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REPORT

on the initiative by the Kingdom of Denmark with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications
(11097/2002 – C5-0419/2002 – 2002/0820(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Sérgio Sousa Pinto

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

Page

PROCEDURAL PAGE

By letter of 11 September 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Denmark with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications (11097/2002 – 2002/0820(CNS)).

At the sitting of 23 September 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (C5-0419/2002) as the committee responsible.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Sérgio Sousa Pinto rapporteur at its meeting of 2 October 2002.

It considered the initiative by the Kingdom of Denmark and the draft report at its meetings of 12 November 2002 and 3 December 2002.

At the last meeting it adopted the draft legislative resolution by 34 votes to 4, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans, vice-chairman; Lousewies van der Laan, vice-chairman; Sérgio Sousa Pinto, rapporteur; Generoso Andria (for Giacomo Santini pursuant to Rule 153(2)), Mario Borghezio, Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Pierre Jonckheer), Marco Cappato (for Frank Vanhecke), Michael Cashman, Chantal Cauquil (for Giuseppe Di Lello Finuoli pursuant to Rule 153(2)), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Rosa M. Díez González (for Carmen Cerdeira Morterero), Marianne Eriksson (for Ilka Schröder pursuant to Rule 153(2)), Evelyne Gebhardt (for Margot Keßler), Anne-Karin Glase (for Christian Ulrik von Boetticher pursuant to Rule 153(2)), Anna Karamanou (for Adeline Hazan), Hans Karlsson (for Martin Schulz pursuant to Rule 153(2)), Timothy Kirkhope, Ole Krarup, Alain Krivine (for Fodé Sylla), Giorgio Lisi (for Bernd Posselt pursuant to Rule 153(2)), Pasqualina Napoletano (for Elena Ornella Paciotti pursuant to Rule 153(2)), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Neil Parish (for Mary Elizabeth Banotti pursuant to Rule 153(2)), Hubert Pirker, José Ribeiro e Castro, Amalia Sartori (for The Lord Bethell pursuant to Rule 153(2)), Olle Schmidt (for Baroness Sarah Ludford), Ole Sørensen (for Francesco Rutelli), Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Sabine Zissener (for Eva Klamt pursuant to Rule 153(2)).

The report was tabled on 4 December 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative by the Kingdom of Denmark with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications (11097/2002 – C5-0419/2002 – 2002/0820(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the initiative by the Kingdom of Denmark (11097/2002[1]),

– having regard to Article 34(2)(c) of the EU Treaty,

– having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0419/2002),

– having regard to Rules 106 and 67 of its Rules of Procedure,

– having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0430/2002),

1. Rejects the initiative by the Kingdom of Denmark;

2. Calls on the Kingdom of Denmark to withdraw its initiative;

3. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Denmark.

[1] OJ C 223, 19.9.2002, p. 17.

EXPLANATORY STATEMENT

I. INTRODUCTION

The creation of a single market without internal borders between the European Union Member States in which, among another freedoms, the free movement of persons is guaranteed, has triggered a debate on the urgent need for the European Union to have appropriate means and instruments to tackle organised crime, which will in turn help to create a genuine European area of security and justice throughout Union territory.

Justice should be seen as an instrument which makes it possible to make everyday life easier whilst at the same time pursuing those who are a threat to the freedom and security of individuals and society. This includes both access to justice and full cooperation among Member States in judicial matters.

The Treaty of Amsterdam, which entered into force on 1 May 1999, gave a decisive boost to the creation of this European area of justice by 'communitarising' judicial cooperation in civil matters, including it within the first pillar of the European Union under the Treaty establishing the European Community, where it is regulated in Articles 61 to 65, and thereby removing it from the third pillar where it had first been placed by the Treaty signed in Maastricht on 7 February 1992.

Nevertheless, for reasons linked to their history and traditions, the Member States, sheltering behind an outmoded notion of sovereignty, were incapable of overcoming national barriers. The most on which political agreement could be reached during the negotiations on the Treaty of Amsterdam in this connection was to include it in Title VI of the Treaty on European Union under the term 'police and judicial cooperation in criminal matters'.

This was a timid step, because it does not guarantee adequate protection for the rights of European citizens in the face of the growing threat of crime which is increasingly being organised on a Union-wide scale, taking advantage of the free movement of goods, capital, services and persons, and the consequent abolition of internal borders between Member States.

II. THE FIGHT AGAINST ORGANISED CRIME IN THE EUROPEAN UNION

Organised crime is a serious threat to European society. Criminal behaviour is no longer the exclusive province of certain individuals but of organisations which infiltrate the various structures of civil society.

The level of organised crime in the European Union is rising, as can be deduced from the Member States' contributions to the report on the annual situation regarding organised crime.

Organised crime groups are not generally confined by national borders. They frequently form associations within and outside Union territory, with both individuals and other networks, for the purpose of committing one particular crime or a series of crimes.

These groups increasingly appear to be active on both the legal and illegal market, using experts and legal business structures to assist their criminal activities.

These organisations are strengthening their international criminal contacts and setting themselves the goal of infiltrating the social and business structures of European society.

There is evidence that these networks are capable of operating easily and effectively in both Europe and other parts of the world, satisfying illegal demand through the acquisition and supply of all kinds of goods and services.

The growing organisational complexity of many of these mafias enables them to exploit the gaps and differences between the various legal systems in the Member States.

Strengthening the fight against the scourge of national and international organised crime means that both the Member States and the European Union must take concerted action as part of a multidisciplinary European strategy in order to attain a genuine area of freedom, security and justice in their territory.

Nevertheless, the measures which both the European Union and its Member States have been able to take to prevent and suppress such criminal activities have been on an extremely small scale compared with the constant expansion in crime, and they have never been proactive in nature.

III. THE INITIATIVE BY THE KINGDOM OF DENMARK ON INCREASING COOPERATION BETWEEN EUROPEAN UNION MEMBER STATES WITH REGARD TO DISQUALIFICATIONS

A) CONTENT

At its meeting in Amsterdam of 16 and 17 June 1997 the European Council approved an Action Plan to combat organised crime.[1]

That plan remained in force until the Council's adoption on 20 March 2000 of a fresh action plan entitled 'The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium'.[2]

The legislative proposal for a decision containing the present initiative of the Kingdom of Denmark seeks to fulfil the political mandate set out in Recommendation 2 of the current EU Action Plan against organised crime referred to above, which also coincides with Recommendation 7 of the earlier 1997 Action Plan which it replaced.

Both recommendations call on the Member States and the Commission to ensure that the applicable legislation provides for the possibility that applicants in a public tender procedure who has committed offences connected with organised crime can be excluded from participation in public tender procedures conducted by the Member States and the

[1] OJ C 251, 15.8.1997, p. 1.
[2] OJ C 124, 3.5.2000, p. 1.

Community, and that any applications from such persons for subsidies or governmental licences can be rejected.

However, the proposal for a decision contained in the present initiative aims merely to establish an information system among the Member States concerning disqualifications imposed on natural persons as part of a criminal judgment, and does not create any kind of mutual recognition of judgments with a view to their application.

The content of the initiative thus continues to uphold the national sovereignties which make the European Union a paradise for criminals, where persons who have been sentenced and disqualified or incapacitated in one Member State can carry on their activities with impunity in another EU Member State, taking advantage of the maintenance of national judicial borders in criminal matters.

B) ASSESSMENT

Your rapporteur would stress that the present initiative by the Kingdom of Denmark, aimed at increasing cooperation between the Member States of the European Union as regards information on disqualifications imposed on a natural person as part of a judgment or as a consequence of a criminal conviction, adds nothing to the unsystematic fight against organised crime.

According to Eurobarometer data from April 2002, 9 out of 10 European citizens put the fight against organised crime in third place in their list of priorities, after peace and security and the fight against unemployment.

There can be no doubt that a prime way of providing an effective response to the needs implicitly stated by more than 330 million European citizens would be to fulfil the political resolve expressed at both the Tampere European Council of October 1999 and the Laeken European Council of December 2001 and implement the principle of the mutual recognition of decisions in criminal matters.

The Government of the Kingdom of Denmark has shown itself to be keenly aware of the vital need to apply this principle in the explanatory memorandum to its initiative, in which it starts by giving a comprehensive account of the political resolve to fight against crime and use the mutual recognition of decisions in criminal matters as one of the basic instruments in that fight, and goes on to provide a detailed review of the action plans already adopted by the Council with a view to achieving these two objectives.

Your rapporteur therefore finds it disappointing that, in the end, the Government of the Kingdom of Denmark has confined itself to presenting an initiative aimed merely at enabling the Member States to exchange details on disqualifications, which will not bring about any progress in the fight against organised crime, nor in the application of mutual recognition of court decisions in criminal matters. Consequently, it is of no value whatsoever.

On 26 July 2000 the Commission submitted a communication to the Council and the

European Parliament[1] on the mutual recognition of final decisions in criminal matters aimed at fulfilling the political mandate contained in point 37 of the conclusions of the Tampere European Council of 15 and 16 October 1999, point 33 of which referred to '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 Commission and Council subsequently adopted the 'Programme of measures to implement the principle of mutual recognition of decisions in criminal matters',[2] point 3.4 of which refers to 'disqualifications and similar sanctions' with the aim of gradually extending the effects of disqualifications throughout the European Union.

Your rapporteur is therefore surprised that, given the urgent need for united action to combat cross-border organised crime on the one hand, and the political mandate for the application among the Member States of the principle of mutual recognition of decisions in criminal matters on the other, for which a programme of specific measures has been created, the present initiative restricts its scope to establishing no more than an information system among the Member States regarding disqualifications imposed on natural persons.

This is an example of the shortcomings already highlighted by the declaration on the future of the European Union contained in Annex I to the conclusions of the Laeken European Council of 14 and 15 December 2001, which explicitly states, in the section headed 'A better division and definition of competence in the European Union', that 'citizens often hold expectations of the European Union that are not always fulfilled. And vice versa − they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential'.

It is clear that the right of each Member State to submit proposals, combined with the six-monthly rotation of the Council Presidency, makes the selection of priorities formidably complicated if not impossible, given that up to now the Member States have been incapable of reaching overall agreements and in the majority of cases their proposals are the product of circumstance (after the attacks of 11 September, for example), or of purely national factors, elevating to European level issues which are essentially of a purely national nature.

Consequently, a multiannual strategic programme needs to be adopted which would establish and define the overall framework of legislative proposals for successive presidencies.

Otherwise the European public is being presented with a distorted picture, since the current proliferation of legislation, which is often incoherent and devoid of real content, produces the mistaken impression that the European Union is taking steps to resolve the fundamental problems affecting their everyday lives, whereas all too often the end result is to create inequalities among Union citizens depending on the actions of the Member State in which they live.

The present initiative provides a clear illustration of the yawning gap between the Council's political declarations and the adoption of the legal instruments by which to apply them.

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[1] COM(2000) 495.
[2] OJ C 12, 15.1.2001, p. 10.

Initiatives proliferate, action plans are adopted, recommendations are issued and common positions established, all of which combine to give the public the impression that a vast amount of legislative activity is going on which will help to resolve their everyday problems. Reality is quite different, however, and (as irrefutably demonstrated by the present initiative, which has no added value and leaves it to the Member States to decide on an arbitrary basis whether or not to extend the application of disqualifications to their territory) the adoption of such instruments is in fact counterproductive, as in the case of the present initiative, whose adoption may have the negative effect of ensuring, in one way or another, that crime is concentrated in those states to which the enforcement of disqualifications does not extend.

However, this initiative does perform one useful function in that it demonstrates that the current legal instruments and procedures provided for under the 'third pillar' of the European Union are totally inadequate when measured against the great political ambitions which have come into being since the Tampere European Council.

This initiative is a clear illustration of the fact that cooperation in this area of the 'third pillar' has no overall coherence and measures are added on without a minimum global strategy, removing any possibility of carrying out any kind of even slightly ambitious legislative project.

Nothing has been done to fulfil the wish expressed by the heads of state and government at their meeting in Laeken, when they stated that 'efforts to surmount the problems arising from differences between legal systems should continue, particularly by encouragement of recognition of judicial decisions, both civil and criminal'.

The present initiative does not respect the priorities set by the above two programmes of measures as regards disqualification and incapacity. This clearly demonstrates the problems posed by the right of initiative of the Member States, whose power should be circumscribed firstly by requiring that an initiative should correspond to the political priorities in criminal matters set by the Council, and secondly by setting a threshold of one third of Member States for an initiative to be deemed admissible, so that initiatives are not determined by the political momentum resulting from the six-monthly rotation of the Council Presidency.

The present initiative also demonstrates the urgent need for more solid democratic legitimacy and scrutiny as regards the decision-making process in areas falling under the 'third pillar'.

How can it be acceptable that the two highly significant work programmes on which this initiative is based, i.e. the 'action plan for the prevention and control of organised crime: a European Union strategy for the beginning of the new millennium' and the 'programme of measures to implement the principle of mutual recognition of decisions in criminal matters', should have been adopted by the Council without first consulting Parliament?

What has happened to the transparency and legitimacy of the legislative process?

The initiative by the Kingdom of Denmark also poses further significant problems of a legal nature, given that some of the matters regulated fall within the sphere of competence of the European Community rather than the European Union.

The Union must respect those areas in which the Community has the legal capacity to act and abstain from acting itself in such areas, since in the event of a conflict Community law prevails over that of the Union, as laid down in Article 47 of the Treaty on European Union.

Your rapporteur takes the view that the content of recital 2 of the initiative by the Kingdom of Denmark with a view to adopting a Council Decision falls within the scope of the first pillar of the EC Treaty, given that the legal instrument to facilitate the exchange of information in the field of exclusion from participating in procedures for the award of public supply contracts falls within the Community's sphere of competence, as laid down in Article 46 of the amended proposal for a European Parliament and Council directive of 6 May 2002.[1]

Likewise, in its current wording, the phrase 'or as a corollary of a criminal conviction' in Article 1 of the draft decision also falls outside the scope of the Treaty on European Union, since in some Member States the consequences of a sentence are established by civil or administrative bodies and would thus fall within the Community's sphere of competence.

For all these reasons, your rapporteur proposes that the present initiative be rejected.

[1] COM(2002) 236.