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COUNCIL OF THE EUROPEAN COMMUNITIES
GENERAL SECRETARIAT

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PRESS RELEASE

537th meeting of the Council

- Justice -

Conference of Ministers of Justice
meeting within the Council

Luxembourg, 9 October 1978

President: Mr Hans-Jochen VOGEL,
Federal Minister of Justice of the
Federal Republic of Germany

The Governments of the Member States and the Commission of the European Communities were represented as follows:

Belgium:

Mr Renaat VAN ELSLANDE Minister of Justice

Denmark:

Mrs Nathalie LIND Minister of Justice

Mr Ole MADSEN State Secretary,
Ministry of Justice

Germany:

Mr Hans-Jochen VOGEL Federal Minister of Justice
of the Federal Republic of
Germany

Mr Günther ERKEL State Secretary,
Federal Ministry of Justice

France:

Mr Alain PEYREFITTE Keeper of the Seals,
Minister of Justice

Ireland:

Mr Gerard COLLINS Minister for Justice

Italy:

Mr Francesco BONIFACIO Minister of Justice

Luxembourg:

Mr Emil KRIEPS Minister of Justice

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Netherlands:

Prof. M.J. de RUITER

Minister of Justice

United Kingdom:

Lord ELWYN-JONES

Lord High Chancellor of
Great Britain

Mr Ronald KING-MURRAY

Lord Advocate

Commission:

Mr Etienne DAVIGNON

Member

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Court of Justice:

Mr Hans KUTSCHER

President

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EXTENSION OF THE CONVENTION ON JURISDICTION AND THE
ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

1. The Representatives of the Governments of the Member States ⁽¹⁾ meeting within the Council have signed the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and to the Protocol on its Interpretation by the Court of Justice.

The accession of these three Member States to the 1968 Convention known as the Brussels Convention (which entered into force on 1 February 1973) and to the 1971 Protocol on its Interpretation (which entered into force on 1 September 1975) brings an area of major importance for the citizen and for the exercise of his rights into line with the enlargement of the Community.

When they joined the Community the three new Member States undertook to accede to the Convention on Enforcement and the Protocol on its Interpretation. Negotiations for this purpose commenced in 1973 under the chairmanship of Mr Jenard, Director of Administration at the Belgian Ministry of Foreign Affairs, in order to make to the texts the adjustments necessary to take account of legal peculiarities in the law of the three new Member States and the importance to them of certain economic sectors. That these adjustments have been able to be made while the substance of the Convention has been preserved is a measure of their success.

⁽¹⁾ See pp. 2 and 3

2. The purpose of the 1968 Convention is to simplify the formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals. To this end, the Convention first of all lays down rules concerning jurisdiction in civil and commercial matters.

It goes on to lay down a procedure for the enforcement of judgments given in another Member State which is simpler than the traditional rules and rapid because proceedings are not adversary in the initial stage.

However, in the event of refusal to enforce or where the party against whom enforcement is sought contests the substance of the judgment, a more complex procedure intended to offer a maximum of guarantees and thus involving adversary proceedings is provided for.

Both the Brussels Convention and the Protocol on its Interpretation have acquired major practical significance. Hundreds of judgments in the Member States have been based on the Convention and a series of rulings by the Court have settled basic questions of its interpretation.

3. In addition to the technical adjustments resulting from its geographical extension, the chief amendments to the Convention concern the following fields:

- there are particular provisions to take account of the special features of United Kingdom trust law;
- a series of provisions on maritime law have been added to take particular account of the extent to which United Kingdom courts exercise jurisdiction in this area;
- to take account of the dimension which the accession of the United Kingdom adds to the insurance market in the European Community, several amendments have been made to the provisions governing insurance contracts, which form a separate section of the Convention. In particular the possibility of concluding agreements on jurisdiction has been extended in two directions: on the one hand by making express provision for the possibility of concluding such agreements with policy-holders who are not domiciled in the Community, and on the other enumerating the risks which may be covered by insurance contracts in respect of which the Convention allows the conclusion of jurisdiction clauses. These risks mainly concern the transport sector;

- to take account of the development of the law since the signing of the Convention in 1968, new provisions have been introduced on consumer protection. The principal objective is to give the final consumer more say in the choice of courts with jurisdiction to hear cases involving the consumer and the vendor.

4. When signing the Convention on Accession, the Representatives of the Governments of the Member States declared that they intended to use their best endeavours to ensure that the Convention is ratified quickly so that these provisions, which are of great importance in creating harmonized procedural law in the Community, can enter into force as soon as possible.

THIRD COMPANY LAW DIRECTIVE

The Council adopted, in the official languages of the Communities, the third company law Directive, based on Article 54(3)(g) of the Treaty and concerning harmonization of the rules on mergers of public limited liability companies governed by the laws of one and the same Member State.

The Directive is designed to co-ordinate the procedures for and effects of mergers and similar operations in order to arrive at an equivalent degree of protection throughout the Community for the members, creditors and employees of companies involved in such operations.

The provisions of the Directive, which are to be converted into national law within three years, define what is meant by a merger, stipulate those companies which may be merged, lay down minimum requirements for the contents, publication and supervision of the draft terms of merger to be drawn up by administrative or management bodies and determine the powers of general meetings and the rights of individual shareholders and of minority shareholders.

Other Articles are concerned with protecting the interests of creditors, particularly debenture-holders.

The protection of employees in the event of mergers and similar operations has been dealt with in a specific Directive on the maintenance of employees' rights in the event of transfers of undertakings etc., which was adopted in 1977. In view of the degree of protection afforded by this Directive and the short space of time which has elapsed since it was adopted, the present Directive reaffirms the existing protection by making reference to the specific Directive.

One of the main features of a merger is the transfer of all the assets and liabilities; shareholders of the company being acquired become shareholders in the acquiring company, and the company being acquired ceases to exist. The acquired company may, however, under certain conditions, carry out formalities concerning the transfer of some of its assets.

The Directive also governs the grounds and detailed procedures for rendering mergers void; such nullity may only be ordered under certain conditions.

These rules apply similarly in the case of merger by the formation of a new company.

Adoption of this Directive might also facilitate negotiations on a convention, currently being prepared by an intergovernmental group of experts, on mergers between public limited liability companies of different Member States.

CHILD CUSTODY

On the basis of a memorandum from the Belgian delegation on child custody, the Council held an exchange of views on the questions arising in this field.

Following this discussion, which covered both the desirability and the procedural aspects of a Community initiative, the Council agreed to instruct a working party of experts, acting in collaboration with the Commission, to report to the Permanent Representatives Committee within six months on whether the work being done by the Council of Europe was likely to resolve the problems in the reasonably near future, or whether a Convention, possibly of a complementary nature at the level of the Nine, ought to be envisaged.

FUNCTIONING OF THE COURT OF JUSTICE

On the basis of a memorandum from the Court of Justice on the measures which it deems necessary for its proper functioning now and in the future, the Council held a discussion after which it agreed on the following statement:

"THE COUNCIL OF THE EUROPEAN COMMUNITIES,

- having taken note of the memorandum from the Court on the measures it deems necessary to ensure its proper functioning now and in the future, shares the Court's concern that the quality and output of legal work should be maintained,
- confirms its determination to introduce all measures within its power to enable the Court, in view of the significant increase in its work load, to continue carrying out conscientiously and rapidly the tasks entrusted to it pursuant to the Treaties,
- states that it is favourably disposed to an adaptation of the rules of procedure, whilst respecting fundamental principles of procedure and judicial organization, such as to ensure that the Court functions as smoothly as possible and that the time taken by proceedings is kept within reasonable limits,

- takes note of the Court's suggestions for an increase in the number of Judges and Advocates-General,
- instructs the Permanent Representatives Committee to examine as soon as possible all the proposals which the Court may submit in the light of today's discussions and to submit an initial report within six months of the submission of such proposals."

TRIBUNAL FOR DISPUTES BETWEEN THE INSTITUTIONS AND THEIR STAFF

The Council,

Having taken note of the Commission proposal of 4 August 1978 for a regulation aiming at amending the Staff Regulations of Officials and setting up an Administrative Tribunal of the European Communities, and of the view expressed by the Court in its letter of 22 July 1974 that this tribunal might be set up by amending the Staff Regulations of Officials,

Whereas a decision on this proposal cannot be taken until the Opinions of the European Parliament and of the Court of Justice are known,

Having regard to its decision on 26 November 1974, by which it agreed in principle to the desirability of setting up a court of first instance;

Agreeing to make provision for a court of first instance which shall decide on matters both of law and of fact in disputes between members of the staff and the appointing authority, reserving to the Court jurisdiction as a court of final instance, for all questions of law;

- requests the Permanent Representatives Committee to ensure that discussions are started on this proposal as soon as the above-mentioned Opinions have been received, and to ensure that work thereon is concluded if possible within nine months.

KNOWLEDGE OF COMMUNITY LAW

The Council

- confirming the importance which it attaches to measures to improve knowledge and accessibility of Community law;
- noting and welcoming the fact that since its meeting in 1974 significant progress has been achieved in this direction, particularly as regards the consolidation of Council and Commission acts;
- believing that further progress must be achieved in this area, and desiring to contribute to the best of its capabilities to this aim;

1. takes note of the report from the Chairman of the Working Party on Legal Informatics to the Permanent Representatives Committee on progress with the automation of legal documentation and welcomes the fact that the information available in the inter-institutional documentation system is to be made accessible to the Member States and, within the limits of the means available, to those persons to whom the law applies;
2. having approved the conclusions of the Report presented at its request by the Management Committee of the Office for Official Publications on the procedure by which a source index to Community legislation will be prepared, notes with satisfaction that this source index will be published in the course of 1979;
3. takes note of the intention of the Court of Justice of the European Communities to reply to the wish, expressed by the Council at the above-mentioned meeting, that a card filing system of its case law as well as of the case law of the courts of Member States concerning Community law be set up and information as to the contents thereof published; invites Member States and Community Institutions to aid the Court of Justice in every way possible for this purpose; suggests that the Court of Justice take the initiative of convening a Working Party within a period of three months in order to promote an exchange of views on the procedure which might prove suitable for such a source index.

PARTICIPATION BY MEMBER STATES IN CASES BEFORE THE COURT OF JUSTICE

The Council noted a statement submitted by the United Kingdom delegation concerning participation by Member States in cases before the Court of Justice, and held an exchange of views on the matter, at the end of which it instructed the Permanent Representatives Committee to study the issues raised.

DEBTS UNDER CIVIL LAW

The Council took note of a statement by the Belgian delegation concerning debts under civil law and agreed to return to this topic at its next meeting.

JURISDICTION OF THE COURT TO INTERPRET INTERNATIONAL CONVENTIONS RELATED TO THE OBJECTIVES OF THE COMMUNITIES

The Council likewise agreed to postpone discussion of this topic, put to it in a note from the German delegation, until its next meeting.

MISCELLANEOUS DECISIONS

The Council agreed to the grant of 160,000 EUA in Community aid to disaster victims in India.

The aid will be supplied to the Catholic Relief Service (CRS) for the repair of dwellings and the provision of clothing, blankets, cooking utensils, tools and food to victims of the recent floods in Northern India, particularly in the Ganges Valley.

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In the field of food aid, the Council agreed to amend the regional breakdown of normal cereals aid granted to the World Food Programme (WFP) under the 1977 Community programme.

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The Council approved, as a joint position for the Community delegation to the EEC-EFTA Joint Committees, seven draft Decisions, amending Lists A and B annexed to Protocol No 3 concerning the definition of the concept of originating products and methods of administrative co-operation.

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The Council adopted in the official languages of the Communities,

- the Regulation:

- providing for certain technical adjustments to Regulations (EEC) Nos 1848/78 and 1850/78 laying down certain measures for the conservation and management of fishery resources applicable, respectively, to vessels registered in the Faroe Islands and vessels flying the flag of Sweden;

- the Decisions:

- adopting a second 3-year plan of action in the field of scientific and technical information and documentation;
- adopting European Economic Community concerted action projects in the fields of:
 - = analysis of organic micropollutants in water;
 - = physico-chemical behaviour of atmospheric pollutants.



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NOTE BIO (78) 351 AUX BUREAUX NATIONAUX
CC AUX MEMBRES DU GROUPE, A M. BURGHARDT, ASSISTANT DG I ET A
M. LECOMTE, DG VIII

CONSEIL MINISTRES DE LA JUSTICE (J. CARROLL)

LE CONSEIL SE TIENDRA LE 9 OCTOBRE A LUXEMBOURG. ■■■■■■ A
L'ORDRE DU JOUR FIGURENT LES POINTS SUIVANTS :

1) SIGNATURE DE LA CONVENTION RELATIVE A L'ADHESION DU DANEMARK,
DE L'IRLANDE ET DU ROYAUME-UNI A LA CONVENTION CONCERNANT LA
COMPETENCE JUDICIAIRE ET L'EXECUTION DES DECISIONS EN MATIERES
CIVILE ET COMMERCIALE, AINSI QU'AU PROTOCOLE CONCERNANT SON
INTERPRETATION PAR LA COUR DE JUSTICE.

2) RECONNAISSANCE DES DECISIONS JUDICIAIRES EN MATIERE DE
GARDE DES ENFANTS. LA DELEGATION BELGE A DEMANDE UNE DISCUS-
SION SUR CE POINT MAIS UNE DECISION N'EST PAS ATTENDUE.

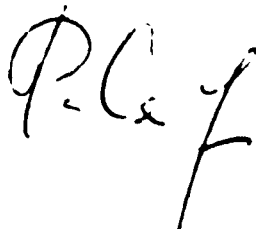
3) ADOPTION FORMELLE DE LA 3EME DIRECTIVE D'HARMONISATION DANS
LE DOMAINE DU DROIT DES SOCIETES ET CONCERNANT LES FUSIONS
INTERNES DES SOCIETES ANONYMES.

4) MESURES NECESSAIRES AU FONCTIONNEMENT DE LA COUR DE JUSTICE.
IL Y AURA UN ECHANGE DE VUES SUR LES PROPOSITIONS DE LA COUR
VISANT UN MEILLEUR FONCTIONNEMENT, PAR EXEMPLE AUGMENTATION DU
NOMBRE DE JUGES ET D'AVOCATS GENERAUX ETC.

5) CREATION D'UNE JURIDICTION DE PREMIERE INSTANCE COMPETENTE
POUR LES LITIGES ENTRE LES INSTITUTIONS ET LEUR PERSONNEL.
LE CONSEIL NE PRENDRA PAS UNE DECISION FORMELLE EN RAISON DE
LA NECESSITE DE CONSULTER LE PARLMENT MAIS APPROUVERA PROBABLEMEN
MENT UNE DECLARATION. - ///

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J. CARROLL



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6) MESURES DESTINEES A AMELIORER LA CONNAISSANCE D'UN DROIT COMMUNAUTAIRE ET A EN FACILITER L'ACCES. IL S'AGIT D'UNE DECLARATION QUI PREND ACTE DES PROGRES REALISES DANS LES DOMAINES DE LA CODIFICATION DE DROIT, L'AUTOMATISATION DE LA DOCUMENTATION JURIDIQUE ETC.

7) COMPETENCE DE LA COUR DE JUSTICE EN MATIERE D'INTERPRETATION DE CONVENTIONS INTERNATIONALES CONCLUES PAR LES ETATS MEMBRES ET PRESENTANT UN LIEN DE CONNEXITE AVEC LES OBJECTIFS DE LA COMMUNAUTE. LA DELEGATION ALLEMANDE FERA UNE DECLARATION A CE SUJET.

8) PARTICIPATION DES ETATS MEMBRES AUX AFFAIRES SOUMISES A LA COUR DE JUSTICE. IL S'AGIT D'UNE NOTE REMISE PAR LA DELEGATION BRITANNIQUE SUR UNE AMELIORATION EVENTUELLE DU FONCTIONNEMENT DE LA COUR.

MARDI LE 10 OCTOBRE, LES MINISTRES DE LA JUSTICE SE RENCONTRERONT DANS LE CADRE DE LA COOPERATION POLITIQUE POUR TRAITER DE LA LUTTE CONTRE LE TERRORISME ET DE "L'ESPACE JUDICIAIRE COMMUN".
12.00

AMITIES,

P. CERF COMEUR
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