OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 10 June 1986 *

Mr President,
Members of the Court,

1. Article 31 of the Convention of 27 September 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters provides that: 'A judgment given in a Contracting State and enforceable in that State shall be enforced in another . . . State when, on the application of any interested party, the order for its enforcement has been issued there.' The first paragraph of Article 33 provides: 'The procedure for making the application shall be governed by the law of the State in which enforcement is sought', and the second paragraph continues: 'The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, . . . [he] shall appoint a representative *ad litem*.'

The Belgian Hof van Cassatie [Court of Cassation], seized of a dispute concerning the application of the latter paragraph, has raised the following issues in a reference for a preliminary ruling: (a) Is it for the law of the State in which enforcement is sought to determine how and when the address for service of process required by the second paragraph of Article 33 is to be given and to penalize any failure to comply with the obligation in question? (b) If not, how and when is an address for service of process to be given and what penalty, if any, is to be imposed for non-compliance?

The facts of the dispute in the main proceedings go back to 27 July 1982. On that date the Rechtbank van Eerste Aanleg [Court of First Instance], Antwerp, issued an order for the enforcement of a judgment of the Landgericht [Regional Court], Duisburg, in which Fernand Carron, a Belgian national, was ordered to pay damages of DM 5 240 000 to the Federal Republic of Germany. Mr Carron's application to set aside the enforcement order was dismissed, and he thereupon lodged an appeal in cassation, claiming that the proceedings were void. In his opinion, the first and second paragraphs of Article 33 require the address for service of process to be given when the application for enforcement is made, and in any event before the decision authorizing enforcement is issued. The German authorities, however, fulfilled that obligation within the jurisdiction of the Rechtbank only on the document notifying the order to the appellant.

That is the background to the questions set out above.

2. Written observations were submitted by the appellant in the main proceedings, the Commission of the European Communities, the Federal Republic of Germany and the United Kingdom. Two arguments are adduced. According to the Commission and Mr Carron, the duty to give an address for service and the enforcement proceedings of which that duty is a part are governed by Community law. A national court cannot therefore apply its own procedural rules without jeopardizing the uniformity of those proceedings. Furthermore, the requirements

* Translated from the Italian.

of simplicity and speed which underlie the provisions of the Convention mean that the address for service of process should normally be given when the application for enforcement is made; an applicant who fails to do so thus frustrates the whole procedure, to his own detriment.

Germany and the United Kingdom take the opposite point of view. In their opinion there can be no doubt that the obligation to give an address for service is of general application. The time at which and the manner in which an address for service must be given and the penalty for non-compliance, however, are merely rules for fulfilling that obligation and are thus governed by the law of the State in which enforcement is sought. That is made clear by the second paragraph of Article 33, according to which '... if the law of the State in which enforcement is sought does not provide for the furnishing of an address for service' (and hence makes no provision for the relevant rules regarding formalities and timing), then the obligation is satisfied by the applicant's appointment of a representative *ad litem.*

However, the general scheme of the Convention does not require an address for service to be given at the same time as the application is made. Indeed, before the decision authorizing enforcement is served the party against whom enforcement is sought may not 'make any submissions' and therefore has no interest in knowing the applicant's address for service.

3. The argument of the appellant and the Commission cannot be accepted. It should be pointed out that, in view of the considerable safeguards enjoyed by the defendant in the substantive proceedings, the authors of the Convention thought it equitable to confer on a party wishing to enforce a judgment in his favour the benefit of a speedy procedure in which the debtor would be precluded from raising fresh objections and the court's role would be limited to considering issues of public policy. To that end, no reference was allowed to the procedure of the State in which enforcement was sought (which does not always confer on the creditor the advantages mentioned above), and it was decided to adopt a common system. The system chosen from amongst the various possibilities under consideration was the one based on an application by the successful party, precisely because it enables the court to give a ruling on the basis of the documents supplied by him, without hearing the other party.

In short, it may be said that the essential elements of the procedure under the Convention are the following: (a) an application for enforcement made by the person concerned to the court within whose jurisdiction the persons against whom enforcement is sought is domiciled (see Articles 31 and 32); (b) the obligation, on the part of that person, to give an address for service of process within the jurisdiction of the court applied to (second paragraph of Article 33); and (c) the decision on the application, which 'the appropriate officer of the court shall without delay bring ... to the notice of the applicant [alone] ...' (Article 35).

With regard to the rules on the time-limits and formal requirements governing those steps, on the other hand, the legislature preferred not to lay down an *ad hoc* set of rules but to leave such matters to the law of the State in which enforcement is sought. That is expressly laid down in respect of the application for enforcement (first paragraph of Article 33) and the notification of the decision authorizing enforcement (Article 35) — that is, the steps which initiate and close the proceedings. It is obvious, however, that the same criterion holds good for the furnishing of an address for service. That is made clear, moreover, by (a) the plain words of the article (rightly relied on by the governments participating in the proceedings before this court), (b) the

remarks made in the Jenard Report (Official Journal 1979, C 59 at pp. 49 and 50, second and sixth paragraphs under the heading 'Article 33') and (c) a simple argument *a contrario*: where the legal system of the State in which enforcement is sought makes no provision for an address for service, the act which takes its place, namely the appointment of a representative *ad litem*, can only be carried out in accordance with the rules governing procedural steps *intuitu personae*.

As regards the question of penalties, it seems advisable to draw a distinction according to whether the applicant fails to comply with the obligations laid down by Articles 32 and 33 or with the rules established by the *lex fori* to ensure that they are observed in good time. In the first case the court hearing the application for enforcement will dismiss it for breach of those two articles (see Jenard Report, under the heading 'Article 34'), and in the second it will take the measures required by its own rules of procedure. From the point of view of the Convention, that entails better supervision by the national court, which will be quite familiar with its own procedural rules. At the same time the applicant has every interest in complying with them in order not to jeopardize the result which he hopes to achieve.

In those circumstances the reply to the first question cannot be other than affirmative. The second question thereby becomes otiose.

4. In view of the foregoing considerations I propose that the Court should give the following answer to the questions referred to it by the Hof van Cassatie in its order of 14 June 1982 in the proceedings between Mr Carron and the Federal Republic of Germany:

The second paragraph of Article 33 of the Convention of 27 September 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters should be interpreted as meaning that the obligation to give an address for service of process must be fulfilled in conformity with the rules laid down by the law of the State in which enforcement is sought. That law also determines the procedural consequences of any failure to observe those rules.