



## **Explanatory Report to the European Convention on the Calculation of Time-Limits**

Basel, 16.V.1972

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I. The European Convention on the Calculation of Time Limits, drawn up within the Council of Europe by a committee of governmental experts which carried out its duties under the authority of the European Committee on Legal Co-operation (CCJ), was opened to signature by the member States of the Council of Europe on 16 May 1972, at Basle, on the occasion of the V11th Conference of European Ministers of Justice.

II. The text of the explanatory report prepared by the committee of experts and submitted to the Committee of Ministers of the Council of Europe, as amended and finalised by the CCL, does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it might be of such a nature as to facilitate the application of the provisions therein contained.

### **General considerations**

1. The calculation of time-limits is a necessary element in the application of a number of legislative provisions, judicial and administrative decisions and clauses in contracts. By way of example may be mentioned rules on extinctive prescription, rules regarding the time within which an appeal must be lodged or contract provisions on the time-limit for payment of a debt. The development of international exchanges in the economic as well as the social spheres has made it apparent that uniform European rules on calculation of time-limits will contribute to the safeguarding of rights.

2. For this reason the European Committee on Legal Co-operation (CCJ) decided to explore the possibility of unifying in this field the laws of the member States of the Council of Europe. A questionnaire relating to the concept of time-limits was addressed to governments; it dealt with time-limits in general, as well as with extinctive and acquisitive prescription. On the basis of the replies received, the Sub-Committee on Fundamental Legal Concepts, set up under the CCJ, was asked to propose concrete solutions.

3. The CCJ, having considered the report of the sub-committee, proposed the setting up of a committee of experts to prepare the instruments (recommendation or convention) best designed to bring about European unification or standardisation of the concept of "time-limits" dealt with in the report of the Sub-Committee on Fundamental Legal Concepts.

The Committee of Ministers approved this proposal at the 158th meeting of their Deputies.

4. With regard to the calculation of time-limits the committee of experts prepared a draft Convention which was considered by the CCJ at its meeting in November 1971. The draft Convention in its revised version was adopted by the Committee of Ministers at the 206th meeting of their Deputies in January 1972. The Convention was opened for signature in Basle in May 1972 in connection with the V11th Conference of European Ministers of Justice.

5. During the preparation of the Convention it was noted that no legal term in English could be considered to provide a satisfactory equivalent of the French term *délai*. The concept was understood in Common Law countries but reference to several legal terms in English was required to cover the core of the concept. It was therefore agreed to use in the English text the neutral term "time-limit", a term which was understandable in English and which conveyed best the essential meaning of the concept of *délai*.

6. As regards the definition of the concept of time-limit the committee of experts considered the two definitions of time-limit mentioned under (a) and (b) below:

(a) A time-limit is a period of time determined by the law, the judicial or administrative authorities or the parties:

(i) before or after the expiry of which certain acts are or are not to be performed;

(ii) during which the performance or non-performance of certain acts entails the loss of a right or has other legal effects;

(iii) on the expiry of which, certain situations, provided they have lasted throughout the period, are recognised to have a legal basis.

(b) A time-limit is a period of time determined by the law, the judicial or administrative authorities or the parties:

(i) before or after the expiry of which certain acts are or are not to be performed;

(ii) the expiry of which either produces, or contributes to the production of, legal effects.

7. The committee was of the opinion that neither of these definitions could be regarded as entirely satisfactory, and for this reason the Convention does not include any provision to this end.

However, the committee agreed that the two aforementioned definitions could serve as a useful guide to what is meant by the term "time-limit" for the purpose of the Convention.

8. The committee agreed that requirements of age (for majority, for the right to vote etc.) clearly did not constitute a time-limit, and that the question of when a certain age is attained was not a matter of "time-limits" within the meaning of the Convention.

9. Furthermore, the committee considered the case where a person is to pay periodically maintenance or fulfil other obligations during a given period of time. The committee agreed that neither the total period of time nor the individual periods of time during which such maintenance should be paid etc., were "time-limits" to be calculated according to the rules of the Convention.

10. In the same context, the committee of experts considered whether the period for which a contract is concluded could be regarded as a time-limit within the meaning of the Convention; for instance contracts concluded for a specific period, expressed in days, weeks, months or years, to be calculated from a certain date. Examples are:

(a) A contract to hire a movable (e.g. a motor car) for a period of ten days as from 15 February. Such a contract would terminate on 24 February;

(b) a lease for a period of one month from 1 March. Such a contract would terminate on 31 March;

(c) a contract of employment or services for one year as from 1 January 1972. Such a contract would terminate on 31 December 1972.

If the Convention were applicable to the periods stipulated in these contracts they would expire on 25 February, 1 April and 1 January 1973 respectively. However, the committee of experts agreed that these periods clearly did not constitute time-limits within the meaning of the Convention.

11. Examples comparable to those referred to above, i.e. examples of periods comprising a certain number of consecutive days or periods expressed in days, weeks, months or years, to be calculated from a certain date, are also found outside private law agreements. Examples are periods during which social benefits (unemployment benefits, maternity payments) have to be paid, periods of service which are a precondition for qualifying for certain employments, and periods fixed for the holding of a public office.

The committee of experts agreed that such periods did not constitute time-limits within the meaning of the Convention.

12. As the Convention deals only with calculation of time-limits, the effects of court vacations on the running of a time-limit are outside the scope of application of the Convention.

13. The Convention applies as well on the domestic as on the international level. This is made clear in the preamble of the Convention where it is stated that "the unification of rules relating to the calculation of time-limits, both for domestic and international purposes", will contribute to the aim of achieving greater unity between the member States of the Council of Europe.

## Comments

### Article 1

14. This article defines the scope of the Convention. The rules laid down apply to time-limits established by law, by a judicial or administrative authority, by an arbitral body or by private parties.

15. There is no restriction regarding the nature of the time-limit. For example, it may be a prescription period, a time-limit for acceptance of an offer or a time-limit relating to court procedure.

16. The rules for calculation of the time-limit are mandatory in the case of time-limits established by law or by a judicial or administrative authority.

Where an arbitral body lays down a limit it may select another method of calculation provided it is empowered to do so under the rules applicable to the arbitration proceedings. Likewise, private parties are at liberty to decide other methods for the calculation of time-limits they themselves lay down. In this event such other methods may be expressly stated in an agreement between the parties or may follow from earlier contracts or practices or usage, either as applied, for instance, in the branch of business in which the parties are engaged, or by local usage.

17. Time-limits calculated retroactively (i.e. backwards in time) are excluded from the application of the Convention. Accordingly, the rules laid down in the Convention do not apply to cases such as the giving of notice within a particular period before the termination of a lease, of a contract of hiring or of a contract of employment where the period must be calculated backwards from a given date, e.g. the day of the termination of the lease or contract.

18. Article 1 (1) of the Convention stipulates that the Convention is to apply to the calculation of time-limits in civil, commercial and administrative matters, including procedure relating to such matters. Thus it does not apply in penal matters, including criminal proceedings, or in constitutional matters.

19. Article 1 (2) gives the Contracting Parties various possibilities of restricting the Convention's field of application in respect of time-limits in administrative matters. Accordingly, they may decide that certain provisions of the Convention, for instance those of Article 5, shall not apply to the calculation of time-limits in administrative matters, or that none of the provisions of the Convention shall apply to the calculation of time-limits in certain administrative matters, such as fiscal or electoral or other matters, or again that the Convention shall apply to the calculation of time-limits in a single specific matter, such as proceedings before administrative courts, with the exclusion of all other administrative matters. They may also exclude all time-limits in administrative matters from the application of the Convention.

## **Article 2**

20. This article indicates the meaning of the terms *dies a quo* and *dies ad quem* for the purposes of the Convention. These expressions were used for convenience in drafting the Convention. It was understood that States, when translating the Convention into their language, may also translate the Latin expressions.

## **Article 3**

21. Paragraph 1 follows the rule, which is accepted in most of the member States, that the day on which the time-limit begins to run (*dies a quo*) is not to be taken into account in the calculation, whereas the day on which it expires (*dies ad quem*) is to be taken into account. The term "midnight" means "24 hours".

This provision does not affect the question of whether an instrument in writing must reach the person to whom it is addressed on the *dies ad quem* or whether it is sufficient for the instrument in writing to have been posted the said day; this question is to be determined by national law.

22. Since Article 4 lays down special rules for the calculation of time-limits expressed in weeks, months or years, paragraph 1 of Article 3 is of particular importance for the calculation of time-limits expressed in days; a time-limit of four days beginning on 5 January expires on 9 January at midnight.

The Convention does not lay down rules for the calculation of time-limits expressed in hours.

23. The law of contract and the procedural law of some States speak of "clear days"; a time-limit calculated in "clear days"; the first and last day both being disregarded, is not in accordance with the provisions of Article 3 (1) of the Convention.

24. It follows from the rules that time-limits expressed in 8 or 15 days shall not be considered to be equivalent to one or two weeks. For example, a time-limit of 8 days starting on Monday 10 January 1972, expires Tuesday 18 January, at 24 hours. If, on the other hand, the time-limit is expressed as "one week", it follows from Article 4 that the time-limit will expire on Monday 17 January, at 24 hours.

25. The general rule laid down in paragraph 1, that the time-limit is to expire on the *dies ad quem* at midnight, might raise certain difficulties where an act has to be performed before the expiry of the time-limit and where performance of the act involves some office or an authority. In theory it could be maintained that this rule implied an obligation on the part of public authorities, for example, to keep offices open until midnight in order to give the persons concerned the full benefit of the time-limit.

In order to avoid any misunderstanding on this point Article 3 (2) specifies that in such a case there is nothing to preclude that an act which is to be performed before the expiry of a time-limit may not be performed on the *dies ad quem* outside normal office hours. The same would apply to commercial transactions where it is customary that acceptance of an offer, for example, must take place before the end of normal office hours on the last day of the time-limit.

26. It also follows from paragraph (2) that the Contracting States are free to introduce rules to the effect that acts must be performed before the expiry of the normal office or business hours of the *dies ad quem*. In the absence of explicit rules, a decision by for example a court to the same effect would be in accordance with the Convention.

#### **Article 4**

27. This article contains detailed rules for the calculation of time-limits in the cases specified.

(a) According to paragraph 1, a period expressed in weeks is to expire on the day of the last week whose name corresponds to that of the *dies a quo*. Thus a time-limit of two weeks beginning on a Thursday expires on Thursday two weeks later at midnight.

(b) According to paragraph 2, a time-limit expressed in months or years expires on the day of the last month or last year whose date corresponds to that of the *dies a quo*. Thus far the principle stated is the same as under (a) above. However, if there is no date corresponding to the *dies a quo*, the time-limit expires on the last day of the last month.

#### *Examples*

A time-limit of one month:

- starting on 5 January, expires on 5 February;
- starting on 30 April, expires on 30 May (not on the last day of May);
- starting on either 30 May or 31 May, expires on 30 June;
- starting on 31 January expires on 28 or 29 February depending on whether it is a leap year or not.

A time-limit of one year,

- starting on 1 January 1971, expires on 1 January 1972;

- starting on 28 February 1971, expires on 28 February 1972, even though 1972 is a leap year with 29 days in February.

(c) Paragraph 3 applies to time-limits expressed in months and days or in months and a fraction of a month (e.g. one month and fifteen days or one month and a half).

#### *Examples*

- A time-limit of one and a half months starting on 1 January expires on 16 February, as a half month equals fifteen days and the one-month period expires on 1 February. If the *dies a quo* is 8 January, the *dies ad quem* is 23 February.

- A time-limit of one month and five days starting on 1 January expires on 6 February. If the starting point is 31 January, it expires on 5 March. If the starting point is 28 February it expires on 2 April.

### **Article 5**

28. This article deals with official holidays, Saturdays and Sundays. These days are normally taken into account in calculating time-limits.

29. The second sentence in Article 5 deals with cases in which an act has to be performed before the expiry of a time-limit and the *dies ad quem* is a Saturday, a Sunday or an official holiday or a day considered as such. In that case the time-limit is extended to include the first working day thereafter. Thus a time-limit which would expire on 31 March 1972 (being "Good Friday") will be extended until midnight on Tuesday 4 April 1972 in countries where both Good Friday and Easter Monday are official holidays.

30. It should be noted that Article 5 second sentence only applies to such provisions as require that a certain act must be performed within a given period of time, e.g. the bringing of an action in order to interrupt a period of extinctive prescription, submission of appeal against a judgment, or payment of taxes. It is not applicable with regard to other provisions stipulating, for instance, that the mere passing of a certain period of time entails certain legal effects.

31. Official holidays vary from State to State and so Article 11 provides that it is for each Contracting State to determine what are its "official holidays". The reference in Article 5 to "a day which shall be considered as an official holiday" was added to provide for a case of days which are not, strictly speaking, "official holidays" but are nevertheless, in certain States, considered as such for the purpose of calculating time-limits.

### **Article 6**

32. No reservations may be made with regard to the articles commented on above, subject however to the right provided for under Article 1 (2).

### **Article 7**

33. The aim of this article is to safeguard provisions in other international instruments concluded or to be concluded which in specific fields govern the matters covered by this Convention.

**Articles 8 – 14**

34. These articles were drawn up in accordance with the model final clauses approved by the Committee of Ministers of the Council of Europe. The committee of experts added Articles 9 and 11, which do not call for specific comment.