


# Procedure file

Basic information		
CNS - Consultation procedure JHA act	<a href="#">2005/0267(CNS)</a>	Procedure completed
Exchange of information extracted from the criminal record between Member States. Framework Decision		
Repealing JHA act 2005/876/JHA <a href="#">2004/0238(CNS)</a> See also <a href="#">2008/0101(CNS)</a> Amended by <a href="#">2016/0002(COD)</a>		
Subject 7.40.04 Judicial cooperation in criminal matters		

Key players			
European Parliament	Committee responsible		Rapporteur
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		Appointed
			27/02/2008
			PPE-DE <a href="#">DÍAZ DE MERA GARCÍA CONSUEGRA Agustín</a>
Council of the European Union	Former committee responsible		
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		23/01/2006
			PPE-DE <a href="#">DÍAZ DE MERA GARCÍA CONSUEGRA Agustín</a>
Council of the European Union	Council configuration		Meeting
	<a href="#">Justice and Home Affairs (JHA)</a>		<a href="#">2927</a>
	<a href="#">Justice and Home Affairs (JHA)</a>		<a href="#">2807</a>
European Commission	Commission DG		Commissioner
	<a href="#">Justice and Consumers</a>		FRATTINI Franco

Key events			
22/12/2005	Legislative proposal published	<a href="#">COM(2005)0690</a>	Summary
16/02/2006	Committee referral announced in Parliament		
08/05/2007	Vote in committee		Summary
10/05/2007	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0170/2007</a>	
12/06/2007	Debate in Council	<a href="#">2807</a>	Summary
20/06/2007	Debate in Parliament		

21/06/2007	Results of vote in Parliament		
21/06/2007	Decision by Parliament	<a href="#">T6-0279/2007</a>	Summary
08/02/2008	Formal reconsultation of Parliament		
08/02/2008	Amended legislative proposal for reconsultation published	<a href="#">05968/2008</a>	Summary
29/05/2008	Vote in committee		Summary
02/06/2008	Committee report tabled for plenary, reconsultation	<a href="#">A6-0207/2008</a>	
17/06/2008	Decision by Parliament	<a href="#">T6-0279/2008</a>	Summary
26/02/2009	Act adopted by Council after consultation of Parliament		
26/02/2009	End of procedure in Parliament		
07/04/2009	Final act published in Official Journal		

### Technical information

Procedure reference	2005/0267(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
	Repealing JHA act 2005/876/JHA <a href="#">2004/0238(CNS)</a> See also <a href="#">2008/0101(CNS)</a> Amended by <a href="#">2016/0002(COD)</a>
Legal basis	Treaty on the European Union (after Amsterdam) M 034-p2b; Treaty on the European Union (after Amsterdam) M 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/32886; LIBE/6/59555

### Documentation gateway

Legislative proposal	<a href="#">COM(2005)0690</a>	22/12/2005	EC	Summary
Document attached to the procedure	N6-0056/2006 <a href="#">OJ C 313 20.12.2006, p. 0026-0035</a>	29/05/2006	EDPS	Summary
Committee draft report	<a href="#">PE386.552</a>	20/03/2007	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0170/2007</a>	10/05/2007	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T6-0279/2007</a>	21/06/2007	EP	Summary
Commission response to text adopted in plenary	SP(2007)3798/2	18/07/2007	EC	
Amended legislative proposal for reconsultation	<a href="#">05968/2008</a>	08/02/2008	CSL	Summary
Committee draft report	<a href="#">PE404.485</a>	22/04/2008	EP	
Amendments tabled in committee	<a href="#">PE406.065</a>	13/05/2008	EP	

Committee final report tabled for plenary, reconsultation		<a href="#">A6-0207/2008</a>	02/06/2008	EP	
Text adopted by Parliament after reconsultation		<a href="#">T6-0279/2008</a>	17/06/2008	EP	Summary
Follow-up document		<a href="#">COM(2016)0006</a>	19/01/2016	EC	Summary

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

Justice and Home Affairs act 2009/315  
[OJ L 093 07.04.2009, p. 0023](#) Summary

## Exchange of information extracted from the criminal record between Member States. Framework Decision

**PURPOSE** : to lay down rules on the transmission, storage and content of information extracted from criminal records between Member States.

**PROPOSED ACT** : Council Framework Decision.

**CONTENT** : the need to improve the quality of information exchanged on convictions was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004 and was reiterated in the Hague Programme, adopted by the European Council on 4 and 5 November 2004.

Information on convictions is currently exchanged between Member States through systems set up by the European Convention on Mutual Assistance in Criminal Matters of 1959 Council of Europe Convention (?1959 Convention?). These systems present certain shortcomings. The result is that national courts often pass sentences on the sole basis of the past convictions featuring in their national register, with absolutely no knowledge of other convictions in other Member States. The Council Decision of 21 November 2005 on the exchange of information extracted from criminal records, which was designed to improve the systems of the 1959 Convention in the short term, chiefly by speeding up transmission times did not make any fundamental changes to these systems and is only a first step to addressing their shortcomings.

The aim of this proposal is a thorough reform of these systems, with a view to ensuring that the Member State of the person's nationality is able to respond properly and fully to the requests made to it. Coordinated action at European level is accordingly required.

The purpose of the draft Framework Decision is:

- to define the ways in which a Member State in which a conviction is handed down against a national of another Member State (the ?convicting Member State?) may transmit such a conviction to the Member State of the convicted person's nationality (the ?Member State of the person's nationality?);
- to define storage obligations for the Member State of the person's nationality and to specify the methods to be followed when responding to a request for information taken from criminal records;
- to lay down the framework for a computerised conviction-information exchange system between Member States to be built and developed on the basis of a ?standardised European format? which will allow such information to be exchanged in a uniform, electronic and easily machine-translatable form.

Obligations of the convicting Member State: the proposal:

- lays down that convictions entered into national criminal records must be accompanied by the nationality of the convicted person, if they are a national of a Member State. Without this information, national criminal records will be able to give no information to the Member State of the person's nationality about convictions handed down against its nationals. The proposal does, however, leave it to Member States to decide at which stage of proceedings and in what form the information should be collected;
- incorporates the principle of the compulsory transmission of information to the Member State of the person's nationality but removes the notification waiver contained in the 1959 Convention for people who also have the nationality of the convicting Member State. The removal of this exception will enable either Member State of the person's nationality to be called upon and is essential if the requesting State ? which will not always be aware of the person's double nationality ? is to have full access to all information;
- requires Member States to store information transmitted to it but leaves it to each Member State to decide how such information is stored.

Obligations of the Member State of the person's nationality: the proposal lays down rules on the obligation to store and update transmitted information. Any alterations or deletions made by the convicting Member State must be reflected in the Member State of the person's nationality, while the latter must only use updated information. These rules, however, may not lead to the person being treated less favourably than if they would have been convicted by a national court. For instance, where national rules governing entries in national criminal records would have prompted the deletion of a national conviction, the Member State of the person's nationality may no longer use such information in national proceedings; it must, however, always be able to transmit such information to another Member State upon request.

Reply to a request for conviction information: the draft Framework Decision draws a distinction between information transmitted before and after the entry into force of the Framework Decision, in order to make clear that the storage and updating obligations only apply to information transmitted after the entry into force of the Framework Decision.

Conditions for the use of personal data: the provisions on this are taken over from the Decision of 21 November 2005, and made more flexible by allowing limited re-use of information transmitted in order to prevent some immediate and serious danger to public security.

Format and committee procedure: Improving mutual understanding requires the creation of a 'standardised European format' allowing information to be exchanged in a uniform, electronic and easily machine-translatable way. This Framework Decision sets up a committee which will assist the Commission in defining and developing this exchange system.

Relation to other legal instruments: This proposal supplements Article 13 of the 1959 Convention. It does not replace the possibility available to judicial authorities of transmitting information concerning criminal records directly to each other under the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 29 May 2000. However, it replaces Article 22 of the 1959 Convention as regards relations between Member States and repeals the Decision of 21 November 2005, the relevant provisions of which are taken over.

Fundamental rights: the proposal contains several provisions designed to ensure a high and satisfactory level of protection for personal data transmitted by the convicting Member State to the Member State of the person's nationality: it limits the use the requesting Member State can make of information asked for and lays down specific rules applying where the Member State of the person's nationality forwards information transmitted to it by the convicting Member State, making a distinction between requests involving criminal proceedings and other requests. If the request is not related to criminal proceedings, only the convicting Member State will be able to assess, on the basis of the purpose of the request, whether or not full information on convictions should be transmitted. The Member State of the person's nationality should therefore check with the convicting Member State to what extent it may transmit such information to the requesting Member State. The same applies for requests from third countries under Article 13 of the 1959 Convention, with a view to ensuring that the Member State of the person's nationality does not give them more information than to a Member State.

#### FINANCIAL IMPLICATIONS :

Remark : the only budgetary implication of this proposal is that regarding the operation of the committee procedure it sets up. Any decision adopted pursuant to this procedure which may have budgetary implications will be covered by the 'Fundamental Rights and Justice' Framework Programme (see COD/2005/0037).

ABM/ABB Framework : Chapter 1806 'Establishing a genuine area of freedom, security and justice in criminal and civil matters.

Total indicative cost of the action : administrative costs only not included in the reference amount (human resources) : EUR 1.2 million for an indicative period of 6 years (start of the action 'n', until 'n+6'), that is EUR200.000 per year.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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Opinion of the European Data Protection Supervisor on the Proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

This opinion will firstly address the context of the proposal. In a European Union without internal borders an effective combat of crime requires at least an intensive cooperation between the authorities of the Member States. However, significant obstacles for such cooperation exist, partly due to the fact that the combat of crime is primarily a competence of the Member States.

Secondly, the EDPS will take into account that a framework for the exchange of information can be established according to several models with different impacts on data protection.

This opinion will discuss the main elements of the proposal, these are: the policy choices grounding the proposal; the safeguards for data protection and the division of responsibilities.

The EDPS welcomes the policy choices grounding the proposal. In general terms, the proposal takes into account the obstacles for a really efficient exchange of information from criminal records between the Member States resulting from the differences in languages and in the technological and legal framework of the Member States. The EDPS notices that the proposal for a Council framework decision on the protection of personal data is still being discussed by the European Parliament and the Council and also fundamental issues - such as the field of application and safeguards for transfers to third countries - are far from being settled.

The EDPS recommends that:

- the present Council Framework decision should not enter into force before the date of entry into force of the Council framework decision on the protection of personal data;
- the Council should carefully link the negotiations on the present proposal to the negotiations on the Council framework decision on the protection of personal data. In case negotiations on the Council framework decision on the protection of personal data would exclude the rules concerning transfers of personal data to third countries from its field of application, more precise rules on transfers of personal data to third countries should be laid down in the current proposal.

The EDPS recommends streamlining the mechanism and providing for a limited and more precise definition of purposes, other than criminal proceedings, for which information can be requested as well as for a limitation of the group of persons that may request this information. According to the EDPS, others than the data subject himself should only be entitled to lawfully request this information under exceptional circumstances. A provision should be added to the proposal allowing data protection authorities to control this exceptional use.

The EDPS recommends clarifying the concept of 'ownership' in the text or in the recitals of the proposal, as well as establishing an obligation for the central authority of the convicted person's nationality to notify updates/cancellations to the central authorities of those other Member States or third countries that have requested information before it was updated or cancelled.

The EDPS requests the Community legislator to justify why the present proposal could not be limited to more serious criminal offences, inter

alia in view of the limits set by the principle of proportionality.

The EDPS welcomes the additional provisions of Articles 10 and Article 11, provided that:

- Article 10 will be worded in a way that it effectively ensures a workable language regime;
- Article 11 will be modified so as to include the setting up of the format in the framework decision itself, to establish the technical specifications by a comitology procedure within a clear time limit and to

abolish the transition period for the implementation of the common format by the Member States, or if

this would be not technically feasible, to limit the period to one year.

Further recommendations of the EDPS concern:

- Article 3 (2) (Central authority), why should the General Secretariat of the Council inform Eurojust about the designation of authorities?
- Article 6(2) (Requests for conviction information), the central authority of the place of residence ?shall? - not ?may?- submit the request to the central authority of the other Member State;
- Article 9 (Conditions for the use of personal data), a provision should be added in which the data protection authorities are encouraged to cooperate actively with each other.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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The Committee on Civil Liberties, Justice and Home Affairs adopted by a comfortable majority the report drafted by Mr Agustín DÍAZ DE MERÁ GARCÍA CONSUEGRA (EPP-ED, ES) amending - via the consultation procedure - the proposal for a Council framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

Overall, Members welcome the proposal but consider that some of its provisions need to be further clarified and that provisions regarding the protection of personal information that is forwarded. Members also wish to facilitate (or at the very least try not to hamper) the exchange of information by laying down provisions that are clearer and simpler with respect to the exchange of data.

The main amendments are as follows:

- strengthening legal effectiveness and certainty : to avoid the situation that different legal systems may apply to a single criminal conviction, the Committee wants the convicting Member State to be regarded as the owner of the data on criminal convictions handed down on its territory against nationals of other Member States. Accordingly, the Member State of nationality of the convicted person, to which these data will be forwarded, must ensure that they are kept up-to-date by taking into account any alteration or deletion occurring in the convicting Member State. Only data that have been kept up-to-date in this way should be used internally by the Member State of nationality or further forwarded by it to any other State (whether another Member State or a third country).

Members therefore want to ensure that the mechanism proposed by the Commission complies with the following principles:

1. the Member State of nationality will be responsible for keeping the information on convictions of its own nationals;
  2. any alteration or deletion of information on criminal records that occurs in the convicting Member State must entail the same alteration or deletion in the Member State of nationality.
- alteration /deletion of criminal records and the problem of multiple nationality: Members stress the importance of the alteration or deletion of criminal records. In this regard, there are two possibilities: those alterations or deletions can follow either the law of the Member State of nationality of the convicted person, or that of the convicting Member State . With the first option, criminal records arising from a sentence of a national court would be available or not to the other Member States depending on the convicted person's nationality. A Member State asking for information from the register of the Member State of nationality would not necessarily obtain all the information existing on the person concerned but only those data as the Member State of nationality believed it should keep under its own law. This is why Members propose that the law of the convicting Member State be applied. In this case, even if there would be no guarantee that the same rules would apply on the time-period for keeping criminal records, the formula avoids distortions arising from nationality and ensures the integrity of the data contained in the registers of criminal records.

In addition, the text of the proposal has been amended to take into account the possibility that a convicted person may have more than one nationality.

- nature of information exchanged: in principle, only offences included in the register ( i.e. those that are not considered spent once the sentence has been served) may be exchanged with another Member State. Distinctions were therefore made in the proposal regarding the information that can be exchanged according to its nature. Furthermore, certain provisions in the initial draft decision were amended because they would entail creating sub-indexes or sub-registers which would slow down the exchange of information. The Committee therefore amended these aspects of the proposal.

Members also relaxed the provisions regarding the forwarding of information to the requesting Member State (which is neither that of the person's nationality nor that which handed down the conviction) shall be permitted as a general rule and unless there are instructions to the contrary for specific reasons.

- formulation, new provisions and clarification of wording : the Committee improved the overall presentation of the text by introducing clearer and more precise wording without making any radical changes to the general spirit of the proposal. It proposed the replacement of conditional formulations which could give the impression that the transmission of information could be purely a matter for Member States' goodwill. In addition, the legal terminology in each of the language versions of the proposal needs to correspond in full with that in use in each of the Member States concerned.

The clarifying amendments include:

- specific provision regarding particular cases in which certain types of information may be forwarded in line with the legislation of the convicting Member State or the Member State of nationality, in order to be used outside the framework of a criminal procedure;
- changes with regard to the protection of personal data with a view to strengthening this aspect of the proposal and to ensuring greater consistency with the rules applicable in this field (Art. 9a was introduced on the rights of data subjects to ensure that they are informed of the fact that personal data concerning them are being processed);
- the introduction, in the scope of the data to be transferred, the number of the legal decision, and the removal of the place where the crime was committed from the data to be transferred, for reasons of legal consistency and harmonization between the Member States.

Entry into force of technical alterations: Committee members want the technical alterations provided for in the proposal to be carried out within one year (and not three) from the date the format and the ways in which information on convictions may be exchanged electronically are adopted.

Compatibility with other related Community texts: lastly, Members want this text to be compatible with the Council framework decision on the taking into account of convictions in the Member States of the EU in the course of new criminal proceedings. Similarly, this text should be compatible with the future framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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The Council agreed on a general approach to a proposal for a Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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The European Parliament adopted the resolution drafted by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES) and amended the proposal on the organisation and content of the exchange of information extracted from criminal records between Member States. (Please see the summary dated 08/05/2007.)

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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At its meeting on 12-13 June 2007, the Council reached an agreement on a general approach on a proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States. The Working Party on Cooperation in Criminal Matters examined the proposal and finalised the discussion on the preamble and the form annexed to the instrument.

The text of the draft Framework Decision resulting from these discussions can be summarised as follows:

- Underlining the need for better interconnection of national criminal registers: in this context, Member States should step up their efforts in terms of cooperation and streamline the mutual exchange of information on convictions;
- Clarifying the aim of the Framework Decision: this aims to improve the exchange of information on convictions and, where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens of the European Union (note that subsequent proposals will be made on convictions handed down in the European Union against nationals of third countries or persons of unknown nationality);
- Specifying the scope of the proposal: the Framework Decision only applies to the transmission of information extracted from criminal records concerning natural persons and should not prejudice a possible future broadening of the scope of application of the mechanisms to the exchange of information concerning legal persons;
- Specifying the material scope of the instrument, including its extension to sex offenders: for the plan to be effective, the central authority of every Member State must include all information provided from the criminal records of the Member State of the person's nationality in its extract from criminal records; in this context, the mechanism establishes provisions in Articles 6(2a) and 11 aimed at ensuring that a person convicted of a sexual offence against children should no longer, where the criminal record of that person in the convicting Member State contains such conviction, and if imposed and entered in the criminal record, a disqualification arising from it, be able to conceal this conviction or prohibition with a view to performing professional activity related to supervision of children in another Member State;
- Retransmission of information: article 11(1) is added; it concerns the transmission of information to the Member State of nationality for the purpose of its storage and retransmission (NB the purpose is not to harmonise national systems of criminal records of the Member States nor to oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes).

Other provisions: the other main amendments to the text concern amendments to the request form for information taken from criminal records and to the reply form for requested information. Some of the information that must be provided includes:

- full name, date of birth, place of birth (town and State), gender, nationality and ? if applicable ? previous name(s) of the convicted person;
- the nature of the conviction (date of conviction, name of the court, date on which the judgment became final);
- the offence giving rise to the conviction (date of the offence and name or legal classification of the offence as well as reference to the applicable legal provisions);
- the contents of the conviction, including notably the sentence as well as any supplementary penalties, security measures and

subsequent decisions modifying the enforcement of the sentence.

?Optional? information may also be included in the reply form:

- the convicted person's parents' names;
- the reference number of the conviction;
- the place of the offence;
- disqualifications arising from a criminal conviction.

The provision also allows for ?additional? information to be transmitted:

- the convicted person's identity number or type and number of the person's identification document;
- fingerprints;
- pseudonym and/or alias name(s).

In addition, the central authority (if it deems necessary) may transmit any other information on criminal convictions if entered in the criminal records.

Two statements issued by the Council should be noted:

1. in the first statement, the Council recognises that Member States use different systems for identification of the person concerned and different data to search for the criminal records of a specific person, when an extract of such criminal records is required. Therefore, when exchanging the information on the basis of this Framework Decision the Member States shall be aware of different needs of each Member State;
2. in the second statement, the Council declares that each Member State should take the necessary measures to ensure that time-limits are applied to the erasure or destruction of information on convictions transmitted in accordance with the provision established in the Framework Decision.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES) amending, in the framework of the renewed consultation procedure, the proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

In their draft resolution accompanying the report, MEPs call on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to give priority to any future proposal to amend the Framework Decision. In this context, MEPs request that they be consulted by urgent procedure, in close cooperation with national parliaments.

The main amendments approved by the committee responsible, under the renewed consultation procedure, can be summarised as follows:

Avoid a dual system of information on convictions: MEPs consider that any alteration or deletion of information transmitted in accordance with the draft Framework Decision should entail identical alteration or deletions by the Member State of the person's nationality regarding information stored, in order to introduce a dual system as regards convictions handed down in a Member State other than the Member State of which the convicted person is a national (one system for domestic use and the other for requesting Member States other than the Member State of nationality). The Commission considers, on the other hand, that the system originally proposed by the Commission should be retained, pursuant to which any change to or deletion of a criminal record in the Member State of conviction would require the same amendment or deletion to be carried out in the Member State of which the person convicted is a national.

Sex offenders: the existence of convictions and the prohibitions arising therefrom, and the place in which these were handed down and recorded, must be known in order to ensure that extracts from criminal records are easy to understand. Hence the Member States must establish comparable formats for extracts containing convictions, with a special section to be created for convictions relating to sexual offences, in order to make them more comprehensible.

Compulsory transmission of information on disqualifications, following a conviction in a Member State : MEPs also request that it be made compulsory for national authorities to transmit information on disqualifications arising from a criminal conviction, which is only optional in the draft Framework Decision.

Data protection: MEPs also strengthen the entire section on data protection in terms of the exchange of data on criminal records set out in the Framework Decision. They:

- call for the Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters to apply to this provision;
- pending its adoption, recall some of the main principles applicable to the gathering, processing and transmission of personal data. A series of new paragraphs has therefore been included in the provision in order to strengthen the framework for the protection of data in terms of the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership and data concerning the health or sex life of the person concerned (exceptions have been established for duly justified cases, for example to prevent an immediate and serious threat to public security).

Rights of the person concerned: along the same lines, MEPs introduce a series of new paragraphs on the right of persons to obtain, without undue delay, the information as to which data are being processed in a language which he or she understands, as well as to rectify and, where appropriate, erase data processed in breach of the principles referred to in the Framework Decision regarding data protection (there are also exceptions here in order to protect security and public order, prevent a crime, not hamper the investigation and prosecution of criminal offences and protect the rights and guarantees of third parties).

Purposes other than criminal proceedings: where information is requested from the register of criminal records in the Member State of the person's nationality for any purpose outside the framework of criminal proceedings, MEPs ask that the requesting Member State clearly

specify its reasons for requesting it.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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The European Parliament adopted by 619 to 21 against, with abstentions, a legislative resolution amending the proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

The report had been tabled for consideration in plenary by Agustín DÍAZ DE MERA GARCÍA CONSUEGRA (EPP-ED, ES), on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

In its resolution accompanying the report, the Parliament called on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to give priority to any future proposal to amend the Framework Decision. In this context, the Parliament requests that it be consulted by urgent procedure, in close cooperation with national parliaments.

The main amendments approved by the Parliament, under the renewed consultation procedure, can be summarised as follows:

**Avoid a dual system of information on convictions:** Parliament considers that any alteration or deletion of information transmitted in accordance with the draft Framework Decision should entail identical alteration or deletions by the Member State of the person's nationality regarding information stored, in order to introduce a dual system as regards convictions handed down in a Member State other than the Member State of which the convicted person is a national (one system for domestic use and the other for requesting Member States other than the Member State of nationality). The Commission considers, on the other hand, that the system originally proposed by the Commission should be retained, pursuant to which any change to or deletion of a criminal record in the Member State of conviction would require the same amendment or deletion to be carried out in the Member State of which the person convicted is a national.

**Sex offenders:** the existence of convictions and the prohibitions arising therefrom, and the place in which these were handed down and recorded, must be known in order to ensure that extracts from criminal records are easy to understand. Hence, the Member States must establish comparable formats for extracts containing convictions, with a special section to be created for convictions relating to sexual offences, in order to make them more comprehensible.

**Compulsory transmission of information on disqualifications,** following a conviction in a Member State: Parliament also requests that it be made compulsory for national authorities to transmit information on disqualifications arising from a criminal conviction, which is only optional in the draft Framework Decision.

**Data protection:** Parliament also strengthens the entire section on data protection in terms of the exchange of data on criminal records set out in the Framework Decision. It:

- calls for the Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters to apply to this provision;
- pending its adoption, recall some of the main principles applicable to the gathering, processing and transmission of personal data. A series of new paragraphs has therefore been included in the provision in order to strengthen the framework for the protection of data in terms of the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership and data concerning the health or sex life of the person concerned (exceptions have been established for duly justified cases, for example to prevent an immediate and serious threat to public security).

**Rights of the person concerned:** along the same lines, MEPs introduce a series of new paragraphs on the right of persons to obtain, without undue delay, the information as to which data are being processed in a language which he or she understands, as well as to rectify and, where appropriate, erase data processed in breach of the principles referred to in the Framework Decision regarding data protection (there are also exceptions here in order to protect security and public order, prevent a crime, not hamper the investigation and prosecution of criminal offences and protect the rights and guarantees of third parties).

**Purposes other than criminal proceedings:** lastly, where information is requested from the register of criminal records in the Member State of the person's nationality for any purpose outside the framework of criminal proceedings, the Parliament asks that the requesting Member State clearly specify its reasons for requesting it.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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**PURPOSE:** to improve the exchange of information extracted from criminal records between Member States.

**LEGISLATIVE ACT:** Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States.

**BACKGROUND:** the European Union has set itself the objective of providing citizens with a high level of safety within the area of freedom, security and justice. This objective presupposes the exchange between the competent authorities of the Member States of information extracted from criminal records. With a view to improving exchanges of this type of information, several initiatives have been taken at Community level, including the adoption of a first decision in 2005 to improve the mechanisms for the transmission of information on convictions between Member States ([Council Decision 2005/876/JHA](#)) and a [White Paper](#) on exchanges of information on convictions.

The experience gained in this context indicates that Member States need to further increase and improve the exchange of information in this area. This Framework Decision responds to that need by improving the existing framework and taking over from several international legal instruments deemed to be insufficient to meet the present requirements of judicial cooperation in criminal matters within the European Union.

**CONTENT:** the main objective of the Framework Decision, an initiative of the Kingdom of Belgium, is to improve the exchange of information on convictions of nationals of the Member States.



Framework and basic principle of the Framework Decision: the text establishes basic rules on the transmission of information to the Member States of the person's nationality concerning convictions, and where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens of the Union (including in the event of a conviction for a sexual offence). The Framework Decision also regulates the storage of information and retransmission, upon request, to other Member States. However, the Framework Decision does not aim to harmonise national systems of criminal records and does not oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.

The Framework Decision incorporates the provisions of [Council Decision 2005/876/JHA](#) on the exchange of information extracted from the criminal record but supplements such provisions with specific rules on the obligations of Member States regarding the exchange of information. It maintains in particular the principle of one or more central authorities responsible for communicating information extracted from criminal records.

Member States' obligations: the Framework Decision provides for the following obligations:

- obligations of the convicting Member State: this Member State shall: (i) ensure that all convictions handed down within its territory are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person; (ii) as soon as possible, inform the central authorities of the other Member States of any convictions handed down within its territory against the nationals of such other Member States; (iii) immediately transmit information on subsequent alteration or deletion of information contained in the criminal record of the convicted person;
- obligations of the Member State of the person's nationality: the central authority of the Member State of the person's nationality shall: (i) store all information transmitted on the convictions of their nationals, for the purpose of retransmission; (ii) alter or delete information received if that information has been altered or deleted by the convicting Member State. For the purpose of retransmission, the Member State of the person's nationality may only use information which has been updated.

The Framework Decision shall only apply to the transmission of information extracted from criminal records concerning natural persons and is without prejudice to a possible future broadening of the scope of application of the mechanism to legal persons.

Mechanism for the exchange of information extracted from criminal records: as in the Decision of 2005, this Framework Decision provides for a two-stage mechanism:

1. a Member State may request information from another Member State from the criminal record of a convicted person for the purposes of criminal proceedings (or other purposes). All requests for information extracted from the criminal record shall be submitted using the form set out in the Annex;
2. the Member State of the convicted person's nationality shall reply to a request for information on convictions, in principle within a period not exceeding ten working days, using the form set out in the Annex. The following information shall be transmitted:
  - convictions handed down in the Member State of the person's nationality and entered in the criminal record;
  - any convictions handed down in other Member States which were transmitted to it after 27 April 2012, and stored for the purpose of retransmission;
  - any convictions handed down in other Member States which were transmitted to it by 27 April 2012, and entered in the criminal record;
  - any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record.

Note that retransmission of certain information from the criminal record may be forbidden. There are also specific provisions on requests for information submitted by third countries.

Material scope of the Framework Decision and terms for the organisation of the exchange of information on convictions: information on convictions transmitted by the convicting Member State shall be transmitted in the official language or one of the official languages of that Member State.

Data to be transmitted includes the following:

- full name, date and place of birth and nationality of the convicted person;
- the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
- the offence giving rise to the conviction;
- the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence).

Optional information? may also appear on the form (the convicted person's parents' names, the place of the offence, etc.), including disqualifications arising from the conviction. The Framework Decision also provides for the transmission of additional information? such as the convicted person's identity number, fingerprints, etc.

The central authority may also transmit (if it deems necessary) any other information on convictions from the criminal record in addition to the aforementioned information.

All of the information shall be stored for the purpose of retransmission. It shall be transmitted first of all by any traditional means of transmission (by post so that a written record of the transmission can be kept), then, at a later date and once the technical conditions have been met, by electronic means in a standard format (ECRIS - see below).

Sex offenders: a specific mechanism has been provided for to keep track of sex offenders. There are therefore specific provisions to ensure that a person convicted of a sexual offence against children should no longer, where the criminal record of that person in the convicting Member State contains such conviction and, if imposed and entered in the criminal record, a disqualification arising from it, be able to conceal this conviction or disqualification with a view to performing professional activity related to supervision of children in another Member State.

Conditions for the use of personal data: existing general rules on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters are complemented by the rules established in this Framework Decision. In principle, personal data may be used only for the purposes of the criminal proceedings for which it was requested. Personal data provided for any purposes other than that of criminal proceedings may be used by the requesting Member State within the limits specified by the requested Member State in the form set

out in the Annex. The same is true when such data are transmitted to a third country. However, personal data may be used by the requesting Member State for preventing an immediate and serious threat to public security. Nevertheless, all other use of criminal records that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible.

ECRIS: the central authorities of the Member States shall establish a European Criminal Records Information System in accordance with the terms set out in a parallel Decision [2009/316/JHA](#). The information may be transmitted electronically in a standardised format, which will allow such information to be exchanged in a uniform and easily machine-translatable form. Once the standardised format has been defined, Member States will have three years to adapt to the new system.

More favourable provisions: this Framework Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

Report: the Commission shall, by 27 April 2015, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

ENTRY INTO FORCE: 27/04/2009.

IMPLEMENTATION: 27/04/2012. Decision 2005/876/JHA is repealed. Without prejudice to their application in relations between Member States and third States, this Framework Decision replaces the relevant provisions of the European Convention on Mutual Assistance in Criminal Matters.

## Exchange of information extracted from the criminal record between Member States. Framework Decision

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The Commission presented a report on the implementation of Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal record between Member States.

Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States stipulates that information on any EU citizens previous convictions by any criminal court in the EU is available to all Member State courts and law-enforcement authorities for criminal proceedings in the pre-trial and trial stages and the execution of the conviction.

This Framework Decision provided a foundation for a computerised system allowing faster and easier transmission of information on criminal convictions. The European Criminal Records Information System (ECRIS) was established by Council Decision 2009/316/JHA and has been operational since April 2012.

Currently, 25 Member States exchange information via ECRIS. The annual volume exchange has reached over 1.8 million messages (including notifications, requests and responses to requests) by the end of 2015. On average, over 24 000 requests are made each per month, with over 30 % leading to a positive hit.

More specifically, the report covered the followed issues:

Implementation: the Member States have taken various approaches to transpose the Framework Decision into their national legislation. AT, BG, CZ, DE, FR, HU, SE and SK have amended multiple national acts; EE, NL, PL and PT have amended their national criminal records act. In addition to these amendments, FI and BE adopted or proposed separate implementing acts. ES and LU only adopted a separate implementing act. HR, LT and LV adopted new legislation regulating matters concerning criminal records in general, and some specific secondary acts. Two Member States adopted new legislation that was wider in scope (SI: a law on international cooperation in criminal matters; UK: a law on criminal law and data protection). In CY, the text of the Framework Decision was directly integrated into national law.

As of 1 December 2014, the Commission is therefore in a position to launch infringement proceedings against Member States that have not or not correctly transposed a Framework Decision.

Conditions for the use of personal data: the Framework Decision contains several provisions designed to ensure a high level of protection of personal data. Almost all Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, HR, HU, LT, LV, NL, PL, PT, SE, SI, SK and UK) implemented personal data safeguards.

Storage of information for the purpose of retransmission: almost all Member States (AT, BE, BG, CZ, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, PT, SE, SK and UK) introduced an explicit provision on the storage obligation into their legislation. While the vast majority of the Member States (AT, BE, BG, CY, DE, EE, FI, FR, HR, HU, LT, LU, NL, PL, SK and UK) store all the required information, three (CZ, LV and SE) have adopted implementing provisions that do not specify what information needs to be stored, but are more general or include specific conditions.

Requests for purposes other than criminal proceedings: the majority (BE, BG, CZ, CY, DE, EE, ES, FR, HR, LT, NL, SE, SI and UK) would reply to requests for other purposes in accordance with their national rules.

Requests for information: almost all Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, HR, HU, LU, LV, NL, PL, PT, SE, SI, SK and UK) adopted a provision allowing a central authority to request information where needed for domestic authorities .

Adoption of electronic standardised format of transmission: the majority of Member States (BE, BG, CY, CZ, EE, ES, FR, FI, HR, LT, LV, NL, PL, PT, SI and SK) introduced an obligation in their national law to exchange information electronically using a standardised format.

In conclusion, the transposition of the Framework Decision by 22 Member States has led to significant progress in improving the exchange of criminal records information within the Union. It has proved to be an indispensable tool used on a daily basis in 25 Member States which has provided a real added-value in practice to judicial authorities.

On the other hand, the report identified areas where transposition of particular provisions is incomplete. Therefore, the Commission considered that it is important that Member States fully transpose this Framework Decision and as a matter of urgency take all necessary measures.

