Basic information

2002/0820(CNS) CNS - Consultation procedure Decision	Procedure lapsed or withdrawn
Judicial cooperation: mutual recognition of decisions in criminal matters, disqualifications. Initiative Denmark **Subject** 7.30.30 Action to combat crime 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	SOUSA PINTO Sérgio (PSE)	02/10/2002

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2477	2002-12-19

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
03/09/2002	Legislative proposal published	11097/2002	Summary
23/09/2002	Committee referral announced in Parliament		
03/12/2002	Vote in committee		Summary
03/12/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0430/2002	
17/12/2002	Decision by Parliament	T5-0602/2002	Summary
19/12/2002	Debate in Council		

Technical information

Procedure reference	2002/0820(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation

Legislative instrument	Decision
Legal basis	Treaty on European Union (after Amsterdam) M 031
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/5/16729

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0430/2002	03/12/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0602/2002 OJ C 031 05.02.2004, p. 0028-0087 E	17/12/2002	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	09957/2002	26/06/2002	Summary
Legislative proposal	11097/2002 OJ C 223 19.09.2002, p. 0017	03/09/2002	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

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

2002/0820(CNS) - 26/06/2002 - Document attached to the procedure

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.

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

2002/0820(CNS) - 03/09/2002 - Legislative proposal

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.

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

2002/0820(CNS) - 17/12/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the report by Sergio SOUSA PINTA (PES, Portugal) and rejected the Danish initiative. (Please refer to the document 03/12/02).