

Exchanges of information extracted from criminal records *

European Parliament legislative resolution of 21 June 2007 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 (COM(2005)0690 – C6-0052/2006 – 2005/0267(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2005)0690)¹,
 - having regard to Articles 31 and 34(2)(b) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0052/2006),
 - 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 (A6-0170/2007),
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. Calls on 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 the Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Recital 8 a (new)

(8a) The fact that different legal regimes may apply to a single criminal conviction

¹ Not yet published in OJ.

leads to the circulation of unreliable information between Member States and creates legal uncertainty for the convicted person. To avoid this situation, the convicting Member State should 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 transmitted, should 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 transmitted by it to any other State, being another Member State or a third country.

Amendment 2
Recital 10

(10) Personal data handled as part of the implementation of this Framework Decision are protected in accordance with the provisions of Framework Decision XXX on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. This Framework Decision also incorporates the provisions of the Decision of 21 November 2005 on the exchange of information extracted from the criminal records¹¹, which limit the use the requesting Member State can make of information asked for. It supplements them with specific rules applying where the Member State of the person's nationality *forwards* conviction information transmitted to it by the convicting Member State.

(10) Personal data handled as part of the implementation of this Framework Decision are protected in accordance with the provisions of Framework Decision XXX on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ***and in particular with the basic principles of data protection referred to in Article 9.*** This Framework Decision also incorporates the provisions of the Decision of 21 November 2005 on the exchange of information extracted from the criminal records, which limit the use the requesting Member State can make of information asked for. It supplements them with specific rules applying where the Member State of the person's nationality *forwards* conviction information transmitted to it by the convicting Member State.

Amendment 3
Recital 12 a (new)

(12a) Improving the exchange and circulation of information on convictions can considerably enhance judicial and police cooperation at EU level, but such cooperation may be hampered if it is not supplemented by the swift adoption of a uniform set of basic procedural guarantees for suspects and defendants in criminal proceedings applicable in all Member States.

Amendment 5
Article 2, point (a)

a) "conviction" means any final decision ***of a criminal court or of an administrative authority whose decision can be appealed against before a court having jurisdiction in particular in criminal matters,*** establishing guilt *of* a criminal offence ***or an act punishable in accordance with national law as an offence against the law***

(a) "conviction" means any final ***court*** decision establishing guilt ***in criminal proceedings for*** a criminal offence ***under*** national law;

Amendment 6
Article 3, paragraph 1

1. For the purposes of this Framework Decision, each Member State shall designate a central authority. However, for the transmission of information under Article 4 and for replies to requests ***as referred to in Articles 6 and 7,*** Member States may designate one or more central authorities.

1. For the purposes of this Framework Decision, each Member State shall designate a central authority. However, for the transmission of information under Article 4 and for replies to requests ***for information under Article 7,*** Member States may designate one or more central authorities.

Amendment 7
Article 4, paragraph 1

1. Each Member State shall take the necessary measures to ensure all convictions handed down within its territory are accompanied, when transmitted to the national criminal record, by the nationality of the convicted person if they are a national of another Member State.

1. Each Member State shall take the necessary measures to ensure all convictions handed down within its territory, ***after they have been entered in the criminal record,*** are accompanied, when transmitted to the national criminal record, by the nationality ***or nationalities*** of the convicted person if they are a national of another Member State.

Amendment 8
Article 4, paragraph 2, subparagraph 2

If the *interested party* is a national of several Member States, the relevant information shall be transmitted to each of these Member States, even if the convicted person is a national of the Member State within whose territory they have been convicted.

If the *convicted person* is *known to be* a national of several Member States, the relevant information shall be transmitted to each of these Member States, even if the convicted person is a national of the Member State within whose territory they have been convicted.

Amendment 9
Article 4, paragraph 3

3. The transmission of information on convictions shall also include the length of time the conviction is to remain in the register of the convicting Member State, in accordance with that the convicting Member State's national legislation at the time of transmission to the Member State of the person's nationality.

deleted

Amendment 10
Article 4, paragraph 4

4. Any subsequent *measures taken in application of the convicting Member State's national legislation which involve an* alteration or deletion of information contained in criminal records, *including those affecting the length of time the information is to be kept*, shall be immediately transmitted by the central authority of the convicting Member State to the central authority of the Member State of the person's nationality.

4. Any subsequent alteration or deletion of information contained in criminal records shall be immediately transmitted by the central authority of the convicting Member State to the central authority of the Member State of the person's nationality.

Amendment 11
Article 5, paragraph 1

1. The central authority of the Member State of the person's nationality shall store *all* information transmitted under *Article 4*, in order to be able to retransmit it in accordance with Article 7.

1. The central authority of the Member State of the person's nationality shall store *the* information transmitted under *Article 4(2) and (4) and Article 11*, in order to be able to retransmit it in accordance with Article 7.

Amendment 12
Article 5, paragraph 3

3. The Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2. ***The obligation provided for by paragraph 2 may not lead to less favourable treatment in national proceedings than if the person had been convicted by a national court.***

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Amendment 13
Article 6, paragraph 1

1. When information from the national criminal record of a Member State is requested, the central authority may, in accordance with national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record.

1. When, ***in the context of criminal proceedings against someone or for any other reason outside the framework of criminal proceedings***, information from the national criminal record of a Member State is requested, the central authority may, in accordance with national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record.

Amendment 14
Article 6, paragraph 1a (new)

1a. 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 requesting Member State shall specify its reasons for making the request.

Amendment 15
Article 6, paragraph 2

2. When a person asks for information on their own criminal record, the central authority of the Member State in which the request is made ***may***, in accordance with national law, submit a request to the central authority of another Member State for information and related data to be extracted

2. When a person asks for information on their own criminal record, the central authority of the Member State in which the request is made ***shall***, in accordance with national law, submit a request to the central authority of another Member State for information and related data to be extracted

from the criminal record, provided the interested party is or has been a resident or a national of the requesting or requested Member State.

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Amendment 16
Article 7, paragraph 1, point (a)

a) national convictions

a) national convictions *entered in the register of criminal records;*

Amendment 17
Article 7, paragraph 1, point (d)

d) any convictions handed down in third countries and subsequently transmitted to it.

d) any convictions handed down in third countries and subsequently transmitted to it *and entered in its register of criminal records.*

Amendment 18
Article 7, paragraph 2, subparagraph 1

2. When information extracted from criminal records is requested under Article 6 from the central authority of the Member State of the person's nationality for any other purpose than that of criminal proceedings, that *State* shall respond in ***accordance with national law for*** national convictions and convictions handed down in third countries and subsequently transmitted to it.

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

Amendment 19
Article 7, paragraph 2, subparagraph 2

The central authority of the Member State of the person's nationality shall ***immediately ascertain*** from the central authority of the convicting Member State ***whether and to what extent*** the information on convictions handed down in the ***latter*** and transmitted to the ***former*** may be transmitted to the central authority of ***the requesting*** Member State.

In the case of information transmitted by the convicting Member State, the central authority of the Member State of the person's nationality shall ***pass on the information received. When transmitting information pursuant to Article 4,*** the central authority of the convicting Member State ***may inform the central authority of the Member State of the person's***

nationality that the information on convictions handed down in the ***former*** and transmitted to the ***latter*** may be transmitted to the central authority of ***another*** Member State ***requesting it only with the consent of the convicting Member State.***

Amendment 20

Article 7, paragraph 2, subparagraph 3

The central authority of the convicting Member State shall reply to the central authority of the person's nationality early enough to enable the latter to meet the reply deadlines provided for in Article 8.

Where the consent of the convicting Member State ***is required, its central authority*** shall reply to the central authority of the person's nationality early enough to enable the latter to meet the reply deadlines provided for in Article 8.

Amendment 21

Article 7, paragraph 4

4. When information extracted from criminal records is requested from the central authority of a different Member State to the Member State of the person's nationality, ***the latter*** shall transmit information on ***national*** convictions to the central authority of the requesting Member State. If the request is not related to criminal proceedings, ***it*** shall respond in accordance with national law.

4. When information extracted from criminal records is requested from the central authority of a different Member State to the Member State of the person's nationality, ***the Member State to which the request is made*** shall transmit information on ***the*** convictions ***entered in its criminal records*** to the central authority of the requesting Member State. If the request is not related to criminal proceedings, ***the central authority of the Member State to which the request is made*** shall respond in accordance with national law.

Amendment 22

Article 9, paragraph -1 (new)

-1. The processing of personal data for the purposes of this Framework Decision shall comply with at least the following basic principles:

a) data processing shall be permitted by law, and shall be necessary and proportionate in relation to the purposes of collection and/or further processing;

b) data shall be collected only for specified and legitimate purposes and

further processed in a way compatible with those purposes;

c) data shall be accurate and updated;

d) special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary for the purpose of a specific case and in accordance with appropriate safeguards.

Amendment 23

Article 9, paragraph 1

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State, solely for the purposes of the particular proceedings they were requested for, in accordance with the annexed form.

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State ***in accordance with the principles referred to in paragraph -1 and, in particular***, solely for the purposes of the particular proceedings they were requested for, in accordance with the annexed form.

Amendment 24

Article 9, paragraph 2

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used by the requesting Member State, in accordance with its national law, solely for the purposes of the particular proceedings they were requested for and within the limits set out by the requested Member State in the relevant form.

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used by the requesting Member State, in accordance with its national law ***and with the principles referred to in paragraph -1 and, in particular***, solely for the purposes of the particular proceedings they were requested for and within the limits set out by the requested Member State in the relevant form.

Amendment 25

Article 9, paragraph 3

3. Notwithstanding paragraphs 1 and 2, personal data provided under Article 7(1), (2) and (4) may be used by the requesting Member State for preventing an immediate

3. Notwithstanding paragraphs 1 and 2, personal data provided under Article 7(1), (2) and (4) may be used by the requesting Member State ***if such use is necessary and***

and serious threat to public security.

proportionate for the purpose of preventing an immediate and serious threat to public security; in such a case, the requesting Member State shall provide the requested Member State with an ex post notification setting out the fulfilment of the conditions of necessity, proportionality, urgency and seriousness of the threat.

Amendment 26
Article 9, paragraph 4

4. Member States shall take the necessary measures to ensure that personal data transmitted to a third *country* under Article 7(3) are subject to the same usage restrictions as those applicable in Member States under *Article 7(1), (2) and (3)*.

4. ***In addition***, Member States shall take the necessary measures to ensure that personal data transmitted to a third *country* under Article 7(3) are subject to the same usage restrictions as those applicable in Member States under *paragraphs 1, 2 and 3 of this Article*.

Amendment 27
Article 9, paragraph 5

5. ***This article does*** not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

5. ***Paragraphs 1 to 4 shall*** not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

Amendment 28
Article 9, paragraph 5 a (new)

5a. Each Member State shall ensure that national data protection authorities are systematically informed of the exchange of personal data under this Framework Decision and, in particular, of the use of personal data in the circumstances referred to in Article 9(3).

The data protection authorities of the Member States shall monitor the exchange referred to in paragraph 1 and cooperate with one another for that purpose.

Amendment 29
Article 9 a (new)

Article 9a

Rights of the data subject

1. A data subject shall be informed of the fact that personal data concerning him or her are being processed. The provision of that information shall be delayed when necessary in order not to hamper the purposes for which the data are being processed.

2. A data subject shall have the right 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, when appropriate, erase data processed in breach of the principles referred to in Article 9(-1).

3. The information referred to in paragraph 1 may be refused or delayed if strictly necessary:

(a) to protect security and public order;

(b) to prevent a crime;

(c) to avoid hampering the investigation and prosecution of criminal offences;

(d) to protect the rights and guarantees of third parties.

Amendment 30

Article 11, paragraph 2, point (a)

a) information on the convicted person (surname, first name, date of birth, place of birth, pseudonym or alias if applicable, gender, nationality, legal form and registered office for legal persons)

a) information on the convicted person (surname, first name, **former name**, date of birth, place **and country** of birth, pseudonym or alias if applicable, gender, nationality, legal form and registered office for legal persons);

Amendment 31

Article 11, paragraph 2, point (b)

b) information on the nature of the conviction (date and place, name and type of convicting authority)

b) information on the nature of the conviction (date and place, **reference number where known, and** name and type of convicting authority);

Amendment 32

Article 11, paragraph 2, point (c)

c) information on the facts giving rise to the conviction (date, *place*, type, legal status, applicable criminal law)

c) information on the facts giving rise to the conviction (date, type, legal status, applicable criminal law);

Amendment 33
Article 11, paragraph 6

6. The technical alterations referred to in paragraph 5 shall be carried out within *three years* from the date the format and the ways in which information on convictions may be exchanged electronically are adopted.

6. The technical alterations referred to in paragraph 5 shall be carried out within *one year* from the date the format and the ways in which information on convictions may be exchanged electronically are adopted.

Amendment 34
Article 14, paragraph 5

5. This Framework Decision has no impact on the application of more favourable provisions included in bilateral or multilateral agreements concluded between Member States.

5. This Framework Decision has no impact on the application of more favourable provisions included in bilateral or multilateral agreements *or conventions* concluded between Member States.