

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

Initiative of the Kingdom of Denmark with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications

(2002/C 223/08)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(c) thereof,

Having regard to the initiative from the Kingdom of Denmark,

Having regard to the opinion of the European Parliament,

Whereas:

(1) 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 judgments and to other decisions by judicial authorities. Point 33 of the conclusions also notes that enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights.

(2) 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⁽¹⁾. According to Recommendation 2 of the action plan, 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.

(3) On 29 November 2000 the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁽²⁾. According to point 3.4 of the 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.

(4) There are a number of conventions designed to bring about mutual recognition of criminal judgments, including the European Convention of 28 May 1970 on the international validity of criminal judgments, 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⁽³⁾.

(5) According to the European Convention of 20 April 1959 on mutual assistance in criminal matters, each contracting party is to inform any other party of all criminal convictions and subsequent measures in respect of nationals of the latter party, entered in the judicial records.

(6) Partly as a result of implementation of the principle of free movement of persons within the European Union, there is a need for greater exchange of information between Member States concerning judgments given in Member States, including disqualifications imposed as part of a judgment or as a corollary of a criminal conviction.

(7) Furthermore provision needs to be made for the possibility in the longer term of applying the principle of mutual recognition to disqualifications imposed as part of a judgment or as a corollary of a criminal conviction.

(8) Application of the principle of mutual recognition to disqualifications, however, as stated in point 3.4 of 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.

(9) 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 of a judgment 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,

⁽¹⁾ OJ C 124, 3.5.2000, p. 1.

⁽²⁾ OJ C 12, 15.1.2001, p. 10.

⁽³⁾ OJ C 211, 23.7.1999, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

Scope of the Decision

This Decision shall apply to disqualifications which are imposed on natural persons as part of a judgment or as a corollary of a criminal conviction, and which restrict the convicted persons' access to employment, with the exception of driving disqualifications.

Article 2

Establishment of a national contact point for information on disqualifications

1. Each Member State shall establish or designate a central national contact point for information on disqualifications.
2. The national contact point shall have the task, in accordance with relevant international agreements and national legislation, of obtaining and supplying information on disqualifications.
3. Each Member State shall notify the General Secretariat of the Council of its national contact point for information on disqualifications and of any subsequent changes thereto, pursuant to this Decision. The General Secretariat of the Council shall ensure that notification by Member States of their national contact points is passed on to the other Member States and the Commission.
4. Each Member State shall ensure that its national contact point is able to carry out its tasks quickly and effectively.

Article 3

Obtaining of information on disqualifications

1. 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.
2. 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.
3. The information referred to in paragraph 2 shall be supplied in accordance with relevant international agreements and national law. Where a request for the information referred to in paragraph 2 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.
4. Should further details of the nature and length of a disqualification be desired, the requesting Member State shall submit a request for them in accordance with relevant international agreements.

Article 4

Notification of disqualifications

1. Member States shall be required to inform any other Member State of disqualifications in respect of the latter Member State's nationals.
2. The information referred to in paragraph 1 shall also be supplied to another Member State if the Member State in which the disqualification has been imposed is aware that the subject of it is:
 - (a) resident in that other Member State, or
 - (b) carrying on a business in that other Member State.
3. The information referred to in paragraphs 1 and 2 shall be supplied in accordance with national law and international agreements.

Article 5

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, pursuant to Articles 3 and 4, with a view to their enforcement in accordance with national law.

Article 6

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.

Article 7

Assessment

The Council shall assess the implementation of this Decision not later than two years after its adoption.

Article 8

Entry into force

This Decision shall take effect on the day following its publication in the *Official Journal of the European Communities*.

Done at Brussels, ...

For the Council

The President

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