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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
(5968/2008 – C6-0067/2008 – 2005/0267(CNS))

(Renewed consultation)

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***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind 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 (5968/2008 – C6-0067/2008 – 2005/0267(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

- having regard to the Council draft (5968/2008),
 - having regard to the Commission proposal (COM(2005)0690),
 - having regard to its position of 21 June 2007¹,
 - 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 (C6-0067/2008),
 - having regard to Rules 93, 51 and 55(3) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0207/2008),
1. Approves the Council draft 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 draft substantially or replace it with another text;
 5. Calls on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to give priority to any future proposal to amend the Decision in accordance with Declaration No 50 concerning Article 10 of the Protocol on transitional provisions to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community;
 6. Is determined to examine any such future proposal by urgent procedure in accordance with the procedure referred to in paragraph 5 and in close cooperation with national parliaments;

¹ Texts adopted, P6_TA(2007)0170.

7. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a Council framework decision Recital 5 a (new)

Text proposed by the Council

Amendment

(5a) The fact that different legal regimes may apply to a single criminal conviction 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, 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

Proposal for a Council framework decision Recital 9 a a (new)

Text proposed by the Council

Amendment

(9a)a Where information is received pursuant to the third subparagraph of Article 7(2), the central authority of the Member State of nationality must ensure that the replies to requests from an individual for information concerning his criminal record contain a general

reference to the applicant's criminal record, including the information transmitted by the convicting Member States.

Justification

The purpose of this amendment is to ensure that a person is unable to hide the fact that he has criminal convictions handed down in a Member State other than the Member State of nationality, especially in cases where he requests information concerning his criminal record for purposes other than criminal proceedings.

Amendment 3

**Proposal for a Council framework decision
Recital 10**

Text proposed by the Council

(10) The provisions of this Framework decision establish rules on the protection of personal data transmitted between the Member States as a result of its implementation. Existing general rules on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters are complemented by the rules established in this instrument. Furthermore, the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of the present 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 records¹, 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.

Amendment

(10) The provisions of this Framework decision establish rules on the protection of personal data transmitted between the Member States as a result of its implementation. Existing general rules on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters are complemented by the rules established in this instrument, ***in particular the basic principles set out in Article 9.*** Furthermore, the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of the present 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 the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (which should also apply to this act as a general guideline) is still awaiting adoption. For this reason, mention should be made of a general set of data-protection principles which should be observed whenever data are being gathered, processed and transmitted under this Framework Decision.

Amendment 4

**Proposal for a decision
Recital 10 a (new)**

Text proposed by the Council

Amendment

(10a) In this context the adoption of the framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is of paramount importance in order to provide for an adequate level of data protection, including for the processing of personal data at national level.

Amendment 5

**Proposal for a Council framework decision
Recital 12 a (new)**

Text proposed by the Council

Amendment

(12a) Knowledge concerning the existence of convictions and of the prohibitions arising therefrom, and also concerning the place in which these were handed down and recorded, must be provided in order to ensure that extracts from criminal records are easy to understand. Hence the Member States must establish comparable formats for extracts containing convictions, with a special section to be created for convictions relating to sexual offences.

Justification

It must be ensured that extracts from criminal records are easy to understand and that the information contained in them is put to proper use. That objective may be achieved if the various types of conviction are grouped together: for example, convictions for offences against property, convictions for offences against other persons, convictions for sexual offences, and so on. Grouping by type of conviction would ensure that persons convicted for sexual offences are immediately identifiable.

Amendment 6

Proposal for a Council framework decision Article 5 – paragraph 2

<i>Text proposed by the Council</i>	<i>Amendment</i>
2. Any alteration or deletion of information transmitted in accordance with Article 4(4) shall entail identical alteration or deletions by the Member State of the person's nationality regarding information stored in accordance with paragraph 1 <i>for the purpose of retransmission in accordance with Article 7.</i>	2. Any alteration or deletion of information transmitted in accordance with Article 4(4) shall entail identical alteration or deletions by the Member State of the person's nationality regarding information stored in accordance with paragraph 1.

Justification

The final part of the proposed article introduces a dual system as regards convictions handed down in a Member State other than the Member State of which the convicted person is a national (one system for domestic use and the other for requesting Member States other than the Member State of nationality). This dual system will only make the task of transmitting information more complex and more confusing.

Amendment 7

Proposal for a Council framework decision Article 5 – paragraph 3

<i>Text proposed by the Council</i>	<i>Amendment</i>
3. <i>For the purpose of retransmission in accordance with Article 7</i> the Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2.	3. The Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2.

Justification

The final part of the proposed article introduces a dual system as regards convictions handed down in a Member State other than the Member State of which the convicted person is a national (one system for domestic use and the other for requesting Member States other than the Member State of nationality). This dual system will only make the task of transmitting information more complex and more confusing.

Amendment 8

Proposal for a Council framework decision Article 6 – paragraph 1 a (new)

Text proposed by the Council

Amendment

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 requesting 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 9

Proposal for a Council framework decision Article 6 – paragraph 2

Text proposed by the Council

Amendment

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 *his or her* 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 in which the interested party is or has been a resident or a national of another Member State and proof exists to that effect, a request for information from that other State cannot depend upon the goodwill of the State in which the request has been submitted.

Amendment 10

**Proposal for a Council framework decision
Article 9 – paragraph -1 (new)**

Text proposed by the Council

Amendment

-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 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 up-to-date;

Justification

Same justification as for Amendment 3.

Amendment 11

**Proposal for a decision
Article 9 – paragraph -1 a (new)**

Text proposed by the Council

Amendment

-1a. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership and data concerning health or sex life shall be prohibited. By way of exception,

the processing of such data may be carried out if, in addition to the principles laid down in paragraph -1:

(a) the processing is provided for by law, following prior authorisation by a competent judicial authority, on a case-by-case basis and is absolutely necessary for the purpose of a specific case; and

(b) the Member States provide for suitable specific safeguards, for example access to the data concerned only for personnel who are responsible for the performance of the legitimate task that justifies the processing.

Amendment 12

Proposal for a Council framework decision Article 9 – paragraph 1

Text proposed by the Council

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.

Amendment

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 exclusively** for the purposes of the particular proceedings they were requested for, in accordance with the annexed form.

Justification

Same justification as for Amendment 3.

Amendment 13

Proposal for a Council framework decision Article 9 – paragraph 2

Text proposed by the Council

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used

Amendment

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.

by the requesting Member State, in accordance with its national law **and with the principles referred to in paragraph -1 and exclusively** 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.

Justification

Same justification as for Amendment 3.

Amendment 14

**Proposal for a Council framework decision
Article 9 – paragraph 3**

Text proposed by the Council

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.

Amendment

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 15

**Proposal for a Council framework decision
Article 9 – paragraph 4**

Text proposed by the Council

4. Member States shall take the necessary measures to ensure that personal data received from another Member State under Article 4, if transmitted to a third State in accordance with Article 7 paragraph 3, are subject to the same usage restrictions as those applicable in a requesting Member

Amendment

4. **In addition,** Member States shall take the necessary measures to ensure that personal data received from another Member State under Article 4, if transmitted to a third State in accordance with Article 7 paragraph 3, are subject to the same usage restrictions as those

State according to paragraphs 2 of this Article. Member States shall specify that personal data, if transmitted to a third State for the purpose of a criminal proceeding, may be further used by that State only for the purposes of criminal proceedings.

applicable in a requesting Member State according to paragraphs 2 of this Article. Member States shall specify that personal data, if transmitted to a third State for the purpose of a criminal proceeding, may be further used by that State only for the purposes of criminal proceedings.

Amendment 16

Proposal for a Council framework decision Article 9 – paragraph 5

Text proposed by the Council

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

Amendment

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 17

Proposal for a Council framework decision Article 9 – paragraph 5 a (new)

Text proposed by the Council

Amendment

5a. Each Member State shall ensure that its 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 Member States' data protection authorities shall monitor the exchange referred to in paragraph 1 and cooperate with one another for that purpose.

Amendment 18

**Proposal for a Council framework decision
Article 9 a (new)**

Text proposed by the Council

Amendment

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, where 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 in order:

(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 19

**Proposal for a Council framework decision
Article 11 – paragraph 1 – point a – point iv a (new)**

Text proposed by the Council

Amendment

***(iv a) information on disqualifications
arising from a criminal conviction,***

Amendment 20

**Proposal for a Council framework decision
Article 11 – paragraph 1 – point b – point iv**

Text proposed by the Council

Amendment

***(iv) information on disqualifications
arising from a criminal conviction,***

deleted

EXPLANATORY STATEMENT

On 22 December 2005 the Commission published its proposal for a Framework Decision on the organisation and content of the exchange of information extracted from criminal records. The purpose of the proposal is to improve communication between the judicial authorities and to ensure that requests for information from the Member States concerning criminal records are replied to properly and in a comprehensive, exhaustive fashion.

The main topics dealt with in the proposal are:

1. The obligation for the Member State of conviction to transmit immediately to the Member State of nationality full information concerning the convictions handed down on its nationals.
2. Obligation for the Member State of nationality to store and update all information received.
3. Conditions and procedure for replying to a request for information concerning a criminal record.

On 6 February 2008 the EU Council decided to consult the European Parliament again. Further consultation is justified in view of the major changes which have been made to the original text and in particular the incorporation of some of Parliament's proposals and the Kingdom of Belgium's initiative concerning the recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children.

The rapporteur welcomes the fact that many of the proposals contained in Parliament's 21 June 2007 report have been accepted. However, attention must be drawn to the proposal for a single legal framework for the protection of personal data which is identical to the one originally formulated by the Commission; since Parliament's initiatives in this field have not been taken into account, further amendments will have to be tabled. The rapporteur also regrets the fact that the Council has chosen to establish a dual system as regards convictions handed down in a Member State other than the Member State of which the convicted person is a national (one system would be used in the domestic sphere and the second would be used in the other Member States to which information relating to convictions is to be transmitted). A dual system of this kind would only make the difficult task of transmitting information more complex and more confusing - a factor which justifies retention of the system originally proposed by the Commission, pursuant to which any change to or deletion of a criminal record in the Member State of conviction would require the same amendment or deletion to be carried out in the Member State of which the person convicted is a national.

We must draw attention to certain aspects of the proposal which should perhaps be considered thoroughly by the Council and the Member States. There is alarming evidence to the effect that sexual delinquents and other extremely dangerous individuals benefit from the lack of an effective information-exchange system and take advantage of the limits imposed on the EU's current powers.

The proposed legal framework determines who may request information relating to

convictions. In brief, requests may be submitted either by the interested party or by the Member States' central authorities. However, **there are highly specific cases** in which certain public or private bodies should be able to find out whether persons whom they intend to employ (or whom they already employ) have a criminal record. We are referring here to educational or childcare institutions.

It is not sufficient for educational or childcare establishments (be they public or private) to require as part of the selection process that various documents be submitted as proof of the candidates' stated experience, skills and training; those establishments must be able to (and must in practice) insist that applicants submit a certificate concerning their criminal record, together with their other documents.

However, a procedure such as the one described in the above paragraph would not be sufficient to guarantee the safety of children. Educational establishments must be able to find out whether their staff (i.e. existing employees) have a criminal record relating to sexual offences against children. Hence it would be desirable if such establishments, whilst fully upholding fundamental rights and observing the principles of personal-data protection, could request and secure access to information in cases in which the individuals concerned do indeed have a criminal record relating to offences committed against children.

PROCEDURE

Title	Exchanges between the Member States of information extracted from the criminal record
References	05968/2008 – C6-0067/2008 – COM(2005)0690 – C6-0052/2006 – 2005/0267(CNS)
Date of consulting Parliament	10.2.2006
Committee responsible Date announced in plenary	LIBE 21.2.2008
Rapporteur(s) Date appointed	Agustín Díaz de Mera García Consuegra 27.2.2008
Discussed in committee	5.5.2008 29.5.2008
Date adopted	29.5.2008
Result of final vote	+: 35 –: 0 0: 2
Members present for the final vote	Alexander Alvaro, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Patrick Gaubert, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Claude Moraes, Martine Roure, Csaba Sógor, Manfred Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Simon Busuttil, Genowefa Grabowska, Sophia in 't Veld, Syed Kamall, Sylvia-Yvonne Kaufmann, Marianne Mikko, Bill Newton Dunn, Nicolae Vlad Popa
Substitute(s) under Rule 178(2) present for the final vote	Manolis Mavrommatis