Judicial cooperation: mutual recognition of decisions in criminal matters, disqualifications. Initiative Denmark

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PURPOSE : to present a Danish initiative with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications. CONTENT : according to the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, the European Council endorses the principle of mutual recognition, which in its view should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union. The European Council believes that this principle should apply both to judgements and to other decision by judicial authorities. Point 33 of the conclusions also notes that enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights. On 29 March 2000, the Council adopted an action plan for the prevention and control of organised crime : a European Union strategy for the beginning of the new millennium. This action plan stipulates that Member States and the Commission should ensure that the applicable legislation provides for the possibility that an applicant in a public tender procedure who has committed offences connected with organised crime can be excluded from participation in tender procedures conducted by Member States and the Community. On 29 November 2000, the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. According to this programme, concerning disqualifications and similar sanctions, the effectiveness of certain sanctions within the European Union depends on their being recognised and enforced throughout the Union. Partly as a result of the implementation of the principle of free movement of persons within the EU, there is a need for greater exchange of information between Member States concerning judgements given in Member States, including disqualifications imposed as part of a judgement or as a corollary of a criminal conviction. Application of the principle of mutual recognition to disqualifications, however, as stated in the programme of measures to implement the principle of mutual recognition of decisions in criminal matters, requires the compilation of a list of disqualifications common to all Member States, handed down when sentencing a natural or legal person or further thereto. It is of considerable importance, however, that Member States should at present be able to pass on details of disqualifications imposed on natural persons as part a judgement or as a corollary of a criminal conviction and which restrict the convicted person's access to employment, so that other Member States can extend such bans to their own territory in accordance with their own national law. The draft Council Decision provides that this decision shall apply to disqualifications which are imposed on natural persons as parts of a judgement or as a corollary of a crime conviction and which restrict the convicted person's access to employment, with the exception of driving disqualifications. It deals with the following issues : 1) Establishment of a national contact point for information on disqualifications : each Member State shall establish or designate a central national contact point for information ondisqualifications. This contact point shall have the task of obtaining and supplying information on disqualifications. The general Secretariat of the Council shall be notified by each Member State of its national contact point for information in disqualifications and of any subsequent changes thereto, pursuant to this decision. The General Secretariat of the Council shall ensure that notification by Member States or their national contact points to passed on to the other Member States and the Commission. 2) Obtaining of information on disqualifications : in accordance with the relevant national and international rules, national contact points shall have access to national criminal records, including access to information on disqualifications. At the request of a contact point in another Member State, national contact points shall inform it whether a person is subject to a disqualification. Then information shall be supplied in accordance with the relevant international agreements and national law. Where a request for the information is not submitted in the course of a criminal prosecution, member States may make the supply of the information in question

conditional upon the consent of the person to whom it relates. Should further details of the nature and the length of a disqualification be desired, the requesting Member State shall submit a request for them in accordance with the relevant international agreements. - Notification of disqualifications : Member States shall be required to inform any other Member State of disqualifications in respect of the latter Member State's nationals. The information shall also be supplied to another Member State if the Member State in which the disqualifications has been imposed is aware that the subject of it is : - resident in that other Member State, or - carrying on a business in that other Member State. The information shall be supplied in accordance with national law and international agreements. - Notification of disqualifications to competent national authorities : the national contact point shall notify the competent national authorities of disqualifications of which the contact point has been informed with a view to their enforcement in accordance with national law. - Languages : correspondence between the various national contact points shall be conducted in their own languages, with a copy in a working language common to the member States concerned, save as otherwise agreed between the Member States concerned. - Assessment : the Council shall assess the implementation of this Decision not later than 2 years after its adoption.