

Exchange of information extracted from the criminal record between Member States.

Framework Decision

2005/0267(CNS) - 08/02/2008 - Amended legislative proposal for reconsultation

At its meeting on 12-13 June 2007, the Council reached an agreement on a **general approach** on a proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States. The Working Party on Cooperation in Criminal Matters examined the proposal and finalised the discussion on the preamble and the form annexed to the instrument.

The text of the draft Framework Decision resulting from these discussions can be summarised as follows:

- Underlining the need for better interconnection of national criminal registers: in this context, Member States should step up their efforts in terms of cooperation and streamline the mutual exchange of information on convictions;
- Clarifying the aim of the Framework Decision: this aims to improve the exchange of information on **convictions** and, where imposed and entered in the criminal records of the convicting Member State, on **disqualifications arising from criminal conviction of citizens of the European Union** (note that subsequent proposals will be made on convictions handed down in the European Union against nationals of third countries or persons of unknown nationality);
- Specifying the scope of the proposal: the Framework Decision only applies to the transmission of information extracted from criminal records concerning **natural persons** and should not prejudice a possible future broadening of the scope of application of the mechanisms to the exchange of information concerning legal persons;
- Specifying the material scope of the instrument, including its extension to **sex offenders**: for the plan to be effective, the central authority of every Member State must include all information provided from the criminal records of the Member State of the person's nationality in its extract from criminal records; in this context, the mechanism establishes provisions in Articles 6(2a) and 11 aimed at ensuring that a person convicted of a sexual offence against children **should no longer**, where the criminal record of that person in the convicting Member State contains such conviction, and if imposed and entered in the criminal record, a disqualification arising from it, **be able to conceal this conviction or prohibition with a view to performing professional activity related to supervision of children in another Member State**;
- Retransmission of information: article 11(1) is added; it concerns the transmission of information to the Member State of nationality for the purpose of its storage and **retransmission** (NB the purpose is not to harmonise national systems of criminal records of the Member States nor to oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes).

Other provisions: the other main amendments to the text concern amendments to the **request form** for information taken from criminal records and to the **reply form** for requested information. Some of the information that must be provided includes:

- full name, date of birth, place of birth (town and State), gender, nationality and – if applicable – previous name(s) of the convicted person;
- the nature of the conviction (date of conviction, name of the court, date on which the judgment became final);

- the offence giving rise to the conviction (date of the offence and name or legal classification of the offence as well as reference to the applicable legal provisions);
- the contents of the conviction, including notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence.

‘Optional’ information may also be included in the reply form:

- the convicted person’s parents’ names;
- the reference number of the conviction;
- the place of the offence;
- disqualifications arising from a criminal conviction.

The provision also allows for ‘additional’ information to be transmitted:

- the convicted person’s identity number or type and number of the person’s identification document;
- fingerprints;
- pseudonym and/or alias name(s).

In addition, the central authority (if it deems necessary) may transmit any other information on criminal convictions if entered in the criminal records.

Two statements issued by the Council should be noted:

1. in the first statement, the Council recognises that Member States use different systems for identification of the person concerned and different data to search for the criminal records of a specific person, when an extract of such criminal records is required. Therefore, when exchanging the information on the basis of this Framework Decision the Member States shall be aware of different needs of each Member State;
2. in the second statement, the Council declares that each Member State should take the necessary measures to ensure that time-limits are applied to the erasure or destruction of information on convictions transmitted in accordance with the provision established in the Framework Decision.