

# EUROPEAN PARLIAMENT

2004



2009

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*Session document*

FINAL  
**A6-0170/2007**

9.5.2007

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## **REPORT**

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Agustín Díaz de Mera García Consuegra

### ***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 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)<sup>1</sup>,
  - 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

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Amendments by Parliament

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Amendment 1  
Recital 8 a (new)

***(8a) The fact that different legal regimes may apply to a single criminal conviction leads to the circulation of unreliable***

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<sup>1</sup> Not yet published in OJ.

*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, 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 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 records<sup>11</sup>, 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 forward 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 of this Framework Decision.*** 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 forward conviction information transmitted to it by the convicting Member State.

### *Justification*

*The Framework decision on data protection in the context of police and judicial cooperation, which should apply also to the present act as a lex generalis, is still in the process of being finalised; for this reasons it seems necessary to recall a basic set of general data protection principles to be respected while collecting, processing, transmitting data within the scope of present Framework Decision.*

### 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.***

### *Justification*

*The Framework Decision on procedural guarantees for suspects and defendants in criminal proceedings is still pending adoption in Council since 2004 and this delay can considerably hamper progresses in judicial and police cooperation, in particular creating conflicts with constitutional measures at a national level.*

### Amendment 4 Article 1, point (a)

(a) 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")

(a) 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") **transmits the information on** such a conviction to the Member State of the convicted person's nationality (the "Member State of the person's nationality")

### *Justification*

*The initial English version states that a Member State 'may transmit' the information. However, this is not an option but an obligation.*

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.

*Justification*

*Article 7 of the proposal specifies how requests for information should be replied to.*

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.



*Justification*

*The unamended article refers to the obligation to forward details of sentences, but does not mention the prior obligation to enter them in the register of criminal records of the Member States where the sentence was passed. It should also be taken into account that the convicted person may have more than one nationality.*

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 interested party 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.

*Justification*

*In some cases it may not be known that a convicted person has double nationality.*

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**

*Justification*

*It would be impossible to comply with this obligation in the case of Member States whose national legislation requires certain criteria, in addition to the prison term having been served, for a conviction to be considered spent (e.g. having paid the fine forming part of the sentence).*

Amendment 10

Article 4, paragraph

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.

#### *Justification*

*Any updating or alteration of the criminal records of the convicting Member State must be immediately transmitted to that of the person's nationality, to ensure that the data in the latter's criminal records are kept up-to-date.*

#### 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.

#### *Justification*

*'All' could give rise to more than one interpretation. It therefore seems preferable to refer to Article 11 regarding the content of the information. The amendment also aims to prevent any distortions of information which might arise when converting the categories of data of the convicting Member State to those of the Member State of the person's nationality.*

#### 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.***

3. The Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2.

*Justification*

*The rule proposed in the deleted sentence has nothing to do with the content of the proposal.*

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.

*Justification*

*It is necessary to include the situations covered by Article 7 of the proposal.*

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 it.***

*Justification*

*This amendment is in line with the wording of Article 9(2) of the proposal and corresponds to the need to define the specific cases in which such information may be transmitted under the law of the convicting Member State or that of the person's nationality, according to the circumstances, in order to be used outside the framework of a criminal procedure.*

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

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.

*Justification*

*In cases where the person concerned is or has been a resident or national of a Member State and these circumstances are confirmed, a request for information from that Member State cannot depend on the choice of the Member State where the request is made.*

Amendment 16

Article 7, paragraph 1, point (a)

a) national convictions

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

*Justification*

*The aim is to make it clear that only offences included in the register, i.e. not considered spent once the sentence has been served, produce legal effects. This amendment should be considered in conjunction with the following amendment, the aim being not to create an over-complex regime which could pose obstacles to the exchange of information.*

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.***

*Justification*

*The aim is to ensure that only convictions which are on the register - i.e. not considered spent once the sentence has been served - produce legal effects.*

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 State 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.***

*Justification*

*The aim is to ensure that only convictions which are on the register - i.e. not considered spent once the sentence has been served - produce legal effects, and to determine what information can be transmitted.*

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.***

*Justification*

*The forwarding of information to a Member State requesting it 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. A system of consultation such as that proposed in the initial text of this paragraph would slow down the exchange of information.*

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.

*Justification*

*Consistency with Amendment 18.*

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.

*Justification*

*The aim is to ensure that only convictions which are on the register - i.e. not considered spent once the sentence has been served - produce legal effects, and to determine what information can be transmitted.*

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

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.

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 and serious threat to public security.

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 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 *county* 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 Article 7(1), (2) and (3).

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) not to hamper 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)

*Justification*

*Previous names should be included in view of the numerous cases of changes of name or identity.*

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)

*Justification*

*Identification will be facilitated by including the number of the legal decision where known.*

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)

*Justification*

*The place where the crime was committed is not of importance with regard to the effects which the sentence may have on other criminal proceedings. Some Member States do not include the place of commission in the data entered in criminal records.*

Amendment 33  
Article 11, paragraph 6

6. The technical alterations referred to in paragraph 5 shall be carried out within **three**

6. The technical alterations referred to in paragraph 5 shall be carried out within **one**

*years* from the date the format and the ways in which information on convictions may be exchanged electronically are adopted.

*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.

*Justification*

*Consistency with Amendment 17.*

## EXPLANATORY STATEMENT

### *Background*

Information concerning the different types of convictions, arrests, search and arrest warrants, criminal records, or other significant evidence of a criminal background is entered and kept in the register of criminal records in line with the national law of each Member State. The main objective of criminal records is to provide a full history of all individual criminal backgrounds which can be used for a number of purposes, including identification of suspects, aiding criminal investigations under way, determining how strictly to apply a sentence in a criminal trial, and clarifying and evaluating a person's honesty and suitability. The existence of such registers reflects the need to enter and keep information on convictions of citizens or residents of a country. The principle that it is for each Member State to centralise the information on convictions of its own nationals has been retained unchanged (the principle of nationality).

However, thanks to the impact of frequent border crossings in the EU, it is more and more common for people to receive criminal convictions outside their country of nationality. The key issue is therefore what to do with the information on convictions of persons who are neither nationals nor residents of the Member State in which they are nevertheless convicted: how to register these convictions, and whom to forward them to and how. As things stand, there are no common EU criteria concerning convictions of non-nationals (since we are dealing with a purely national competence). On the one hand, some Member States do not include foreign convictions of their own citizens in their register of criminal records; on the other, those which do employ varying criteria when entering such data. The nature of the information registered regarding criminal records thus differs from one Member State to another. Apart from different kinds of information being registered, the existing system for exchange of information between Member States is unsatisfactory and does not lead to efficient or correct crossborder use.

Allowing for the need for full respect of the diversity of the Member States' legal systems, the independence of the judiciary and all the existing European mechanisms, it is now important, as a matter of urgency, to consolidate the European area of justice in order to guarantee the fundamental rights and freedoms of all EU citizens, while reinforcing mutual trust and the rule of law throughout the Union. In this connection, it is essential to step up judicial cooperation, and here the exchange of information is one of the crucial issues.

The objective of the present proposal is to improve communication and ensure that there is a correct, complete and exhaustive response to requests for information on criminal records between Member States.

With this in mind, further progress is needed in order to establish European mechanisms for the exchange of information in a standard, computerised and easily translatable form, using automated procedures and on the basis of a 'standard European format'.

### ***The existing legal framework***

At present, information on convictions circulates between Member States under the mechanisms of the European Convention on Mutual Assistance in Criminal Matters of 1959 (Council of Europe Convention; hereinafter 'the 1959 Convention'), and, specifically, its Articles 13 and 22 and Article 4 of the additional protocol of 17 March 1978.

These provisions regulate:

- the conditions governing the forwarding of extracts from criminal records between the parties to the Convention (Article 13); and
- the obligation to transmit, on a reciprocal and automatic basis and once a year, details of convictions affecting nationals of other contracting member states (Article 22).

However, the mechanism based on the 1959 Convention is not satisfactory. The automatic forwarding of information on convictions of nationals of a contracting member state (Article 22) is sometimes inadequate and may even be completely non-existent.

To obtain information following a request for mutual assistance under Article 13, it is necessary to follow a procedure that is so complicated that in most cases the judicial authorities simply do not ask for any information. This means that nationals of other member states are often sentenced taking account of their criminal record in the country where the trial takes place, but not of their convictions in other Member States, and, in particular, that of which they are nationals or residents.

### ***Content of the proposal***

On 13 October 2004 the Commission adopted an initial proposal for a framework decision on the exchange of information extracted from criminal records, with a view to the short-term improvement of the mechanisms of the 1959 Convention. However, this proposal does not substantially alter those mechanisms, and takes only a partial step towards remedying their dysfunctions. The present proposal is aimed at a major reform of those mechanisms, so as to ensure that the Member State of nationality can give a swift, correct, complete and exhaustive reply to the requests for information it receives.

Account should also be taken of 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. At the JHA Council meeting of 4 and 5 December 2006 a general agreement was reached on the application of that decision; nonetheless, it can only be effective if there are mechanisms to facilitate the exchange of information on criminal records.

### ***Automatic transmission of information on convictions***

The proposal obliges Member States to exchange information regularly, and either immediately or as soon as possible (not just once a year), on convictions and on other subsequent changes entailing the modification or deletion of information contained in the registers of criminal records. In addition, the Member State of nationality is obliged to keep

and update the information transmitted (all registers must contain the same information on a given individual and a given conviction). These rules must not, however, be used in such a way that someone receives less favourable treatment than had he been sentenced by a court in his own Member State.

For example, where the national rules on the keeping of criminal records have dictated the deletion of a national conviction, the Member State of the person's nationality can no longer use that information in national proceedings; it may, however, still transmit it to another Member State asking for it.

In order to ensure the effective and correct functioning of the exchange, the information on convictions should include the nationality of the person convicted and the time-period for which the record should remain in the register of the convicting Member State.

### *Exchange of information following a request*

Information on criminal records may be requested by the central authority of a Member State, by an individual in relation to his own criminal background (through a central authority of a Member State), or by a third country (under Article 13 of the 1959 Convention). In order to facilitate the exchange, all requests submitted by a central authority must follow a 'standard European format' (third countries are exempted).

In addition, with a view to accelerating the process of information exchange, the proposal lays down time-limits for replying to requests. Requests from a Member State must be replied to within ten days, and those from individuals about their own criminal backgrounds within twenty working days. Requests from third countries are governed by the 1959 Convention, which does not lay down a specific time-limit.

The proposal distinguishes three types of procedure for replying to a request for information on convictions:

1. where a request is made by a Member State to the Member State of a person's nationality:
  - if the information is requested in the context of criminal proceedings, the Member State of nationality must transmit information on all the convictions to be found in its records: national convictions, those handed down in another Member State, and those handed down in third countries;
  - if the information is requested for purposes other than criminal proceedings, the Member State of nationality must reply pursuant to its own law on national convictions and third-country convictions. However, in the case of convictions handed down by other Member States, it must check with the Member State concerned whether and to what extent it may transmit the information received.
2. where the request is made by a third country to the Member State of nationality (under Article 13 of the 1959 Convention), the information on national convictions must be transmitted in accordance with the national law of the Member State from which the information is requested, as also in the case of third-country convictions. However, where the

information requested includes convictions handed down by another Member State, the Member State of nationality from which the information is requested must check whether and to what extent it may transmit the information.

3. where a Member State other than that of nationality receives a request for information from any other Member State, it must forward the information on national convictions. If the request is not related to criminal proceedings, it must reply in accordance with national law.

### ***Rapporteur's remarks and recommendations***

Your rapporteur believes that the Commission's proposal is to be welcomed, and considers that the implementation of the proposed mechanism will make a positive contribution to the adoption of resolutions in the legal field.

He proposes a number of amendments aimed at making the proposal more inclusive and clarifying its wording. Some of the amendments are intended to bring it into line with the framework decision on the taking into account of convictions in the Member States of the EU in the course of new criminal proceedings.

The proposal needs to be clearly and precisely worded, avoiding conditional formulations which could give the impression that the transmission of information could be purely a matter for Member States' goodwill. Equally, its legal terminology in each of the language versions must correspond in full with that in use in the Member State concerned.

In order to boost the efficiency in practice of legal cooperation in the criminal field, it is important to maintain the mechanism proposed by the Commission, under which:

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.

The arrangements for alteration or deletion of criminal records are very important. There are of course 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: it would obtain only such data as the Member State of nationality believed it should keep under its own law.

It appears more correct to apply the law of the convicting Member State. 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.

Finally, the decision must not propose requirements which it would be difficult for the Member States to comply with, as this would slow down the exchange of information. Some of the provisions proposed would entail creating sub-indexes or sub-registers which would delay implementation of the mechanism to be created.



## PROCEDURE

<b>Title</b>	Exchanges between the Member States of information extracted from the criminal record		
<b>References</b>	COM(2005)0690 - C6-0052/2006 - 2005/0267(CNS)		
<b>Date of consulting Parliament</b>	10.2.2006		
<b>Committee responsible</b> Date announced in plenary	LIBE 16.2.2006		
<b>Rapporteur(s)</b> Date appointed	Agustín Díaz de Mera García Consuegra 23.1.2006		
<b>Discussed in committee</b>	12.7.2006	11.4.2007	8.5.2007
<b>Date adopted</b>	8.5.2007		
<b>Result of final vote</b>	+	41	
	-	0	
	0	2	
<b>Members present for the final vote</b>	Alexander Alvaro, Mario Borghezio, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Carlos Coelho, Fausto Correia, Elly de Groen-Kouwenhoven, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Kinga Gál, Roland Gewalt, Lilli Gruber, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klant, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Kartika Tamara Liotard, Sarah Ludford, Dan Mihalache, Claude Moraes, Javier Moreno Sánchez, Martine Roure, Inger Segelström, Károly Ferenc Szabó, Adina-Ioana Vălean, Ioannis Varvitsiotis, Manfred Weber		
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Simon Busuttill, Ignasi Guardans Cambó, Jean Lambert, Katalin Lévai, Antonio Masip Hidalgo, Marianne Mikko, Hubert Pirker, Eva-Britt Svensson		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Tobias Pflüger		