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REPORT

on the proposal for a Council decision on the exchange of information
extracted from the criminal record
(COM(2004)0664 – C6-0163/2004 – 2004/0238(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Antonio Di Pietro

Symbols for procedures

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

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

Amendments to a legislative text

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the exchange of information extracted from the criminal record
(COM(2004)0664 – C6-0163/2004 – 2004/0238(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2004)0664)¹,
 - having regard to Articles 31 and 34(2)(c) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0163/2004),
 - having regard to Rules 93 and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0020/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Article 3

Each central authority shall ***without delay*** inform the central authorities of the other Member States of convictions of nationals of those Member States registered in the national criminal record ***and of relevant***

Each central authority shall ***immediately and in any event within three months at most*** inform the central authorities of the other Member States of convictions of nationals of those Member States

¹ Not yet published in OJ.

subsequent entries in the criminal record.

registered in the national criminal record.

Justification

The effectiveness of the proposal under consideration depends upon the frequency with which the Member States' central authorities periodically update the data contained in their criminal records. The final section of the article is deleted in order to make the text easier to understand (through omission of unnecessary detail which could cause confusion amongst users of the system).

Amendment 2
Article 4, paragraph 2

2. The reply shall be sent immediately and in any event within a period not exceeding **five** working days from the receipt of the request, under the conditions provided for by national law, by the central authority of the requested Member State to the central authority of the requesting Member State on the basis of reply form B annexed hereto. It shall include the information transmitted in accordance with Article 3.

2. The reply shall be sent immediately and in any event within **48 hours in urgent cases and otherwise within** a period not exceeding **ten** working days from the receipt of the request, under the conditions provided for by national law, by the central authority of the requested Member State to the central authority of the requesting Member State on the basis of reply form B annexed hereto. It shall include the information transmitted in accordance with Article 3.

Justification

In urgent cases, 48 hours is the minimum amount of time required in many Member States for confirmation to be provided as to whether or not an individual is being held in custody. In other cases the requested Member State may send its reply within ten working days of receiving the request.

Amendment 3
Article 4, paragraph 3

3. The reply form shall be accompanied by a statement of convictions.

3. The reply form shall be accompanied by a statement of **the** convictions **entered in the criminal record.**

Justification

The purpose of the amendment is to make the text immediately comprehensible to users of the system.

Amendment 4
Article 5, paragraph 1, letter (b)

(b) for other purposes within the limits specified by the requested Member State and in accordance with national law of the requesting Member State.

(b) for other purposes within the limits specified **on the form** by the requesting Member State **and approved by the requested Member State** and in accordance with national law of the requesting Member State.

Justification

Where personal data are forwarded for purposes other than criminal proceedings, the requesting and requested Member States must be aware of, and must have mutually accepted, the limits within which such information may be gathered.

Amendment 5
Article 5, paragraph 2

2. Where personal data is transmitted under paragraph 1(b) of this Article, the requested Member State **may ask** the requesting Member State **to inform it of** the use made of it.

2. Where personal data is transmitted under paragraph 1(b) of this Article, the requested Member State **shall be informed by** the requesting Member State **regarding** the use made of it.

Justification

Where personal data are forwarded for purposes other than criminal proceedings, the requested Member State must be informed regarding the use which the requesting Member State has made of them.

Amendment 6
Article 5, paragraph 3a (new)

3a. The 28 January 1981 Council of Europe Convention on the protection of individuals with regard to the automatic processing of personal data and Article 23 of the 29 May 2000 Council of Europe Convention on mutual assistance in criminal matters between the Member States of the European Union shall apply to this Article.

Justification

It should be made clear in the text that compliance with current conventions is one of the conditions governing the use of personal data. The ideal thing would be a reference to the new rules which the EU some time ago undertook to adopt with a view to protecting data in cases where the latter are used for the purpose of maintaining public security. If such rules are adopted before the text under consideration is, the reference contained in the proposed amendment should be updated.

Amendment 7
Article 8

Member States shall implement this Decision as soon as possible and in any event ***no later than 30 June 2005***.

Member States shall implement this Decision as soon as possible and in any event ***within six months of the date upon which it is published in the Official Journal of the European Union***.

Justification

No dates should be set in advance; it would be better to wait for a definite timeframe to emerge once the procedure is concluded.

Amendment 8
Form A, letter a), third line

Contact ***person***:

Contact ***office***:

Justification

Provision should be made for particularly delicate, complex investigations in which the identity of the magistrates conducting them needs to be kept confidential in the interests of their safety.

EXPLANATORY STATEMENT

1. Legislative framework

Contrary to what might appear at first sight to be the case, the Commission's proposal for a decision on the exchange of information extracted from the criminal record constitutes an important, necessary and urgent technical-adjustment measure within the EU's area of freedom, security and justice.

In each of the 25 Member States there are special registers in which the convictions handed down by the Member States' judicial authorities are recorded, but the legal instrument used by the Member States for the purpose of exchanging important information of this nature dates back to the 1959 Council of Europe Convention¹.

The Commission has taken it upon itself to make improvements of a technical nature to the relevant legislation, following the wave of anger and revulsion which swept across Europe in the wake of the horrific cases of paedophilia which occurred not so long ago in the Ardennes, involving both France and Belgium. Those cases highlighted not only the investigators' undeniable negligence but also the total lack of communication between two founder Member States.

Leaving aside that particular (and highly disturbing) case, it is clear that a qualitative improvement in the exchange of information between Member States is urgently needed - not least in view of the fact that the terrorist groups which have carried out attacks in Europe and in other parts of the world are part of a well-established international network which includes perpetrators of serious organised crime who have long been involved in criminal activities (from drugs trafficking to money laundering) which fan out way beyond the borders of individual countries.

The next few years will be crucial in the European-integration process as regards criminal matters - in which connection all the necessary action will be taken in order to ensure that the people of the EU have access to justice in criminal affairs which is genuinely effective, independent and transparent.

The Commission has already announced that, over the next few months, more complex initiatives will be brought forward, such as the White Paper on the exchange of information relating to convictions, prohibition measures and the mutual recognition thereof within the EU (to be published in January 2005), the framework decision on the recognition amongst EU Member States of decisions to convict (due to be submitted at the end of February 2005) and the decision on the computerised system for the exchange of information extracted from the criminal record.

There are, however, still objective technical and legal difficulties to be overcome before an operational computerised system for the exchange between Member States of information on criminal convictions can be set up and it is unlikely that - even according to the most optimistic forecasts - such a system can be brought into operation before 2008/2010.

¹ Council of Europe, European Treaties series, no. 30

This means that the decision which is currently being examined by Parliament will not have any practical, tangible effects on the people of the EU for at least five years.

2. Analysis of the Commission proposal

The legal basis for the proposed decision is Article 31 of the Treaty on European Union as amended by the Nice Treaty; it provides for Parliament merely to be consulted.

The main purpose of the Commission's proposal for a decision on the exchange of information extracted from the criminal record is - as indicated - to suggest practical ways of remedying the shortcomings in the current system, and it proposes action in just a few key areas:

- (a) it requires the Member States to notify each other straight away regarding any of their nationals who have been convicted of an offence; under the 1959 Convention the Member States are required to do so just once a year;
- (b) it establishes a five-day time limit for the receipt of a reply from the requested Member State;
- (c) with an obvious view to simplifying the practical data-transfer procedures, it provides that a request from a requesting Member State and a reply from a requested Member State must be accompanied by a standard form which is identical in all the Member States;
- (d) it provides definitions of 'criminal record' and 'conviction', since the legal systems in force in the 25 EU Member States do not currently recognise a single concept of 'criminal record', which may contain very different information on individuals, depending on the Member State concerned.

3. Proposed amendments

The rapporteur broadly agrees with the Commission's overall approach and he has merely proposes a few, well-focused amendments designed to enhance the legislative text (which will be a practical tool in the hands of those responsible for operating the judicial system) and making it easier to use.

Amendment 1 - Article 3: Own-initiative information on convictions

With regard to this basic issue, the rapporteur considers that each central authority should inform the other Member States' central authorities of convictions of nationals of those Member States which are registered in the national criminal record immediately or in any event within three months. If the legislative text were to retain the vague concept whereby the central authorities will inform the other central authorities *without delay*, this could lead to unjustified delays in what should be a regular periodic updating of the central authorities' databases.

Amendments 2 and 3 - Article 4: Request for information on convictions

With regard to this aspect the rapporteur considers (in accordance with what has already been agreed by the Council) that a reply from a requested Member State may arrive within 10 working days of the date upon which the request was received (instead of the five working days proposed by the Commission - a time limit which would be difficult to meet), but that in urgent cases a reply should in all cases be received within 48 hours (which in many Member States is the minimum length of time required for it to be confirmed that an individual is or is not being held in custody).

Again in order to make the text more immediately comprehensible to users of the system, the rapporteur considers it useful to specify that the reply form from the requested Member State must be accompanied by a statement of the convictions which appear in the criminal record.

Amendments 4, 5 and 6 - Article 5: Conditions for the use of personal data

This article is an extremely delicate one, and the rapporteur is aware that the requirements of investigative activities (where speedy exchange of information is essential) must be balanced against the need to safeguard and protect personal data.

However, it is a condition of the mutual trust which must underpin relations between Member States that where personal data are forwarded for purposes other than criminal proceedings, the information gathered may be used solely and exclusively within the limits specified by the requesting Member State and accepted by the requested Member State.

Furthermore, as a further safeguard that there will not be misunderstandings of any kind between Member States, whenever personal data are forwarded for purposes other than criminal proceedings, the Member State to which such a request is issued must automatically be informed of the use made of it by the requesting Member State.

Lastly, the rapporteur considers that, pending the advent of a single text which will protect the use of personal data in this third-pillar field, the wording of the text must contain a reference (already present in the recitals) to the rules which protect personal data on the basis of the 28 January 1981 Council of Europe Convention on the protection of individuals with regard to the automatic processing of personal data and Article 23 of the 29 May 2000 Convention on mutual assistance in criminal matters between the Member States of the European Union.

The ideal thing would be a reference to the new rules which the EU some time ago undertook to adopt with a view to protecting data in cases where the latter are used for the purpose of maintaining public security. If such rules are adopted before the text under consideration is, the reference contained in the proposed amendment should be updated.

Amendment 7 - Article 8: Implementation

With regard to the timing of this decision (which will be directly applicable in all the Member States), the rapporteur considers that deadlines (which might not be met) should not be laid down in advance; it would be better to wait for a definite timeframe to emerge once the procedure is concluded.

The decision must in any event be implemented by the Member States as soon as possible and at the latest within six months of the date upon which it is published in the Official Journal of the European Union.

Amendment 8 - Form

With reference to the standard forms proposed by the Commission, the rapporteur considers - as the Council has already agreed - that Form A (intended to be used by the requesting Member State in order to issue a request) and Form B (intended to be used by the requested Member State in order to reply to the request) should for practical reasons be combined into one.

However, he considers it essential that, in the part containing the information relating to the requesting Member State, 'Contact person' be replaced by the more impersonal 'Contact office'.

Provision should obviously be made for particularly delicate, complex investigations in which the identity of the magistrates conducting them needs to be kept confidential in the interests of their safety.

PROCEDURE

Title	Proposal for a Council decision on the exchange of information extracted from the criminal record	
References	COM[(2004)0664 – C6-0163/2004 – 2004/0238(CNS)]	
Legal basis	Article 39(1) EU	
Basis in Rules of Procedure	Rules 93 and 51	
Date of consulting Parliament	27.10.2004	
Committee responsible Date announced in plenary	LIBE 16.11.2004	
Committee(s) asked for opinion(s) Date announced in plenary	JURI 16.11.2004	
Not delivering opinion(s) Date of decision	JURI 24.11.2004	
Enhanced cooperation Date announced in plenary		
Rapporteur(s) Date appointed	Antonio Di Pietro 25.11.2004	
Previous rapporteur(s)		
Discussed in committee	18.1.2004	1.2.2005
Date adopted	1.2.2005	
Result of final vote	for:	43
	against:	1
	abstentions:	2
Members present for the final vote	Alexander Nuno Alvaro, Alfredo Antoniozzi, Johannes Blokland, Mario Borghesio, Jean-Louis Bourlanges, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Charlotte Cederschiöld, Carlos Coelho, António Costa, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Antoine Duquesne, Kinga Gál, Patrick Gaubert, Adeline Hazan, Timothy Kirkhope, Ewa Klamt, Ole Krarup, Stavros Lambrinidis, Romano Maria La Russa, Henrik Lax, Edith Mastenbroek, Jaime Mayor Oreja, Hartmut Nassauer, Bogdan Pęk, Martine Roure, Inger Segelström, Manfred Weber, Tatjana Ždanoka	
Substitutes present for the final vote	Frederika Brepoels, Panayiotis Demetriou, Gérard Deprez, Camiel Eurlings, Ignasi Guardans Cambó, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Vincent Peillon, Herbert Reul, Marie-Line Reynaud, Bogusław Sonik, Jan Zahradil	
Substitutes under Rule 178(2) present for the final vote	Georgios Papastamkos	
Date tabled – A[5]	3.2.2005	A6-0020/2005
Comments	...	