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

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In an explanatory note regarding the drat Council decision on increasing cooperation between the European Union and Member States with regard to disqualifications, the Danish delegation, who initiated this text, explains in depth the foundations and the objectives of this text. Firstly, it should be noted that the legal basis for the draft Council decision is article 31(a) and 34(2)(c) of the Treaty on European Union. The draft Council decision contains provisions on contact points and exchange of the information in the field of disqualifications, that have been imposed as a criminal conviction or as a corollary of a criminal conviction with a view to making it possible for Member States to extend such disqualifciations to their own territory. The draft Council decision, however, does not entail approximation of Member States legislation. Moreover, the draft Council decision will not entail financial implications for the budget of the European Communities but may however, entail financial implications for Member States. According to the conclusions of the European Council meeting in Tampere, 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. There are a number of conventions designed to bring about mutual recognition of criminal judgements, including the European Convention of 28 May 1970 on the International Validity of Criminal Judgements, the Convention of 13 November 1991 between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences, enacted by way of European political cooperation, and the European Union Convention of 17 June 1998 on Driving Disqualifications (please refer to procedure reference CNS/1998/0901). In the long run it will be necessary to apply the principle of mutual recognition to disqualifications imposed as a criminal conviction or as a corollary of a criminal conviction. It is of considerable importance that Member States should at this point be able to supply information disqualifications imposed as a criminal conviction or as a corollary of criminal convictions, so that other Member States can extend such disqualifications to their own territory in accordance with their own national law. For this purpose, the draft Council decision ensures that Member States establish or designate contact points in this field which - in accordance with relevant international agreements and national law - can supply information on disqualifications imposed as criminal convictions or as a corollary of criminal convictions in other Member States. Furthermore, the draft Council decision ensures that a Member State is not ex officio, if a person with ties to the Member State concerned is the subject of a disqualification, which has been imposed as a criminal conviction or as a corollary of a criminal conviction in another Member State. This document defines in depth the scope of the draft Council decision. The Council decision applies to disqualifications, that have been imposed on a physical person as a criminal conviction or as a corollary of a criminal conviction and which restricts the rights of the person concerned to carry on his business orto practise his profession. The Council decision does not apply to driving disqualifications (please refer to procedure reference CNS/1998/0901). As stated in the initial proposal, Member States are to establish or designate a national contact point for information on disqualifications. The task of the national contact point is to obtain and supply information on disqualifications in accordance with relevant international agreements and national law. Member States are obliged to ensure that the national contact point in accordance with international agreements and national law have access to national registers on criminal convictions, including disqualifications, that have been imposed as criminal convictions or as a corollary to criminal convictions. The draft decision states that at the request of a contact point in another Member State the national contact point shall supply information on whether or not a particular person is the subject of a disqualifications in the requested Member State. At this point, the contact point is only to confirm or deny that the person, whom the request concerns, is the subject of a disqualification ("hit/no hit system"). The information may be requested because it is needed in a criminal matter, but it may also be requested, e.g. because the person concerned

has applied for a specific position or wishes to start a business in the requesting Member State thus rendering information on disqualifications in other Member States necessary. It is possible for Member States to make supplying the information conditional upon the consent of the person to whom the data relates. This does not apply, however, if the request is not submitted because it is need tin a criminal matter. Member States can request further information as to the nature and the length of a disqualification. Furthermore, the draft decision obliges Member States to notify the competent national authorities of another Member State of disqualification, that concern nationals of the latter Member State. This decision, also obliges Member States to notify another Member States of disqualifications in respect of persons that are resident or who run a business in that other Member State. Also, in this instance, the information is supplied in accordance with relevant international agreement and national law.