information which the recipient requires in order to react, in particular regarding:
 - (a) the nature of the road traffic offence, the place, date and time at which it was committed and the manner in which it was established;

 - (b) the registration number and, where possible, the type and make of the motor vehicle with which the road traffic offence was committed or, in the absence of this information, any means of identifying the vehicle;

 - (c) the amount of the financial penalty which may be imposed or, where appropriate, the financial penalty which has been imposed, the deadline within which it has to be paid and the method of payment;

 - (d) the possibility of invoking exonerating circumstances, as well as the deadlines and procedures for presenting these circumstances;

 - (e) the possible channels of appeal against the decisions, the procedures and deadlines for lodging an appeal, as well as the contact details of the authority with which an appeal should be lodged.

ARTICLE 6

1. If the addressee does not respond to communications or decisions pursuant to Article 5 within the stipulated period or if the requesting authority considers further information necessary to apply this Agreement, the latter may directly seek assistance from the requested authority. A translation into the official language or one of the official languages of the requested Member State shall be attached to such requests for assistance.

2. The provisions of Title III, Chapter 2 of the Schengen Convention or the Acts of the European Union which have replaced these provisions and which are applicable between the Member States concerned shall apply to the requests referred to in paragraph 1.

TITLE IV

MUTUAL ENFORCEMENT OF DECISIONS

ARTICLE 7

1. The transfer of the enforcement of decisions may only be requested under this Agreement where:
 - (a) all channels of appeal against the decision have been exhausted and the decision is enforceable in the territory of the requesting Member State;
 - (b) the competent authorities have, in particular in accordance with Article 5, requested the person concerned to pay the financial penalty imposed but to no avail;

- (c) the financial penalty is not limited by lapse of time under the law of the requesting Member State;
 - (d) the decision concerns a person who resides or who has his habitual residence in the territory of the requested Member State;
 - (e) the amount of the fine or financial penalty imposed is at least 40 euros.
2. The Member States may bilaterally alter the amount fixed in paragraph 1(e).

ARTICLE 8

1. The *request*, authorised under Article 7, *for* transfer of the enforcement of a decision may not be refused unless the requested Member State deems that:
- (a) the road traffic offence giving rise to the decision is not provided for under the law of the requested Member State;
 - (b) enforcement of the request runs counter to the *ne bis in idem* principle pursuant to the provisions of Articles 54 to 58 of the Schengen Convention;
 - (c) the financial penalty is limited by lapse of time under the law of the requested Member State;
 - (d) the person concerned would have been granted an amnesty or a pardon by the requested Member State if the road traffic offence had been committed in the territory of the requested Member State.
2. The requested Member State shall inform the requesting Member State as soon as possible of a refusal to execute the request, giving the reasons for the refusal.

ARTICLE 9

1. The decision shall be enforced without delay by the competent authorities of the requested Member State.
2. The financial penalty shall be payable in euros or - in those requested Member States which have not introduced the euro - in their national currency. The conversion between euros and the national currency concerned - or between two national currencies - shall be calculated on the basis of the official exchange rate obtaining when the decision mentioned in paragraph 1 is taken.
3. Should it transpire [...] that the amount of the financial penalty imposed by the decision exceeds the maximum amount of the financial penalty prescribed in respect of the same type of road traffic offence by the law of the requested Member State, the enforcement of the decision shall not exceed this maximum amount.
4. At the time of the notification referred to in Article 21(2), each Member State may, for reasons of a constitutional order or of equal importance, declare that it intends to derogate from the application of paragraph 1 by making a declaration defining the cases in which the financial penalty to be enforced must be declared enforceable by a judicial decision of the requested Member State before enforcement. This judicial decision shall not, however, concern the contents and the amount of the decision of the requesting Member State which is to be enforced.

ARTICLE 10

1. The enforcement of the decision shall be governed by the law of the requested Member State.

2. Any part of the financial penalty already enforced in the requesting Member State shall be deducted in full from the penalty to be enforced in the requested Member State.

3. Where the person against whom the decision has been taken does not pay or pays only in part within the specified period, an alternative custodial sanction or coercive detention may be applied by the requested Member State if provided for in both Member States, unless expressly excluded by the law of the requesting Member State.

ARTICLE 11

The requesting Member State may no longer proceed with the enforcement of the decision once it has requested the transfer of enforcement. The right of enforcement shall revert to the requesting Member State upon its being informed by the requested Member State of the latter's refusal or inability to enforce.

ARTICLE 12

The requested Member State shall terminate enforcement of the decision as soon as it (the requested Member State) is informed by the requesting Member State of any decision, measure or any other circumstance as a result of which enforcement of the decision is suspended or the decision ceases to be enforceable.

ARTICLE 13

1. Requests for the transfer of the enforcement of a decision and all communications relating thereto shall be made in writing. They may be transmitted through any appropriate channels leaving a written record, including a fax.
2. Such requests shall be transmitted directly between the competent authorities of the Member States, the contact details of which shall be furnished by the vehicle registration authorities (Article 4(2)), and returned in the same way. They shall be transmitted via the designated central authorities of the Member State if the contact details of the competent authority cannot be inferred from the information referred to in Article 3(2).

ARTICLE 14

1. The request for the transfer of enforcement of a decision shall be accompanied by a copy of the decision and a declaration by the competent authority of the requesting Member State certifying that the conditions laid down in subparagraphs (a), (b) and (c) of Article 7(1) have been fulfilled.
2. Where appropriate, the requesting Member State shall accompany its request by other information relevant to the transfer of the enforcement of a decision, in particular information regarding the special circumstances of the offence which were taken into consideration when assessing the financial penalty and, where possible, the text of the legal provisions applied.
3. If the requested Member State considers that the information supplied by the requesting Member State is inadequate to enable it to apply this Agreement, it shall ask for the additional information required.

4. The translation of the relevant documents into the official language or one of the official languages of the requested Member State shall be attached.

ARTICLE 15

The competent authorities of the requested Member State shall inform the competent authorities of the requesting Member State of the enforcement of the financial penalty or, where appropriate, of inability to enforce the decision.

ARTICLE 16

The financial penalty and the cost of proceedings incurred by the requesting Member State shall be enforced. Monies obtained from the enforcement of decisions shall accrue to the requested Member State.

ARTICLE 17

Member States shall not claim from each other the refund of costs resulting from application of this Agreement.

TITLE V

FINAL PROVISIONS

ARTICLE 18

The Joint Supervisory Authority established by the Schengen Convention shall be responsible, in matters relating to the protection of personal data, for delivering an opinion on the common aspects resulting from the implementation of this Agreement.

ARTICLE 19

The Council, by a majority of two-thirds of the Contracting Parties [...], may decide to alter the amount provided for under subparagraph (e) of Article 7(1).

ARTICLE 20

This Agreement shall apply to the territory of the Member States. As regards the French Republic it shall apply only to the European territory of the French Republic, and as regards the Kingdom of the Netherlands this Agreement shall apply only to the European territory of the Kingdom of the Netherlands. [...] This Agreement shall not apply to the Faroe Islands and Greenland. It shall apply to Gibraltar.

ARTICLE 21

1. This Agreement shall also be applicable to traffic offences committed before its entry into force.
2. Any Member State may declare, when making the notification referred to in Article 22(2), that as far as it is concerned, this Agreement shall apply only to road traffic offences committed after its entry into force or, in its relations with those Member States which have made a declaration to that effect, after it has become applicable.

ARTICLE 22

1. This Agreement 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 the constitutional procedures for the adoption of this Agreement.
3. This Agreement shall, 90 days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Agreement, which is the eighth to complete this formality, enter into force for the eight Member States concerned.
4. Any notification by a Member State subsequent to the receipt of the eighth notification referred to in paragraph 2 shall have the effect that, 90 days after this subsequent notification, this Agreement shall enter into force as between that Member State and the Member States for which the Agreement has already entered into force.

5. Before the Agreement has entered into force pursuant to paragraph 3, any Member State may, when making the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Agreement in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.

ARTICLE 23

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

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

3. The instruments of accession shall be deposited with the depositary.

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

5. Where this Agreement is not yet in force at the time of the deposit of their instrument of accession, Article 22(5) shall apply to acceding Member States.

ARTICLE 24

1. Without prejudice to Article 8 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis (the "Association Agreement"), the provisions of the present Agreement shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement on fulfilment of their constitutional requirements, in their mutual relations with any Member State for which the present Agreement has already entered into force pursuant to Article 22(3) or (4).
2. Any entry into force of the present Agreement for a Member State after the date of entry into force of the provisions of the present Agreement for Iceland and Norway shall render these provisions also applicable in the mutual relations between that Member State and Iceland and Norway.
3. The provisions of the present Agreement shall in any event not become binding on Iceland and Norway before the date to be fixed pursuant to Article 15(4) of the Association Agreement.
4. Without prejudice to paragraphs 1, 2 and 3 above, the provisions of the present Agreement shall enter into force for Iceland and Norway not later than on the date of entry into force of the present Agreement for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Agreement.

ARTICLE 25

1. The Secretary-General of the Council of the European Union shall act as depositary of this Agreement.
2. At the latest when making the notification referred to in Article 22(2), each State shall notify the depositary of the names and addresses of the authorities within the meaning of Articles 2, 4 and 13(2).
3. The list of authorities pursuant to paragraph 2 may [...] be subsequently changed at any time by notification to the depositary.
4. 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 Agreement.

Done at on the in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.
