



Plenary sitting

A8-0219/2016

27.6.2016

*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA
(COM(2016)0007 – C8-0012/2016 – 2016/0002(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Timothy Kirkhope

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (COM(2016)0007 – C8-0012/2016 – 2016/0002(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0007),
 - having regard to Article 294(2) and Article 82(1)(d) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0012/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0219/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to the prevention and

Amendment

(1) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to the prevention and combating of crime, **and providing**

combating of crime.

internal security.

Amendment 2

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The ECRIS legal framework, however, does not sufficiently **cover** the particularities of requests concerning third country nationals. Although it is now possible to exchange information on third country nationals through ECRIS, there is no procedure or mechanism in place to do so efficiently.

Amendment

(4) The **existing** ECRIS legal framework, however, does not sufficiently **address** the particularities of requests concerning third country nationals. Although it is **already** possible to exchange information on third country nationals through ECRIS, there is no **common European** procedure or mechanism in place to do so efficiently.

Amendment 3

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) Such blanket requests impose **an** administrative burden on all Member States, including those not holding information on the particular third country national. In practice, this negative effect deters Member States from requesting information on third country nationals **and leads to** Member States limiting the criminal record information **on information** stored in their national register.

Amendment

(6) Such blanket requests impose **a disproportionate** administrative burden on all Member States, including those not holding information on the particular third country national. In practice, this negative effect deters Member States from requesting information on third country nationals **from other Member States, which seriously hinders its exchange between** Member States, limiting the criminal record information stored in their national register. **As a consequence, the risk of information exchange between Member States being inefficient and incomplete is increased, which in turn affects the level of security and safety provided to citizens and persons residing within the Union.**

Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) The exchange of information on criminal convictions is important in any strategy to combat crime and counter terrorism. ***It would contribute to the criminal justice response to radicalisation leading to terrorism and violent extremism if*** Member States used ECRIS to its full potential.

Amendment

(7) The exchange of information on criminal convictions is important in any strategy to combat crime and counter terrorism ***and to ensure security within the Union. If*** Member States used ECRIS to its full potential, ***it would bolster the criminal justice response of Member States to the radicalisation that leads to acts of terrorism and violent extremism, increase the protection offered to vulnerable persons, and help counter the persistent and serious effects of cross-border organised criminal networks.***

Amendment 5

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) ***The recent terrorist attacks demonstrated in particular the urgency of enhancing relevant information sharing, notably as regards the extension of ECRIS to third country nationals.***

Amendment

deleted

Amendment 6

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In order to increase the utility of information on convictions and disqualifications arising from convictions for sexual offences against children, Directive 2011/93/EU of the European

Parliament and of the Council^{1a} established the obligation for Member States to take the necessary measures to ensure that when recruiting a person to a role involving direct and regular contact with children, employers are entitled to request information about that person's criminal convictions or any disqualifications arising from those convictions. Member States should endeavour to provide similar safeguards with regard to persons who intend to work with disabled or elderly persons. The aim is to ensure that a person convicted of a sexual or violent offence against a child or vulnerable person can no longer conceal this conviction or disqualification with a view to carrying out such work in another Member State.

^{1a} Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

Justification

The rapporteur believes that the scope for background checks should be extended beyond just those persons working with children, but also include those individuals working with vulnerable persons, including those with disabilities, and those working more generally in the healthcare and education sectors.

Amendment 7

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) As a result, a system should be established by which the central authority of a Member State finds out **quickly** and efficiently **in** which other Member State criminal record information on a third

Amendment

(9) As a result, a system should be established by which the central authority of a Member State finds out **promptly** and efficiently which other Member State **holds** criminal record information on a third

country national *is stored so that the existing ECRIS framework can then be used.*

country national.

Amendment 8

Proposal for a directive Recital 10

Text proposed by the Commission

(10) The obligations of Member States as regards convictions of third country nationals should also include fingerprints to secure identification. This obligation includes to store information, including fingerprints, to reply to requests on information from other central authorities, to ensure that a criminal record extract requested by a third country national is supplemented as appropriate with information from other Member States, and to make the technical changes to apply state-of-the-art technologies necessary to make the information exchange system work.

Amendment

(10) The obligations of Member States as regards convictions of third country nationals should also include fingerprints *when this is necessary* to secure identification. This obligation includes to store information, including fingerprints, to reply to requests on information from other central authorities, to ensure that a criminal record extract requested by a third country national is supplemented as appropriate with information from other Member States, and to make the technical changes to apply state-of-the-art technologies necessary to make the information exchange system work.

Amendment 9

Proposal for a directive Recital 11

Text proposed by the Commission

(11) In order to compensate the lack of a *single Member State* where information on *a* particular third country national is stored, decentralised information technology should enable the central authorities of the Member States to find out in which other Member State criminal record information is stored. For this purpose, each central authority should distribute to the other Member States an index-filter which includes, in *an anonymised* form, the identification data of the third country nationals convicted in its Member State.

Amendment

(11) In order to compensate the lack *of a centralised Union database* where information on *each* particular *convicted* third country national is stored, *a* decentralised information technology *system* should enable the central authorities of the Member States to find out in which other Member State criminal record information *on this particular third country national* is stored. For this purpose, each *designated* central authority should distribute to the other Member States an index-filter which includes, in a

The personal data should be *rendered anonymous* in such a way that the data subject is not identifiable. The receiving Member State may then match these data with their own information on a ‘hit’/‘no hit’ basis, thus finding out whether or not criminal record information is available in other Member States and, in case of a ‘hit’, in which Member States. The receiving Member State should then follow up a ‘hit’ using the ECRIS framework. With respect to third country nationals who also hold the nationality of a Member State, the information included in the index should be limited to information available as regards nationals of Member States.

pseudonymised form, the identification data of the third country nationals convicted in its Member State. The personal data *in the index-filter* should be *pseudonymised* in such a way that the data subject is not *directly* identifiable. The receiving Member State may then match these data with their own information on a ‘hit’/‘no hit’ basis, thus finding out whether or not criminal record information is available in other Member States and, in case of a ‘hit’, in which Member States. The receiving Member State should then follow up a ‘hit’ using the ECRIS framework. With respect to third country nationals who also hold the nationality of a Member State, the information included in the *index-filter* should be limited to information available as regards nationals of Member States.

Amendment 10

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Where, in the context of criminal proceedings, a Member State receives, on the basis of bilateral agreements compliant with Union law, information on a conviction relating to terrorist offences or serious criminal offences handed down by a judicial authority in a third country to a third country national residing on the territory of the Union, that Member State should be able to create and transmit to other Member States an index-filter with this information, within the limitations of the bilateral agreements. This exchange of information should be in full respect, in particular to the principles of proportionately, necessity, and the right to a fair trial in the third country.

Amendment 11

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) The Commission should take all the necessary measures to achieve interoperability and interconnection of the common communication infrastructure of ECRIS with all the other relevant Union databases for law enforcement, border control and judicial cooperation purposes.

Amendment 12

Proposal for a directive Recital 12

Text proposed by the Commission

Amendment

(12) Council Framework Decision 2008/977/JHA²² ***should*** apply in the context of computerised exchange of information extracted from criminal records of Member States, ***providing for an adequate*** level of data protection when information is exchanged between Member States, whilst allowing for Member States to require higher standards of protection to national data processing.

(12) Council Framework Decision 2008/977/JHA²² ***and Directive (EU) 2016/680 of the European Parliament and of the Council^{22a}*** ***must*** apply in the context of computerised exchange of information extracted from criminal records of Member States, ***thereby*** providing for ***a high*** level of data protection when information is exchanged between Member States, whilst allowing for Member States to require ***even*** higher standards of ***data*** protection to national data processing.

²² Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

²² Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

^{22a} ***Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the***

processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

Justification

The Directive should also make the necessary updates in order to reflect the data protection rules adopted in recent legislative revisions in the area of law enforcement.

Amendment 13

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to protection of personal data, the principle of equality before the law and the general prohibition of discrimination. This Directive should be implemented in accordance with these rights and principles.

Amendment

(15) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to protection of personal data, ***including judicial and administrative redress***, the principle of equality before the law, ***the right to a fair trial, the presumption of innocence*** and the general prohibition of discrimination. This Directive should be implemented in accordance with these rights and principles ***and the principles of proportionality and necessity***.

Justification

The provisions to providing information on previous convictions should not prevent an individual from the right to a fair trial and the presumption of innocence. Therefore, it is important to reflect upon these values, and reflect other EU legislation in the area of procedural rights.

Amendment 14

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) Since the objective of this Directive, namely to enable rapid and efficient exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by ***reason of the necessary synergy and interoperability***, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment

(16) Since the objective of this Directive, namely to enable rapid and efficient exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by ***putting in place common European rules and interoperable systems***, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment 15

Proposal for a directive

Article 1 – point 1

Council Framework Decision 2009/315/JHA
Article 1

Text proposed by the Commission

(1) Article 1 is replaced by the following:

‘Article 1

Subject Matter

This Framework Decision

(a) defines the ways ***in*** which a convicting Member State shares information on convictions with other Member States;

(b) defines storage obligations for the convicting Member State, and specifies the methods to be followed when replying to a request for information extracted from

Amendment

(1) Article 1 is replaced by the following:

‘Article 1

Subject Matter

This Framework Decision

(a) defines the ways ***and conditions under*** which a convicting Member State shares information on convictions with other Member States;

(b) defines storage ***and privacy*** obligations for the convicting Member State, and specifies the methods to be followed when replying to a request for

criminal records;

(c) establishes a decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Record Information System (ECRIS).";

information extracted from criminal records;

(ba) defines storage obligations for the Member States of the person's nationality and specifies the methods to be followed when replying to a request for information extracted from criminal records;

(c) establishes a **European** decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Record Information System (ECRIS).";

Amendment 16

Proposal for a directive

Article 1 – point 3

Council Framework Decision 2009/315/JHA

Article 4 – paragraph 1

Text proposed by the Commission

(3) in Article 4, paragraph 1 is replaced by the following:

"1. Each Member State shall take **the** necessary measures to ensure that when convictions handed down within its territory are entered into its criminal records, information on the nationality or nationalities of the convicted person is included if the person is a national of another Member State or a third country national.";

Amendment

(3) in Article 4, paragraph 1 is replaced by the following:

"1. Each Member State shall take **all** the necessary measures to ensure that when convictions **are** handed down within its territory, **they** are entered into its criminal records **database, and that** information on the nationality or nationalities of the convicted person is included if the person is a national of another Member State or a third country national.";

Amendment 17

Proposal for a directive

Article 1 – point 4

Council Framework Decision 2009/315/JHA

Article 4 a – paragraph 1

Text proposed by the Commission

1. The Member State where a conviction is handed down against a third country national shall store the following information, unless, in exceptional individual cases, this is not possible:
- (a) information on the convicted person (full name, date of birth, place of birth (town and country), gender, nationality and – if applicable – previous name(s);
 - (b) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
 - (c) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions);
 - (d) information on 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);
- (e) *the convicted person's parents' names;***
- (f) the reference number of the conviction;
 - (g) the place of the offence;
 - (h) if applicable, disqualifications arising from the conviction;
 - (i) the convicted person's identity number, or the type and number of the

Amendment

1. The Member State where a conviction is handed down against a third country national shall ***always*** store the following information, unless, in exceptional individual cases, this is not possible (***obligatory information***):
- (a) information on the convicted person (full name, date of birth, place of birth (town and country), gender, nationality and – if applicable – previous name(s);
 - (b) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
 - (c) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions);
 - (d) information on 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);
- 1a. The Member State where a conviction is handed down against a third country national may store the following information, if available (optional information):***
- (a) the reference number of the conviction;
 - (b) the place of the offence;
 - (c) if applicable, disqualifications arising from the conviction;
 - (d) the convicted person's identity number, or the type and number of the

person's identification document;

(j) fingerprints of the person;

(k) if applicable, pseudonym and/or alias name(s).

person's identification document;

(e) fingerprints of the person *only when the national law of a Member State where a conviction is handed down allows for collection and storage of fingerprints of a convicted person*;

(f) if applicable, pseudonym and/or alias name(s).

Justification

This amendment makes sure that the data stored at the national level regarding convicted TCNs is categorised in the same way as for convicted EU nationals, with "obligatory information" and "optional information" in order to avoid any unnecessary discrimination.

Amendment 18

Proposal for a directive

Article 1 – point 4

Council Framework Decision 2009/315/JHA

Article 4a – paragraph 2

Text proposed by the Commission

2. The central authority shall create an index-filter containing *anonymised* information of the types referred to in *points (a), (e), (i), (j) and (k)* of paragraph 1 concerning third country nationals convicted in its Member State. The central authority shall transmit this index-filter and any updates to it, to all Member States.

Amendment

2. The central authority shall create an index-filter containing *pseudonymised* information of the types referred to in *point (a)* of paragraph 1 *and points (d), (e) and (f) of paragraph 1a* concerning third country nationals convicted in its Member State. The central authority shall transmit this index-filter and any updates to it, to all Member States.

Amendment 19

Proposal for a directive

Article 1 – point 4

Council Framework Decision 2009/315/JHA

Article 4 a – paragraph 3

Text proposed by the Commission

3. Any alteration or deletion of the information referred to in *paragraph 1* shall immediately entail identical alteration

Amendment

3. Any alteration or deletion of the information referred to in *paragraphs 1 and 1a* shall immediately entail identical

or deletion of the information stored in accordance with **paragraph 1** and contained in the index-filter created in accordance with paragraph 2 by the central authority of the convicting Member State.

alteration or deletion of the information stored in accordance with **paragraphs 1 and 1a** and contained in the index-filter created in accordance with paragraph 2 by the central authority of the convicting Member State **and shall entail updating the information contained in the index-filter stored in all other Member States.**

Amendment 20

Proposal for a directive

Article 1 – point 4

Council Framework Decision 2009/315/JHA

Article 4 a – paragraph 4

Text proposed by the Commission

Amendment

4. Paragraph 2 and paragraph 3 apply with respect to the index-filter also regarding third country nationals who hold the nationality of a Member State, to the extent that the information referred to in points (a), (e), (i), (j) and (k) of paragraph 1 is stored by the central authority in respect of nationals of Member States.

deleted

Amendment 21

Proposal for a directive

Article 1 – point 4

Council Framework Decision 2009/315/JHA

Article 4 a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall not enter information on convictions related to irregular entry or stay into the index-filter.

Amendment 22

Proposal for a directive

Article 1 – point 4

Text proposed by the Commission

Amendment

4b. *Member States shall not enter information in the index-filter on convictions of third country national minors other than those relating to serious crime, punishable by a maximum deprivation of liberty of at least four years.*

Amendment 23

Proposal for a directive

Article 1 – point 5

Council Framework Decision 2009/315/JHA
Article 4 b – paragraph 2

Text proposed by the Commission

Amendment

2. This Article *applies also* regarding a third country national who holds the nationality of a Member State.

2. This Article *shall not apply* regarding a third country national who holds the nationality of a Member State. ***Any third country national also holding the nationality of a Member State shall be treated as a national of that Member State in accordance with Article 4.***

Justification

The proposal creates discrimination between EU citizens who have only one nationality and EU citizens who have the nationality of a Member State and also the nationality of a third country. EU citizens with dual nationality would be treated as TCNs even though they are first and foremost EU citizens. This amendment eliminates the risk of discrimination by making sure that citizens with two nationalities (one EU, one TCN) are considered as EU citizens.

Amendment 24

Proposal for a directive

Article 1 – point 6 – point b

Council Framework Decision 2009/315/JHA
Article 6 – paragraph 3 – subparagraph 2 a (new)

Where applicable, if a search on the index-filters returns no hits, the third country national asking for information on his own criminal record shall receive a statement certifying that the search on the index-filters returned no hits."

Justification

This amendment ensures that TCNs requesting a criminal records extract shall receive, if they have committed no offences, a certificate that there was no hit on ECRIS, which proves that they have no criminal records in the 28 MS. This can be extremely useful for TCNs for employment purposes.

Amendment 25

Proposal for a directive

Article 1 – point 6 a (new)

Council Framework Decision 2009/315/JHA

Article 7 – paragraph 2 – subparagraph 1

Present text

2. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for any purposes other than that of criminal proceedings, that central authority shall in respect of convictions handed down in the Member State of the person's nationality and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in its criminal record, reply in accordance with its national law.

Amendment

(6a) in Article 7(2) the first subparagraph is replaced by the following:

"2. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for any purposes other than that of criminal proceedings, that central authority shall in respect of convictions handed down in the Member State of the person's nationality and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in its criminal record, reply, ***if so provided in the national law of the Member State of the person's nationality or of the requesting Member State."***

Amendment 26

Proposal for a directive

Article 1 – point 7 a (new)

Council Framework Decision 2009/315/JHA

Article 7 a (new)

Text proposed by the Commission

Amendment

(7a) the following article is inserted:

"Article 7a

Access to ECRIS database by Europol

1. Europol shall be entitled to access the ECRIS database for the performance of its tasks.

2. Europol may submit, on a case-by-case basis, an electronic and duly reasoned request to the central authority of any Member State through the Europol National Unit for the transmission of information from the criminal record of a Member State using the form set out in the annex.

3. Europol may submit a request referred to in paragraph 2 when this is necessary to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

4. Exchange of information under this Article shall take place through Secure Information Exchange Network Application.";

Amendment 27

Proposal for a directive

Article 1 – point 7 b (new)

Council Framework Decision 2009/315/JHA

Article 7 b (new)

(7b) the following article is inserted:

"Article 7b

Access to ECRIS database by Frontex

1. Frontex shall be entitled to access the ECRIS database for the performance of its tasks.

2. Frontex may submit, on a case-by-case basis, an electronic and duly reasoned request to the central authority of any Member State for the transmission of information from the criminal record of a Member State using the form set out in the annex."

Amendment 28

Proposal for a directive

Article 1 – point 9

Council Framework Decision 2009/315/JHA

Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. If the mode of transmission referred to in paragraph 3 is not available and for as long as it is not available, central authorities of Member States shall transmit all information referred to in paragraph 3, with the exception of the index-filter referred to in Article 4a, by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof.

4. If the mode of transmission referred to in paragraph 3 is not available and for as long as it is not available, central authorities of Member States shall transmit all information referred to in paragraph 3, with the exception of the index-filter referred to in Article 4a, by any ***secure*** means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof, ***shall inform the Commission of this and shall make all attempts to rectify the situation as soon as possible.***

Amendment 29

Proposal for a directive

Article 1 – point 10

Council Framework Decision 2009/315/JHA

Article 11 a – paragraph 1 – subparagraph 2

Text proposed by the Commission

ECRIS shall ensure the confidentiality and integrity of criminal record information transmitted to other Member States.

Amendment

ECRIS shall ensure the confidentiality, **protection, privacy** and integrity of criminal record information transmitted to other Member States.

Amendment 30

Proposal for a directive

Article 1 – point 10

Council Framework Decision 2009/315/JHA

Article 11 a – paragraph 2

Text proposed by the Commission

2. All criminal records data shall be stored solely in databases operated by the Member States.

Amendment

2. All criminal records data shall be stored solely in databases operated by the Member States **within the territory of the Union**.

Amendment 31

Proposal for a directive

Article 1 – point 10

Council Framework Decision 2009/315/JHA

Article 11 a – paragraph 4

Text proposed by the Commission

4. The software and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned.

Amendment

4. The software and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State **and the competent authorities** concerned.

Amendment 32

Proposal for a directive

Article 1 – point 10

Council Framework Decision 2009/315/JHA

Article 11 a – paragraph 6

Text proposed by the Commission

"6. The Commission shall provide the software referred to in paragraph 1, general support and technical assistance, including the collection and drawing up of statistics."

Amendment

"6. The Commission shall provide the **appropriate and most effective** software referred to in paragraph 1, general support and technical assistance, including the collection and drawing up of statistics."

Amendment 33

Proposal for a directive

Article 1 – point 11

Council Framework Decision 2009/315/JHA

Article 11 b – paragraph 1 – point c

Text proposed by the Commission

(c) any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:

Amendment

(c) any other **technical** means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:

Amendment 34

Proposal for a directive

Article 1 – point 13

Council Framework Decision 2009/315/JHA

Article 13 a

Text proposed by the Commission

"Article 13a

Reporting by the Commission and review

1. By [**24 months** after implementation], the Commission shall submit a report on the application of this Framework Decision to the European Parliament and the Council. The report shall assess the extent to which the Member States have taken the necessary

Amendment

"Article 13a

Reporting by the Commission and review

1. By [**18 months** after implementation], the Commission shall submit a report on the application of this Framework Decision to the European Parliament and the Council. The report shall assess the extent to which the Member States have taken the necessary

measures to comply with this Framework Decision, including the technical implementation.

2. The report shall be accompanied, where appropriate, by relevant legislative proposals.

3. The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics referred to in Article 11a(6). This report shall be published for the first time one year after the report referred to in paragraph 1 is submitted.

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3a. The Commission report referred to in paragraph 3 shall cover in particular the level of exchange between Member States, including that of third country nationals; the purpose of requests and their respective number, including requests for purposes other than criminal proceedings such as background checks and requests for information of the concerned person on his own criminal record; and issues relating to protection of personal data and an assessment of the impact of this Framework Decision on fundamental rights.

3b. The report referred to in paragraph 3, second sentence, shall also examine the feasibility of creating a centralised European Criminal Records Information System (ECRIS) for third country nationals.

EXPLANATORY STATEMENT

I. Background

The nature of criminal and terrorist activity has been constantly evolving in recent years. It has become increasingly trans-national in nature, and EU institutions and Member States have spoken of the increased need to exchange information in order to tackle the threats faced. The European Council and the Justice and Home Affairs Council of Ministers have stated on several occasions the importance of improving ECRIS. The Riga Statement of 29 January 2015 issued by the Justice and Home Affairs Ministers stressed that exchanging information on criminal convictions is important in any strategy to combat crime and counter terrorism.

The recent terrorist attacks demonstrated in particular the urgency of enhancing relevant information-sharing, notably as regards the extension of ECRIS to third country nationals. In response to this, the European Commission as part of its European Agenda for Security, proposed a revision of the existing Regulation on the Exchange of Criminal Records Information System. The intention of such a revision is to enhance information sharing between Member States, and to close any existing loop holes.

ECRIS is an electronic system for exchanging information on previous convictions handed down against a specific person by criminal courts in the EU for the purposes of criminal proceedings against a person and, if so permitted by national law, for other purposes. The ECRIS legal framework, however, does not sufficiently cover requests concerning third country nationals. Although it is now possible to exchange information on third country nationals (TCN) through ECRIS, there is no procedure or mechanism in place to do so efficiently.

II. Commission Proposal

The proposal aims to amend Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replace Council Decision 2009/316/JHA. The proposal imposes an obligation to store criminal record information; an obligation to distribute to the other Member States an anonymised index-filter with identity information on the TCN convicted in its territory for the purpose of identifying the Member States holding criminal record information on a TCN; and the obligation to update the index-filter in line with any deletion or alteration of the data included in it.

Storage: A Member State shall comply with the storage obligation even if the information is stored in another database than the criminal record database, as long as the central authority has access to the database in which the information is stored. Furthermore, the obligation applies regardless of whether a person also holds an EU nationality in order to ensure that the information can be found whether or not the additional nationality is known.

Request for information on convictions: A Member State is obliged to supplement an extract of a criminal record for which a TCN has asked (his/her own record) with information from the other Member States in the same way that it would for EU nationals.

The definition of 'convicting Member State': this now covers convictions, irrespective of whether they were handed down against a national of another Member State or a TCN.

Obligations of the convicting Member State: the Framework Decision is amended to ensure that Member States' obligation to add the nationality (or nationalities) of a convicted person to the criminal record now also applies to the nationality or nationalities of TCN.

Response to a request for information on convictions: A request for information on a TCN is treated similarly to a request for information on EU nationals. Accordingly, the requested central authority has to transmit information on a conviction handed down in its Member State against the TCN plus any convictions handed down in third countries that have been entered in its criminal record.

Personal data: The references to personal data are extended to the new provisions on TCN.

Format and organisational arrangements: The proposal provides that central authorities of Member States shall transmit the information, the index-filter, requests, replies and other relevant information electronically using ECRIS and a standardised format in accordance with the standards laid down in implementing acts; sets out the technical obligations of Member States in relation to the tasks to be fulfilled by the Directive. This concerns both the current information exchange system and the new 'hit'/'no hit' system based on an anonymised index-filter. The technical and administrative arrangements for facilitating the exchange of information will be set out in implementing acts; governs the transmission of information if ECRIS is not available; requires Member States to notify the Commission instead of the Council in future when they are able to use ECRIS and the new index-filter.

Comitology: A comitology procedure has been introduced to give the Commission the necessary tools in order to implement the technical aspects of the exchange of information so it will work in practice.

III. Rapporteur's Position

Your Rapporteur agrees with the vast majority of the Commission's approach to the exchange of criminal records information between Member States. Expanding the scope of this Regulation so as to make particular provisions for third country nationals is very important in order to produce equality in the eyes of national legal systems with regard to EU nationals and third country nationals.

Checking the criminal records of people entering the EU marks an important step in delivering more confidence in migration, and in the EU's security in general. In order to have confidence in the Schengen area and EU free movement we require clear and effective actions which help to exchange information on criminal suspects. Such a revision to this Regulation is essential in order to enhance trust, confidence and mutual recognition in the area of judicial cooperation.

The rapporteur also suggests that the provision of this Regulation extends the scope of background checks to all individuals working with vulnerable persons as well as children. Member States must have confidence in all persons working in healthcare, education, and

similar caring professions.

The Rapporteur also believes that there should be clear obligation for Member States to enter any bilateral information received on criminal convictions of persons residing on the EU territory into their national criminal records database, and share such information on the index system.

The rapporteur also asks that there are clear references to the need for data protection provisions, and the presumption of innocence and a fair trial, as well as a clear list of provisions which should form part of a detailed review of the system, as is required under the better regulation provisions.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Exchange of information on third country nationals and European Criminal Records Information System (ECRIS)			
References	COM(2016)0007 – C8-0012/2016 – 2016/0002(COD)			
Date submitted to Parliament	19.1.2016			
Committee responsible Date announced in plenary	LIBE 1.2.2016			
Rapporteurs Date appointed	Timothy Kirkhope 15.2.2016			
Discussed in committee	16.3.2016	7.4.2016	9.5.2016	30.5.2016
Date adopted	30.5.2016			
Result of final vote	+: –: 0:	45 2 4		
Members present for the final vote	Jan Philipp Albrecht, Martina Anderson, Malin Björk, Michał Boni, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Tanja Fajon, Laura Ferrara, Monika Flašíková Beňová, Ana Gomes, Nathalie Griesbeck, Jussi Halla-aho, Monika Hohlmeier, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Timothy Kirkhope, Cécile Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Claude Moraes, Péter Niedermüller, Soraya Post, Birgit Sippel, Branislav Škripek, Csaba Sógor, Bodil Valero, Marie-Christine Vergiat, Beatrix von Storch, Josef Weidenholzer, Kristina Winberg			
Substitutes present for the final vote	Marina Albiol Guzmán, Hugues Bayet, Carlos Coelho, Pál Csáky, Ska Keller, Miltiadis Kyrkos, Artis Pabriks, Salvatore Domenico Pogliese, Jaromír Štětina, Róza Gräfin von Thun und Hohenstein, Axel Voss			
Substitutes under Rule 200(2) present for the final vote	Reimer Böge, Caterina Chinnici, Edouard Ferrand, Peter Jahr, Othmar Karas, Ilhan Kyuchyuk, Maite Pagazaurtundúa Ruiz, Keith Taylor, Lieve Wierinck			
Date tabled	27.6.2016			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

45	+
ALDE	Nathalie Griesbeck, Sophia in 't Veld, Ilhan Kyuchyuk, Maite Pagazaurtundúa Ruiz, Lieve Wierinck
ECR	Jussi Halla-aho, Timothy Kirkhope, Branislav Škripek
EFDD	Laura Ferrara, Kristina Winberg
PPE	Michal Boni, Reimer Böge, Carlos Coelho, Pál Csáky, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Monika Hohlmeier, Peter Jahr, Othmar Karas, Artis Pabriks, Salvatore Domenico Pogliese, Jaromír Štětina, Csaba Sógor, Róza Gräfin von Thun und Hohenstein, Axel Voss
S&D	Hugues Bayet, Caterina Chinnici, Tanja Fajon, Monika Flašíková Beňová, Ana Gomes, Sylvia-Yvonne Kaufmann, Cécile Kashetu Kyenge, Miltiadis Kyrkos, Marju Lauristin, Juan Fernando López Aguilar, Claude Moraes, Péter Niedermüller, Soraya Post, Birgit Sippel, Josef Weidenholzer
Vers/ALE	Jan Philipp Albrecht, Ska Keller, Keith Taylor, Bodil Valero.

2	-
GUE/NGL	Martina Anderson, Malin Björk

4	0
EFDD	Beatrix von Storch
ENF	Edouard Ferrand
GUE/NGL	Marina Albiol Guzmán, Marie-Christine Vergiat

Key to symbols:

+ : in favour

- : against

0 : abstention