



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**Disqualifications arising from criminal convictions in the European Union**

{SEC(2006)220}

# COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

## Disqualifications arising from criminal convictions in the European Union

1. A disqualification can be defined as a measure which restricts, for a limited or unlimited period, a natural or legal person from exercising certain rights, occupying certain functions, engaging in certain activities, going to certain places or carrying out certain measures<sup>1</sup>. It is a category of sanction whose objective is primarily preventive. When a person who has been convicted of an offence is deprived of the ability to exercise certain rights (for example the right to work with minors), it is primarily to prevent him or her from re-offending. In an area of freedom, security and justice in which individuals should enjoy a high degree of protection, there would accordingly be merit in recognising the effect of certain disqualifications throughout the entire territory of the Union. The issue is all the more pertinent in an internal market within which persons move freely.
2. Disqualifications are a category of sanctions which might need, under certain circumstances, to be recognised and enforced throughout the Union to be effective. This is recognised in the Hague Programme<sup>2</sup> where the European Council called on the Commission to put forward proposals on enhancing the exchange of information from national records of convictions and disqualifications, in particular information relating to sex offenders. This objective is also set out in the action plan jointly adopted by the Council and the Commission on 2-3 June 2005 to give effect to the Hague Programme and in the Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between the Member States adopted by the Commission in May 2005<sup>3</sup>, both of which announce the adoption of the present Communication.
3. The present Communication seeks to clarify the concept of disqualification, assess the relevant legislation at European level and outline the approach likely to be followed in this regard.

### 1. GENERAL CHARACTERISTICS

4. A disqualification as defined under paragraph 1 is a very broad concept which requires further clarification for the purposes of this Communication.
5. *The exclusion of disqualifications not linked to a criminal conviction.* In accordance with the framework referred to in paragraph 2, this communication concerns only disqualifications resulting from **a criminal conviction** and not e.g. measures imposed in the context of ongoing proceedings, measures imposed for purely

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<sup>1</sup> Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union ("Green Paper on sanctions"), COM (2004) 334 final, 30.04.2004.

<sup>2</sup> Adopted on 4-5 November 2004 (OJ C 53, 3.3.2005, p. 1).

<sup>3</sup> COM (2005) 195 of 19.5.2005.

preventive purposes on persons who cannot be held criminally liable or prohibitions that may result from conduct which does not constitute a criminal offence.

6. *Nature of the disqualification.* There are different ways in which a disqualification can result from a criminal conviction:
  - it can be a penalty ordered by the court, either as an addition to the principal penalty or as an alternative penalty if it is ordered in place of one or more principal penalties;
  - it can be an additional penalty, automatically imposed as a consequence of the principal penalty, even if it is not ordered by the court;
  - it can be ordered in administrative or disciplinary proceedings arising as a result of a criminal conviction.
7. *Material scope.* The potential range of disqualifications matches the number of rights of which a legal or natural person can be deprived (e.g. driving ban, prohibition from residing in a particular area, exclusion from public procurement procedures, deprivation of civil, civic or family rights).
8. *Personal scope.* Disqualifications can apply to both legal and natural persons. Not all Member States recognise the criminal liability of legal persons<sup>4</sup>. This question does not specifically concern disqualifications and is treated more fully in the Commission's Green Paper on sanctions<sup>5</sup>.
9. *Heterogeneity of disqualifications within the Union:* as illustrated in the Green Paper on sanctions, the Member States' legislation on sanctions differs widely and the same can be said of the legislation on disqualifications. Within a single Member State, the potential range of disqualifications is broad and the nature and the way in which these sanctions are enforced can vary considerably. This heterogeneity becomes all the more visible when viewed from the perspective of the European Union. While certain disqualifications exist in all the Member States – for instance, driving disqualifications – this is by no means the general rule<sup>6</sup>.

## 2. INVENTORY OF INSTRUMENTS ADOPTED AT EUROPEAN UNION LEVEL

10. A certain number of instruments adopted at EU level refer to disqualifications. On the one hand, there are instruments which aim to approximate national legislation concerning disqualifications (section 2.1.). On the other hand, there are instruments which deal with the effect that a disqualification measure (or a conviction) ordered in one Member State is likely to have in the other Member States (section 2.2.).

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<sup>4</sup> For example, Belgium, France, Ireland, the Netherlands and the United Kingdom do recognize the criminal liability of legal persons, contrary to Greece, Germany or Italy.

<sup>5</sup> Section 3.1.6.

<sup>6</sup> This heterogeneity and the difficulties with a general approach were illustrated during the discussion of an initiative put forward by Denmark in 2002 with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications (OJ C 223 of 19.9.2002, p. 17). This initiative is still before the Council.

## 2.1. Instruments to approximate penalties

11. These instruments are listed in the Annex to this Communication. Most refer to disqualifications as possible penalties available on conviction for particular offences. The following instruments contain more prescriptive provisions concerning disqualifications following a criminal conviction:

- a) Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography<sup>7</sup> requires the Member States to take the necessary measures to ensure that a natural person convicted of one of the offences covered by the instrument may be temporarily or permanently prevented from exercising professional activities related to the supervision of children (Article 5(3)). That does not mean that disqualification must automatically follow as a consequence of conviction for one of the relevant offences but simply that each Member State must provide for the possibility of preventing the person from exercising a specific activity as one of the penalties available following conviction;
- b) Framework Decision 2003/568/JHA on combating corruption in the private sector<sup>8</sup> contains a similar provision in its Article 4(3);
- c) The recent legislation concerning the procedures for the award of public contracts makes the process of awarding such contracts more transparent and thus helps to combat corruption and organised crime. Article 45(1) of the public procurement Directive<sup>9</sup> provides, in certain circumstances, for the exclusion from participation in a public contract of any candidate or tenderer who has been the subject of a conviction by final judgment for participation in a criminal organisation, corruption, fraud to the detriment of the financial interests of the Communities or money laundering. The Directive applies to both natural and legal persons<sup>10</sup>.

A parallel can be drawn here with other EC directives applying to the financial sector. Most of these instruments contain a standard provision according to which the management body of the relevant institution must be constituted of persons of “good repute”. For example, under the Banking Directive<sup>11</sup>, a credit institution cannot be authorised to perform its duties if the persons concerned are not of sufficiently good repute. It is therefore likely that their criminal

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<sup>7</sup> OJ L 13, 20.1.2004, p. 44.

<sup>8</sup> OJ L 192, 31.7.2003, p. 54. It is interesting that the Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p. 2) contains no provisions on disqualification.

<sup>9</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ L 134, 30.4.2004, p. 114. Member States are required to have implemented this Directive by 31 January 2006.

<sup>10</sup> In this connection, reference should also be made to Article 29(c) of the Services Directive, Article 20(1)(c) of the Supply Directive and Article 24(1)(c) of the Works Directive which are discussed in more detail in the Annex. The public procurement Directive repeals these provisions with effect from 31 January 2006.

<sup>11</sup> Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, OJ L 126, 26.5.2000, p. 1.

records will be checked and that they will not be authorised if they have been convicted of offences such as money laundering or corruption. The interpretation of “good repute” is however left to the Member States and there is no systematic disqualification flowing from the commission of specific offences. The same applies to the legislation relating to investment firms<sup>12</sup>, trade in securities<sup>13</sup>, statutory auditing of accounting documents<sup>14</sup> and insurance<sup>15</sup>.

## 2.2. Measures concerning the effect of convictions or disqualifications

12. The instruments concerning the effect that a disqualification measure (or a conviction) ordered in one Member State is likely to have in the other Member States can be divided in three categories.
13. A first category includes a series of directives which can be regarded as instruments allowing partial mutual recognition. Some of them deal directly with the recognition of a **disqualification** ordered in another Member State (a and b). Others focus on the consequences in terms of disqualification that might flow from the recognition of a **conviction** handed down in another Member State (c and d).
  - a) the Directives on the exercise of the right to vote and stand for election at municipal<sup>16</sup> and European elections<sup>17</sup>. The former allows a disqualification from standing for election ordered in one Member State to be recognised in another Member State. The latter requires a disqualification from standing for election ordered in one Member State to be recognised in another Member State and allows a disqualification from voting ordered in one Member State to be recognised in another Member State;

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<sup>12</sup> See Article 9 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1.

<sup>13</sup> See Articles 5 a and 5 b of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 375, 31.12.1985, p. 3.

<sup>14</sup> See Article 3 of the Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents, OJ L 126, 12.05.1984, p. 20.

<sup>15</sup> See Articles 6(1) a and 8 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, OJ L 345, 19.12.2002, p. 1 and Article 8 of Directive 73/239/EC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, OJ L 228, 16.08.1973, p. 3 (as amended by Directive 92/49/EC, OJ L 228, 11.08.1992, p. 1).

<sup>16</sup> Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 31.12.1994, p. 38. Amended by Council Directive 96/30/EC of 13 May 1996, OJ L 122, 22.5.1996, p. 14.

<sup>17</sup> Council Directive 93/109/EC of 6 December laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30.12.1993, p. 34.

- b) the Directive on the mutual recognition of expulsion decisions<sup>18</sup> aims to allow the recognition of an expulsion decision taken by one Member State against a third-country national who is in the territory of another Member State. In particular, it applies to expulsion decisions based on a serious and current threat to public order or national security and taken following a conviction for an offence punishable by at least one year's imprisonment. It does not apply to family members of citizens of the European Union who have exercised their rights of free movement. They are covered by Directive 2004/38/EC which strictly regulates the permissible restrictions on freedom of movement and underlines that previous criminal convictions cannot on their own justify such restrictions<sup>19</sup>;
- c) the public procurement Directive mentioned earlier. This is an instrument which entails the partial mutual recognition of convictions since it results in a conviction handed down in one Member State normally having as a consequence the exclusion from public procurement on a Union-wide basis. Where a conviction has been handed down in one Member State but the contracting authority is located in another Member State, it may seek the co-operation of the competent authorities of the first Member State to obtain information relating to the conviction.

At EU level, the Financial Regulation<sup>20</sup> also sets up a mechanism for the exclusion from European tenders and grants of natural or legal persons who have committed certain offences;

- d) On 7 September 2005, the European Parliament and the Council adopted a new Directive on the recognition of professional qualifications<sup>21</sup> which will replace fifteen directives currently applying to this field. It requires the competent authorities of the host and home Member States to exchange information regarding, in particular, disciplinary action or criminal sanctions which are likely to have consequences for the pursuit of the professional activities in question (Article 56, paragraph 2). This new Directive strengthens the existing obligation to inform. However, as it is currently the case, the exchange of information does not trigger an automatic disqualification from exercising the profession in the host country. This matter is left to the host country. In that regard, it is worth mentioning the difference between this Directive and

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<sup>18</sup> Council Directive 2001/40/EC of 28 May 2001, OJ L 149, 2.6.2001 p. 34. The recent Commission proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (COM (2005) 391 final of 1.9.2005) provides for a flexible and comprehensive set of rules, applicable if a third-country national who is the subject of a removal order or return decision issued in a Member State is apprehended in the territory of another Member State. Member States may select different options, one of them being mutual recognition, depending on the circumstances of the particular case. Upon adoption of this proposal, Directive 2001/40/EC will become redundant and will therefore be repealed.

<sup>19</sup> Directive 2004/38/EC of 29 April 2004 (OJ L 158, 30.4.2004, p. 77) consolidates earlier instruments and will have to be transposed by 30 April 2006.

<sup>20</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, O J L 248, 16.9.2002, p. 1. See Articles 93 (b) and 93 (e).

<sup>21</sup> JO L 255, 30.09.2005, p. 22.

Directive 98/5/EC<sup>22</sup> relating to the right of establishment for lawyers (which is not affected by the new Directive). Since the right of establishment is based on the recognition of lawyers' professional registration rather than on their qualifications, Directive 98/5/EC ensures that a disqualification ordered in the home Member State has effect in the host country.

14. A second category comprises instruments which are not in force or which have been ratified by only a limited number of Member States:
- a) the Danish initiative “*with a view to adopting a Council Decision on increasing cooperation between European Union Member States with regard to disqualifications*”<sup>23</sup>. This initiative, which is still before the Council, focuses on access to employment and is restricted to natural persons. Moreover, it envisages only the exchange of information between Member States and not the mutual recognition of disqualification decisions<sup>24</sup>;
  - b) the EU Convention of 1998 concerning driving disqualifications<sup>25</sup>. This Convention does not provide for direct recognition of driving bans imposed in one Member State by all the other Member States and the mechanisms it establishes do not follow the rationale underlying the principle of mutual recognition. In particular, the Convention enables the Member State of implementation to choose to convert the foreign decision into a domestic judicial or administrative order. So far, it has been ratified by a very limited number of Member States<sup>26</sup>.
15. Lastly, a third category is made up of resolutions, i.e. non-mandatory acts, to combat football-related violence. A Council Resolution dating from 1997<sup>27</sup> stresses that stadium exclusions are found to be effective in preventing and containing disorder connected with national football matches and that it is desirable that a stadium exclusion imposed in one Member State should be upheld for European football matches in the other Member States. A resolution of 2003<sup>28</sup> calls on the Member States to study the possibility of extending stadium exclusions to certain football matches in other Member States and linking this to the imposition of penalties in the event of non-compliance with any such exclusion.

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<sup>22</sup> Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, OJ L77, 14.03.1998, p.36

<sup>23</sup> OJ C 223, 19.9.2002, p. 17.

<sup>24</sup> A parallel can be drawn here with the Council of Europe's European Convention of 1970 on the International Validity of Criminal Judgments. Ratified by 9 Member States (status as of 6 October 2005), it applies in particular to disqualifications. However, the mechanisms contained therein do not follow the rationale underlying the principle of mutual recognition: the Convention requires double criminality, permits review of the merits of the disqualification, makes provision for the determination of its duration and includes the possibility of limiting the extent of the disqualification.

<sup>25</sup> OJ C 216, 10.7.1998, p. 1. See also explanatory report on the Convention on driving disqualifications, OJ C 211, 23.7.1999, p. 1.

<sup>26</sup> Spain and Slovakia. Status as of 5 October 2005.

<sup>27</sup> Council Resolution of 9 June 1997 on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy, OJ C 193, 24.6.1997, p. 1.

<sup>28</sup> Council Resolution of 17 November 2003 on the use by Member States of bans on access to venues of football matches with an international dimension, OJ C 281, 22.11.2003, p. 1.

### 2.3. Conclusion

16. From the foregoing inventory it can be seen that:
- a) there is a relatively limited number of European instruments that provide for disqualifications on a mandatory basis, i.e. instruments requiring the Member States to include professional disqualifications among the penalties available on conviction (see paragraph 11 a) and b)) or attaching disqualification effects to certain convictions (as in the public procurement Directive);
  - b) With the exception of the Directive on the mutual recognition of expulsion decisions<sup>29</sup>, the instruments which deal with the effect of certain disqualifications or convictions outside the Member State of conviction do not provide for genuine information exchange systems giving the Member States a source of reliable and complete information on disqualifications or convictions ordered in other Member States.
17. The establishment of a system of information exchange concerning driving licences is currently being examined by the Commission. This initiative rests on recent judgments of the Court of Justice which note the existence of an obligation on the Member States to exchange information in certain circumstances, thereby enlarging the system of voluntary information exchange established by Directive 91/439/EEC<sup>30</sup> on driving licences. The recent proposal for a Directive on driving licences, which recasts Directive 91/439/EEC, additionally emphasizes the need to implement a mandatory general information exchange system<sup>31</sup>.

### 3. POSSIBLE APPROACHES TOWARDS DISQUALIFICATIONS

18. Two different approaches, which are not mutually exclusive, might be followed to ensure that disqualifications become effective tools at EU level in sanctioning certain criminal conduct and preventing its repetition. First, one might consider that an EU-wide disqualification from exercising certain activities should flow from the commission of certain offences. Secondly, one might take the view that, under certain conditions, the effect of a national disqualification should be extended to the whole EU territory. In any case, any legislative proposal in this field will be subject, in accordance with the Communication of the Commission of 27 April 2005<sup>32</sup>, to an

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<sup>29</sup> In that case, mutual information exchange takes place via an alert entered in the Schengen Information System (SIS) on basis of Art 96 (3) of the Convention of 19 June 1990 implementing the Schengen Agreement.

<sup>30</sup> OJ L 237, 24.08.1991, p. 1

<sup>31</sup> COM(2003)621. The proposal aims in particular to put an end to “driving licence tourism” and to facilitate the implementation of the principle that the same person can hold only one licence. It maintains the provisions whereby Member States can refuse to recognise the driving licence of a person whose licence has been withdrawn and indirectly still holds another licence. It also strengthens the obligations of the Member States by requiring each Member State to ensure that an applicant for a new licence is not the subject of a driving ban ordered by the authorities of another Member State (Article 8(5) of the proposal).

<sup>32</sup> Communication from the Commission on Compliance with Charter of Fundamental Rights in Commission legislative proposals. Methodology for systematic and rigorous monitoring. COM (2005)172 final of 27.04.2005.

in-depth impact assessment study to assess, in particular, its impact on fundamental rights.

### **3.1. Attach the effects of disqualification to the commission of certain offences**

19. Theoretically, the approach followed in the public procurement Directive could be applied to other sectors with a view to prohibiting access to certain occupations or activities throughout the Union following a conviction for a particularly serious offence.
20. The adoption of such an instrument is likely to require:
  - that the activities and professions concerned be defined;
  - a minimum harmonisation of the offences themselves;
  - the harmonisation of the duration of the disqualification itself in order to avoid potential discrimination. Currently, the duration of a disqualification often varies according to the period for which information stays on the national criminal record. The Commission's original proposal for the public procurement Directive<sup>33</sup> harmonised the duration of the automatic disqualification at five years, but the relevant provision was not carried through to the final text.
21. In practice, the adoption of such an instrument would mean that access to certain activities becomes, to a certain extent, regulated at European level and will have to be justified under the principles of subsidiarity and proportionality. This regulatory approach might prove inappropriate for activities that are not, as in the public procurement Directive, necessarily EU-wide. This is also not the approach adopted in the financial sector (see paragraph 11 c) above).

### **3.2. Provide for the mutual recognition of disqualifications**

22. Although mutual recognition is the cornerstone of the establishment of a European area of freedom, security and justice, extending the territorial effect of disqualifications could be seen as aggravating the sanction and raises the issue of the rights of the individual who will see the territorial scope of the disqualification extended to the whole territory of the European Union. In addition, there is significant diversity in criminal sanctions in the European Union and extending the effect of a disqualification measure ordered in one Member State throughout the Union could be opposed by a Member State which does not impose this type of sanction for the offence in question<sup>34</sup>.
23. A reasonable approach in the first instance would therefore be to adopt a sectoral approach and to give priority to mutual recognition of disqualifications in the fields for which a common basis between the Member States already exists. This presupposes a sufficient degree of homogeneity as regards sanctions, which is notably the case where:

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<sup>33</sup> COM (2000) 275 final.

<sup>34</sup> See the Green Paper on sanctions referred to above.

- the disqualification already exists in all the Member States for a specific category of offence (e.g., driving disqualifications) or
- a legal instrument specifically requires this type of penalty to be provided for in all Member States for certain types of offence (e.g. disqualifications from working with children, see paragraph 11 above). If disqualifications are only referred to as one out of a possible range of penalties for the conduct that the legal instrument requires to be criminalised, without requiring the Member States to provide for this type of penalty, there is no guarantee that a common basis will exist.

24. Even where such a common basis does exist, certain difficulties could result from differences between Member States on the nature of the prohibition<sup>35</sup> or on its substance (duration, for example). The room for manoeuvre to be left to the implementing state would need to be defined.

#### **4. A PREREQUISITE: IMPROVING THE INFORMATION FLOW**

25. The two scenarios described above presuppose that information on convictions and disqualifications circulate between the Member States.

##### **4.1. Convictions**

26. Several steps have already been taken to improve existing information exchange mechanisms:

- On 13 October 2004, the Commission adopted a proposal for a Council Decision on the exchange of information extracted from the criminal record<sup>36</sup> aimed at securing rapid improvements in the current mechanisms for exchanging information between the Member States, mainly by providing time-limits for the transmission of this information. It was adopted by the Council on 21 November 2005<sup>37</sup>.
- On 25 January 2005 the Commission presented a White Paper analysing the main difficulties in exchanging information on convictions and making proposals for a computerised information exchange system<sup>38</sup>. Following discussions on the White Paper, the Justice and Home Affairs Council of 14 April 2005 agreed on a way forward. On this basis and in light of the objectives defined in the Hague Programme, the Commission tabled on 22 December 2005 a legislative proposal setting forth an in-depth reform of the existing exchange mechanisms<sup>39</sup>. Further work should be carried out in 2006 to improve access to information on convictions handed down in the European Union against third country nationals.

27. In this context, it is also worth mentioning that on 17 March 2005 the Commission adopted a proposal for a Council framework decision on taking account of

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<sup>35</sup> For example, some legal systems provide for specific decisions pronouncing such prohibitions while in others it is an automatic consequence of a criminal conviction; even when a decision is taken, its nature (e.g. administrative or criminal) can differ.

<sup>36</sup> COM (2004) 664 13.10.2004.

<sup>37</sup> OJ L 322, 9.12.2005, p. 33.

<sup>38</sup> COM (2005) 10 25.1.2005.

<sup>39</sup> COM (2005) 690

convictions in the Member States in the course of new criminal proceedings<sup>40</sup>. The proposal defines the conditions in which a conviction handed down in another Member State should be taken into account in new criminal proceedings concerning different facts.

## 4.2. Disqualifications

28. Disqualifications are a form of sanction the nature of which is likely to vary within the same Member State and *a fortiori* from one Member State to the other. They can be ordered in the context of criminal, civil/commercial, administrative or disciplinary proceedings or be the automatic result of a conviction. Moreover, in certain Member States they are more commonly ordered as administrative or disciplinary penalties than as “judicial” penalties. These disparities make it difficult to gain access to exhaustive information, especially as the rules concerning the organisation of the national registers also differ widely: all the Member States keep criminal records, but the information gathered by the Commission suggests a high degree of diversity between Member States, particularly as regards the content of such records<sup>41</sup>. In some Member States, only decisions given by the criminal courts are registered whereas in others, the register also contains decisions by civil, commercial or administrative authorities. For example, certain national registers include disqualifications from exercising parental authority.
29. The nature of an individual disqualification and the operation of the national register concerned will therefore determine how it is entered in the register. While disqualifications ordered by the criminal courts are in general found in all registers, this is by no means the case for disqualifications flowing automatically from conviction or ordered by an administrative authority or a professional organisation following conviction. The extent to which disqualifications are entered in national registers is therefore likely to vary considerably between Member States.
30. The scope for improving the exchange of information on disqualifications should therefore be assessed, with due regard to the need to ensure a high degree of protection of personal data. The processing of personal data and the exchange of information on disqualifications should in any case comply with the existing legal framework for the processing of personal data in the European Union<sup>42</sup>. Ideally, the aim should be to enable a comprehensive exchange of information to take place in respect of the following types of disqualification:
- i) disqualifications ordered by a court following criminal conviction (i.e. as part of the criminal conviction);

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<sup>40</sup> COM (2005) 91 17.03.2005.

<sup>41</sup> See Annex to the White Paper COM (2005) 10.

<sup>42</sup> See Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.01.2001). The Commission also adopted on 4 October 2005 a proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (COM (2005) 475).

- ii) disqualifications imposed in one Member State that flow automatically from a conviction in that same state;
  - iii) disqualifications ordered in one Member State following a criminal conviction in that Member State, regardless of the authority ordering them, where the procedure gives the same guarantees as a criminal procedure;
  - iv) disqualifications imposed on legal persons for offences or infringements which would have been criminal offences if they had been committed by a natural person and for which a legal person can be held liable (criminally or administratively) in all the Member States<sup>43</sup>.
31. In the light of this, the need to adopt minimum EU rules requiring Member States to systematically register at least some disqualifications in their national criminal records - or in registers<sup>44</sup> - where a common basis already exists between the Member States, should be assessed.

## 5. CONCLUSION

32. The existence of a criminal conviction triggering a disqualification is the common denominator between the Member States. Improving access to information on convictions handed down in other Member States should enable Member States to take this information into account, in particular for the purposes of assessing whether a person should be granted access to certain jobs or activities. The Commission therefore favours an approach based on improving the circulation of information on convictions and will pursue the work already undertaken in the years to come.
33. Concerning the mutual recognition of disqualifications, the Commission favours a “sectoral” approach, in sectors where a common basis exists between the Member States. This view is shared by a majority of Member States. Such a common basis notably exists with regard to disqualifications from working with children and driving disqualifications (see paragraph 23). In October 2004, Belgium submitted an initiative on mutual recognition of disqualifications from working with children as a result of convictions for sexual offences committed against children. In the future, the Commission also plans to propose a Framework Decision to replace the 1998 Convention concerning driving disqualifications (see paragraph 14 b)). The objective will be to supplement the existing EC instruments with a view to ensuring the full recognition of driving disqualifications.

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<sup>43</sup> Several EU instruments require Member States to take the necessary measures so that legal persons can be held liable (criminally or administratively) for the offences to which the instrument applies and sentenced accordingly. This means that, at least for a limited list of offences, legal persons can be liable in all the Member States.

<sup>44</sup> Irrespective of the type of liability, the frequency with which penalties imposed on legal persons are entered in national registers varies according to the Member State (see Annex to the White Paper COM (2005) 10). In countries which recognise the criminal liability of legal persons, the national criminal record often but not always covers both natural and legal persons. Progress would undeniably be made if penalties (including disqualifications) imposed on legal persons for offences which would have had a criminal nature if they had been committed by a natural person were systematically entered in a national register.