

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 May 1997

concerning the conclusion of an Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks

(97/361/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof, in conjunction with the first sentence of Article 228 (2),

Having regard to the proposal from the Commission,

Whereas the conclusion of the Agreement negotiated between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks will facilitate the improvement of the conditions for the marketing of spirit drinks on the respective markets of the European Community and the United Mexican States, in accordance with the principles of equality, mutual benefit and reciprocity; whereas it is therefore desirable to approve the said Agreement;

Whereas, in order to facilitate the implementation of certain provisions of the Agreement, the Commission should be authorized to make the necessary technical adjustments in accordance with the procedure laid down in Article 15 of Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks⁽¹⁾,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks and the Exchange of Letters relating thereto are hereby approved on behalf of the European Community.

The texts of the instruments referred to in the first paragraph are attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement.

Article 3

The President of the Council shall make the notification provided for in Article 22(1) of the Agreement⁽²⁾.

Article 4

For the purposes of Article 18 of the Agreement, the Commission is hereby authorized to conclude the necessary acts amending the Agreement, in accordance with the procedure laid down in Article 15 of Regulation (EEC) No 1576/89.

Article 5

The Commission, assisted by the representatives of the Member States, shall represent the Community in the Joint Committee referred to in Article 17 of the Agreement.

Article 6

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 27 May 1997.

For the Council

The President

W. SORGDRAGER

⁽¹⁾ OJ No L 160, 12. 6. 1989, p. 1. Regulation as last amended by Regulation (EC) No 3378/94 (OJ No L 366, 31. 12. 1994, p. 1).

⁽²⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities*.

AGREEMENT

between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks

THE EUROPEAN COMMUNITY, hereinafter called 'the Community',

of the one part, and

THE UNITED MEXICAN STATES,

of the other part,

hereinafter called 'the Contracting Parties',

DESIROUS of improving the conditions for the marketing of spirit drinks on their respective markets, in accordance with the principles of equality, mutual benefit and reciprocity,

HAVE AGREED AS FOLLOWS:

Article 1

The Contracting Parties agree, on the basis of non-discrimination and reciprocity, to facilitate and promote trade between them in spirit drinks.

Article 2

This Agreement shall apply to products falling within code 2208 of the International Convention on the Harmonized Commodity Description and Coding System.

For the purposes of this Agreement:

- (a) 'spirit drink originating in' shall mean, when followed by the name of one of the Contracting Parties, a spirit drink listed in the Annex and made on the territory of that Contracting Party;
- (b) 'description' shall mean the names used on the labelling, on the documents accompanying the transport of the spirit drinks, on the commercial documents, particularly the invoices and delivery notices, and in advertising;
- (c) 'labelling' shall mean all the descriptions and other references, signs, designs or trade marks which distinguish the spirit drinks and which appear on the same container, including the sealing device or the tag attached to the container and the sheathing covering the neck of the bottles;
- (d) 'presentation' shall mean the names used on the containers, including the closure, on the labelling and on the packaging;
- (e) 'packaging' shall mean the protective wrappings such as papers, straw envelopes of all kinds, cartons and cases, used in the transport of one or more containers.

Article 3

The following designations are protected:

- (a) as regards spirit drinks originating in the Community, the designations listed in Annex I;
- (b) as regards spirit drinks originating in the United Mexican States, the designations listed in Annex II.

Article 4

1. In the United Mexican States, the protected Community names:

- may not be used otherwise than under the conditions laid down in the laws and regulations of the Community, and
- are reserved exclusively to the spirits originating in the Community to which they apply.

2. In the Community, the protected Mexican names:

- may not be used otherwise than under the conditions laid down in the laws and regulations of the United Mexican States, and
- are reserved exclusively to the spirits originating in the United Mexican States to which they apply.

3. Without prejudice to Articles 22 and 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1 C of the Agreement establishing the World Trade Organization, the Contracting Parties shall take all the necessary measures, in accordance with this Agreement, to ensure reciprocal protection of the designations referred to in Article 3 and used to refer to spirit drinks originating in the territory of the Contracting Parties. Each Contracting Party shall provide the interested parties with the legal means of preventing the uses of a designation to designate spirit drinks not originating in the place indicated by the designation in question or in the place where the designation in question is traditionally used.

4. The Contracting Parties will not deny the protection provided for by this Article in the circumstances specified in paragraphs 4, 5, 6 and 7 of Article 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 5

The protection afforded by Article 4 shall also apply even where the true origin of the spirit drink is indicated or the designation is used in translation or accompanied by terms such as 'kind', 'type', 'style', 'way', 'imitation', 'method' or other analogous expressions, including graphic symbols which may lead to confusion.

Article 6

In the case of homonymous designations for spirit drinks, protection shall be accorded to each designation. The Contracting Parties will lay down the practical conditions under which the homonymous designations in question will be differentiated, taking into account the need to treat the producers concerned fairly and to avoid misleading the consumer.

Article 7

The provisions of this Agreement shall in no way prejudice the right of any person to use, in the course of trade, their name or the name of their predecessor in a business, provided that such name is not used in such a manner as to mislead consumers.

Article 8

Nothing in this Agreement shall oblige a Contracting Party to protect a designation of the other Contracting Party which is not protected or ceases to be protected in its country of origin or which has fallen into disuse in that country.

Article 9

The Contracting Parties shall take all measures necessary to ensure that, in cases where spirit drinks originating in the Contracting Parties are exported and marketed outside their territory, the protected names of one Contracting Party referred to in this Agreement are not used to designate and present spirit drinks originating in the other Contracting Party.

Article 10

To the extent that the relevant legislation of the Contracting Parties allows, the benefit of the protection given by this Agreement shall be extended to natural and legal persons and to federations, associations and organizations

of producers, traders or consumers whose headquarters are in the other Contracting Party.

Article 11

If the description or presentation of a spirit drink, particularly on the label or in the official or commercial documents or in advertising, is in breach of this Agreement, the Contracting Parties shall apply administrative measures or initiate legal proceedings as appropriate in order to combat unfair competition or prevent any other form of wrongful use of the protected name.

Article 12

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the United Mexican States.

Article 13

This Agreement shall not apply to spirit drinks:

- (a) which are in transit through the territory of one of the Contracting Parties; or
- (b) which originate in the territory of one of the Contracting Parties and are consigned in small quantities between them.

The following shall be considered to be small quantities:

- (a) quantities of spirit drinks not exceeding 10 litres per traveller contained in traveller's personal baggage;
- (b) quantities of spirit drinks not exceeding 10 litres forming part of consignments from one individual to another;
- (c) spirit drinks forming part of the household effects of individuals moving house;
- (d) up to one hectolitre of spirit drinks imported for conducting scientific and technical experiments;
- (e) spirit drinks imported as part of the duty-free allowances of diplomatic missions, consular posts and assimilated bodies;
- (f) spirit drinks which form part of the supplies carried on board international means of transport.

Article 14

1. The Contracting Parties shall each designate the bodies to be responsible for the enforcement of this Agreement.

2. The Contracting Parties shall inform one another of the names and addresses of the said bodies not later than two months after this Agreement comes into force. There shall be close and direct cooperation between the said bodies.

Article 15

1. If one of the bodies referred to in Article 14 has reason to suspect that:

- (a) a spirit drink as defined in Article 2, being or having been traded between the United Mexican States and the Community, does not comply with this Agreement or Community or Mexican legislation applicable to spirit drinks; and
- (b) this non-compliance is of particular interest to the other Contracting Party and could result in administrative measures or legal proceedings being taken,

that body shall immediately inform the Commission and the relevant body or bodies of the other Contracting Party.

2. The information to be provided in accordance with paragraph 1 shall be accompanied by official, commercial or other appropriate documents, as well as an indication of what administrative measures or legal proceedings may, if necessary, be taken. The information shall include, in particular, the following details of the spirit drink concerned:

- (a) the producer and the person who stocks the spirit drink;
- (b) the composition of that drink;
- (c) the description and presentation; and
- (d) details of the non-compliance with the rules concerning production and marketing.

Article 16

1. The Contracting Parties shall enter into consultations if one of them considers that the other has failed to fulfil an obligation under this Agreement.

2. The Contracting Party which requests the consultations shall provide the other Party with the information necessary for a detailed examination of the case in question.

3. In cases where any delay could endanger human health or impair the effectiveness of measures to control fraud, interim protective measures may be taken, without prior consultation, provided that consultations are held immediately after the taking of these measures.

4. If, following the consultations provided for in paragraphs 1 and 3, the Contracting Parties have not reached agreement, the Party which requested the consultations or took the measures referred to in paragraph 3 may take appropriate protective measures so as to permit the proper application of this Agreement.

Article 17

A Joint Committee shall be established, consisting of representatives of the Community and of the United Mexican States. It shall meet at the request of one of the Contracting Parties and in accordance with the require-

ments for implementing the Agreement alternately in the Community and the United Mexican States.

The Joint Committee shall ensure the proper functioning of this Agreement and shall examine all questions which may arise in implementing it. In particular, the Joint Committee may make recommendations which would contribute to the attainment of the objectives of this Agreement.

Article 18

1. The Contracting Parties may by mutual consent amend this Agreement in order to enhance the level of cooperation in the spirit drinks sector.

2. Where the legislation of one of the Contracting Parties is amended to protect designations other than those listed in the Annexes to this Agreement, these designations shall be included, within a reasonable length of time, following conclusion of the consultations.

Article 19

1. Spirit drinks which, at the time of entry into force of this Agreement, have been legally produced, designated and presented, but which are prohibited by this Agreement, may be marketed by wholesalers for a period of one year from the entry into force of the Agreement and by retailers until stocks are exhausted. From the entry into force of this Agreement spirit drinks included therein may no longer be produced outside the limits of their regions of origin.

2. Spirit drinks produced, designated and presented in accordance with this Agreement when they are marketed but whose description and presentation ceases to conform to this Agreement following an amendment thereto may be marketed until stocks are exhausted unless otherwise agreed by the Contracting Parties.

Article 20

The Annexes to this Agreement shall form an integral part thereof.

Article 21

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, all these languages being equally authentic.

Article 22

This Agreement shall enter into force on the first day of the second month after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.

Either Contracting Party may terminate the Agreement by giving one year's written notice to the other Contracting Party.

Hecho en Bruselas, el veintisiete de mayo de mil novecientos noventa y siete.

Udfærdiget i Bruxelles den syvogtyvende maj nitten hundrede og syvoghalvfems.

Geschehen zu Brüssel am siebenundzwanzigsten Mai neunzehnhundertsiebenundneunzig.

Έγινε στις Βρυξέλλες, στις είκοσι επτά Μαΐου χίλια εννιακόσια ενενήντα επτά.

Done at Brussels on the twenty-seventh day of May in the year one thousand nine hundred and ninety-seven.

Fait à Bruxelles, le vingt-sept mai mil neuf cent quatre-vingt-dix-sept.

Fatto a Bruxelles, addì ventisette maggio millenovecentonovantasette.

Gedaan te Brussel, de zevenentwintigste mei negentienhonderd zevenennegentig.

Feito em Bruxelas, em vinte e sete de Maio de mil novecentos e noventa e sete.

Tehty Brysselissä kahdentakymmenentenäseitsemäntenä päivänä toukokuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän.

Som skedde i Bryssel den tjugosjunde maj nittonhundra nittiosju.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

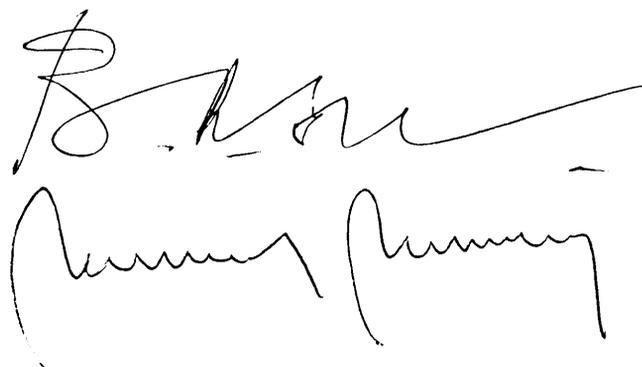
Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar



Por el Gobierno de los Estados Unidos Mexicanos



ANNEX I

1. Rum	Rhum de la Martinique Rhum de la Guadeloupe Rhum de la Réunion Rhum de la Guyane (These designations may be supplemented by the indication 'traditional') Ron de Málaga Ron de Granada Rum da Madeira
2. (a) Whisky (b) Whiskey	Scotch Whisky Irish Whisky Whisky español (These designations may be supplemented by the indication 'malt' or 'grain') Irish Whiskey Uisce Beatha Eireannach/Irish Whiskey (These designations may be supplemented by the indication 'Pot Still')
3. Grain spirit	Eau-de-vie de seigle de marque nationale luxembourgeoise Korn Kornbrand
4. Wine spirit	Eau-de-vie de Cognac Eau-de-vie des Charentes Cognac (This designation may be supplemented by the following indications: — Fine — Grande Fine Champagne — Grande Champagne — Petite Fine Champagne — Fine Champagne — Borderies — Fins Bois — Bons Bois.) Fine Bordeaux Armagnac Bas-Armagnac Haut-Armagnac Ténarèse Eau-de-vie de vin de la Marne Eau-de-vie de vin originaire d'Aquitaine Eau-de-vie de vin de Bourgogne Eau-de-vie de vin originaire du Centre-Est Eau-de-vie de vin originaire de Franche-Comté Eau-de-vie de vin originaire du Bugey Eau-de-vie de vin de Savoie Eau-de-vie de vin originaire des Coteaux de la Loire Eau-de-vie de vin des Côtes-du-Rhône Eau-de-vie de vin originaire de Provence Faugères or Eau-de-vie de Faugères Eau-de-vie de vin originaire du Languedoc

4. Wine spirit (cont'd)	Aguardente do Minho Aguardente do Douro Aguardente da Beira Interior Aguardente da Bairrada Aguardente do Oeste Aguardente do Ribatejo Aguardente do Alentejo Aguardente do Algarve
5. Brandy	Brandy de Jerez Brandy del Penedés Brandy italiano Brandy Αττικής/Attica Brandy Brandy Πελοποννήσου/Peloponnese Brandy Brandy Κεντρικής Ελλάδας/Brandy from central Greece Deutscher Weinbrand Wachauer Weinbrand, Weinbrand Dürnstein
6. Grape marc spirit	Eau-de-vie de marc de Champagne or Marc de Champagne Eau-de-vie de marc originaire d'Aquitaine Eau-de-vie de marc de Bourgogne Eau-de-vie de marc originaire du Centre-Est Eau-de-vie de marc originaire de Franche-Comté Eau-de-vie de marc originaire du Bugey Eau-de-vie de marc originaire de Savoie Marc de Bourgogne Marc de Savoie Marc d'Auvergne Eau-de-vie de marc originaire des Coteaux de la Loire Eau-de-vie de marc des Côtes du Rhône Eau-de-vie de marc originaire de Provence Eau-de-vie de marc originaire du Languedoc Marc d'Alsace Gewürztraminer Marc de Lorraine Bagaceira do Minho Bagaceira do Douro Bagaceira da Beira Interior Bagaceira da Bairrada Bagaceira do Oeste Bagaceira do Ribatejo Bagaceira do Alentejo Bagaceira do Algarve Orujo gallego Grappa Grappa di Barolo Grappa piemontese or del Piemonte Grappa lombarda or di Lombardia Grappa trentina or del Trentino Grappa friulana or del Friuli Grappa veneta or del Veneto Südtiroler Grappa/Grappa dell'Alto Adige Τσικουδιά Κρήτης/Tsikoudia from Crete Τσίπουρο Μακεδονίας/Tsipouro from Macedonia Τσίπουρο Θεσσαλίας/Tsipouro from Thessaly Τσίπουρο Τυρνάβου/Tsipouro from Tyrnavos Eau-de-vie de marc de marque nationale luxembourgeoise

7. Fruit spirit	<p>Schwarzwälder Kirschwasser Schwarzwälder Himbeergeist Schwarzwälder Mirabellenwasser Schwarzwälder Williamsbirne Schwarzwälder Zwetschgenwasser Fränkisches Zwetschgenwasser Fränkisches Kirschwasser Fränkischer Obstler Mirabelle de Lorraine Kirsch d'Alsace Quetsch d'Alsace Framboise d'Alsace Mirabelle d'Alsace Kirsch de Fougerolles Südtiroler Williams/Williams dell'Alto Adige Südtiroler Aprikot or Südtiroler Marille/Aprikot dell'Alto Adige or Marille dell'Alto Adige Südtiroler Kirsch/Kirsch dell'Alto Adige Südtiroler Zwetschgeler/Zwetschgeler dell'Alto Adige Südtiroler Obstler/Obstler dell'Alto Adige Südtiroler Gravensteiner/Gravensteiner dell'Alto Adige Südtiroler Golden Delicious/Golden Delicious dell'Alto Adige Williams friulano or del Friuli Sliwovitz del Veneto Sliwovitz del Friuli-Venezia Giulia Sliwovitz del Trentino-Alto Adige Distillato di mele trentino or del Trentino Williams trentino or del Trentino Sliwovitz trentino or del Trentino Aprikot trentino or del Trentino Medronheira do Algarve Medronheira do Buçaco Kirsch or Kirschwasser friulano Kirsch or Kirschwasser trentino Kirsch or Kirschwasser veneto Aguardente de pêra da Lousã Eau-de-vie de pommes de marque nationale luxembourgeoise Eau-de-vie de poires de marque nationale luxembourgeoise Eau-de-vie de kirsch de marque nationale luxembourgeoise Eau-de-vie de quetsch de marque nationale luxembourgeoise Eau-de-vie de mirabelle de marque nationale luxembourgeoise Eau-de-vie de prunelles de marque nationale luxembourgeoise Wachauer Marillenbrand</p>
8. Cider spirit and perry spirit	<p>Calvados du Pays d'Auge Calvados Eau-de-vie de cidre de Bretagne Eau-de-vie de poiré de Bretagne Eau-de-vie de cidre de Normandie Eau-de-vie de poiré de Normandie Eau-de-vie de cidre du Maine Aguardiente de sidra de Asturias Eau-de-vie de poiré du Maine</p>

9. Gentian spirit	Bayerischer Gebirgsenzian Südtiroler Enzian/Genzians dell'Alto Adige Genziana trentina or del Trentino
10. Fruit spirit drinks	Pacharán Pacharán navarro
11. Juniper-flavoured spirit drinks	Ostfriesischer Korngenever Genièvre Flandres Artois Hasseltse jenever Balegemse jenever Péket de Wallonie Steinhäger Plymouth Gin Gin de Mahón
12. Caraway-flavoured spirit drinks	Dansk Akvavit/Dansk Aquavit Svensk Aquavit/Svensk Akvavit/Swedish Aquavit
13. Aniseed-flavoured spirit drinks	Anís español Évoca anisada Cazalla Chinchón Ojén Rute Ouzo/Oúζο
14. Liqueur	Berliner Kümmel Hamburger Kümmel Münchener Kümmel Chiemseer Klosterlikör Bayerischer Kräuterlikör Cassis de Dijon Cassis de Beaufort Irish Cream Palo de Mallorca Ginjinha portuguesa Licor de Singeverga Benediktbeurer Klosterlikör Ettaler Klosterlikör Ratafia de Champagne Ratafia catalana Anis português Finnish berry/fruit liqueur Großglockner Alpenbitter Mariazeller Magenlikör Mariazeller Jagasaftl Puchheimer Bitter Puchheimer Schloßgeist Steinfelder Magenbitter Wachauer Marillenlikör Jägertee, Jagertee, Jagatee

15. Spirit drinks	Pommeau de Bretagne Pommeau du Maine Pommeau de Normandie Svensk Punsch/Swedish Punch
16. Vodka	Svensk Vodka/Swedish Vodka Suomalainen Votka/Finsk Vodka/Vodka of Finland

ANNEX II

Agave spirit drink	TEQUILA: Protected, made and classified in accordance with the laws and regulations of the United Mexican States
Agave spirit drink	MEZCAL: Protected, made and classified in accordance with the laws and regulations of the United Mexican States

Exchange of Letters regarding the agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks

Letter No 1

Sir,

I have the honour to refer to the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks.

In this connection, I wish to confirm the following:

Notwithstanding the provisions of Article 4 (2), the United Mexican States and the Community have agreed that the protection of the spirit drink 'Tequila' referred to in Annex II to the Agreement will not prevent the use in the Kingdom of Spain of the designation 'Tequila' during a transitional period of one year, as from the entry into force of the Agreement, provided that local producers undertake not to increase current output.

For the designated spirit drink 'Tequila' produced in Spain, the provisions set down in Article 19 (1), first sentence, of the Agreement shall take effect from the expiry of the transitional period of one year.

I should be obliged if you would confirm that the Government of the United Mexican States is in agreement with the contents of this letter.

Please accept Sir, the assurance of my highest consideration,

*For the Council
of the European Union*

Letter No 2

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'I have the honour to refer to the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks.

In this connection, I wish to confirm the following:

Notwithstanding the provisions of Article 4 (2), the United Mexican States and the Community have agreed that the protection of the spirit drink "Tequila" referred to in Annex II to the Agreement will not prevent the use in the Kingdom of Spain of the designation "Tequila" during a transitional period of one year, as from the entry into force of the Agreement, provided that local producers undertake not to increase current output.

For the designated spirit drink "Tequila" produced in Spain, the provisions set down in Article 19 (1), first sentence, of the Agreement shall take effect from the expiry of the transitional period of one year.

I should be obliged if you would confirm that the Government of the United Mexican States is in agreement with the contents of this letter.'

I have the honour to confirm that my Government is in agreement with the contents of this letter.

Please accept, Sir, the assurance of my highest consideration,

*For the Government
of the United Mexican States*

Hecho en Bruselas, el veintisiete de mayo de mil novecientos noventa y siete.

Udfærdiget i Bruxelles den syvogtyvende maj nitten hundrede og syvoghalvfems.

Geschehen zu Brüssel am siebenundzwanzigsten Mai neunzehnhundertsiebenundneunzig.

Έγινε στις Βρυξέλλες, στις είκοσι εφτά Μαΐου χίλια εννιακόσια ενενήντα επτά.

Done at Brussels on the twenty-seventh day of May in the year one thousand nine hundred and ninety-seven.

Fait à Bruxelles, le vingt-sept mai mil neuf cent quatre-vingt-dix-sept.

Fatto a Bruxelles, addì ventisette maggio millenovecentonovantasette.

Gedaan te Brussel, de zevenentwintigste mei negentienhonderd zevenennegentig.

Feito em Bruxelas, em vinte e sete de Maio de mil novecentos e noventa e sete.

Tehty Brysselissä kahdentenakymmenentenäseitsemäntenä päivänä toukokuuta vuonna tuhatyhdeksänsataayhdeksänkymmentäseitsemän.

Som skedde i Bryssel den tjugosjunde maj nittonhundranittiosju.

Por la Comunidad Europea

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

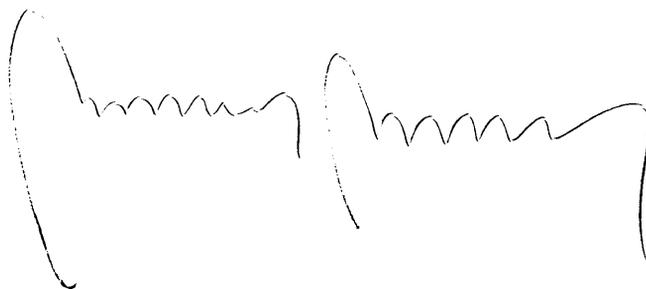
Per la Comunità europea

Voor de Europese Gemeenschap

Pela Comunidade Europeia

Euroopan yhteisön puolesta

På Europeiska gemenskapens vägnar



Por el Gobierno de los Estados Unidos Mexicanos