

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

Framework Decision

2005/0267(CNS) - 26/02/2009 - Final act

PURPOSE: to improve the exchange of information extracted from criminal records between Member States.

LEGISLATIVE ACT: Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States.

BACKGROUND: the European Union has set itself the objective of providing citizens with a high level of safety within the area of freedom, security and justice. This objective presupposes the exchange between the competent authorities of the Member States of information extracted from criminal records. With a view to improving exchanges of this type of information, several initiatives have been taken at Community level, including the adoption of a first decision in 2005 to improve the mechanisms for the transmission of information on convictions between Member States ([Council Decision 2005/876/JHA](#)) and a [White Paper](#) on exchanges of information on convictions.

The experience gained in this context indicates that Member States need to further increase and improve the exchange of information in this area. This Framework Decision responds to that need by improving the existing framework and taking over from several international legal instruments deemed to be insufficient to meet the present requirements of judicial cooperation in criminal matters within the European Union.

CONTENT: the main objective of the Framework Decision, an initiative of the Kingdom of Belgium, is to improve the exchange of information on convictions of nationals of the Member States.

Framework and basic principle of the Framework Decision: the text establishes basic rules on the transmission of information to the Member States of the person's nationality concerning 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 Union** (including in the event of a conviction for a sexual offence). The Framework Decision also regulates the **storage** of information and retransmission, upon request, to other Member States. However, the Framework Decision does not aim to harmonise national systems of criminal records and does not oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.

The Framework Decision incorporates the provisions of [Council Decision 2005/876/JHA](#) on the exchange of information extracted from the criminal record but supplements such provisions with specific rules on the obligations of Member States regarding the exchange of information. It maintains in particular the principle of one or more **central authorities** responsible for communicating information extracted from criminal records.

Member States' obligations: the Framework Decision provides for the following obligations:

- **obligations of the convicting Member State:** this Member State shall: (i) ensure that all convictions handed down within its territory are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person; (ii) as soon as possible,

inform the central authorities of the other Member States of any convictions handed down within its territory against the nationals of such other Member States; (iii) immediately transmit information on subsequent alteration or deletion of information contained in the criminal record of the convicted person;

- **obligations of the Member State of the person's nationality:** the central authority of the Member State of the person's nationality shall: (i) store all information transmitted on the convictions of their nationals, for the purpose of retransmission; (ii) alter or delete information received if that information has been altered or deleted by the convicting Member State. For the purpose of retransmission, the Member State of the person's nationality may only use information which has been updated.

The Framework Decision shall only apply to the transmission of information extracted from criminal records concerning **natural persons** and is without prejudice to a possible future broadening of the scope of application of the mechanism to legal persons.

Mechanism for the exchange of information extracted from criminal records: as in the Decision of 2005, this Framework Decision provides for a two-stage mechanism:

1. a Member State may **request information from another Member State from the criminal record** of a convicted person for the purposes of criminal proceedings (or other purposes). All requests for information extracted from the criminal record shall be submitted using the form set out in the Annex;
2. the Member State of the convicted person's nationality shall **reply to a request for information on convictions**, in principle **within a period not exceeding ten working days**, using the form set out in the Annex. The following information shall be transmitted:
 - convictions handed down in the Member State of the person's nationality and entered in the criminal record;
 - any convictions handed down in other Member States which were transmitted to it after 27 April 2012, and stored for the purpose of retransmission;
 - any convictions handed down in other Member States which were transmitted to it by 27 April 2012, and entered in the criminal record;
 - any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record.

Note that retransmission of certain information from the criminal record may be forbidden. There are also specific provisions on requests for information submitted by third countries.

Material scope of the Framework Decision and terms for the organisation of the exchange of information on convictions: information on convictions transmitted by the convicting Member State shall be transmitted in the official language or one of the official languages of that Member State.

Data to be transmitted includes the following:

- full name, date and place of birth and nationality of the convicted person;
- the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
- the offence giving rise to the conviction;
- the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence).

“Optional information” may also appear on the form (the convicted person’s parents’ names, the place of the offence, etc.), including **disqualifications arising from the conviction**. The Framework Decision also provides for the transmission of “additional information” such as the convicted person’s identity number, fingerprints, etc.

The central authority may also transmit (if it deems necessary) any other information on convictions from the criminal record in addition to the aforementioned information.

All of the information shall be stored for the purpose of retransmission. It shall be transmitted first of all by any traditional means of transmission (by post so that a written record of the transmission can be kept), then, at a later date and once the technical conditions have been met, by electronic means in a standard format (ECRIS - see below).

Sex offenders: a specific mechanism has been provided for to keep track of sex offenders. There are therefore specific provisions to ensure that 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 disqualification with a view to performing professional activity related to supervision of children in another Member State**.

Conditions for the use of personal data: 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 Framework Decision. In principle, personal data may be used only **for the purposes of the criminal proceedings** for which it was requested. Personal data provided for any purposes other than that of criminal proceedings may be used by the requesting Member State within the limits specified by the requested Member State in the form set out in the Annex. The same is true when such data are transmitted to a third country. However, personal data may be used by the requesting Member State for preventing an immediate and serious threat to public security. Nevertheless, all other use of criminal records that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible.

ECRIS: the central authorities of the Member States shall establish a European Criminal Records Information System in accordance with the terms set out in a parallel Decision [2009/316/JHA](#). The information may be transmitted electronically in a **standardised format**, which will allow such information to be exchanged in a uniform and easily machine-translatable form. Once the standardised format has been defined, Member States will have three years to adapt to the new system.

More favourable provisions: this Framework Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

Report: the Commission shall, by 27 April 2015, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

ENTRY INTO FORCE: 27/04/2009.

IMPLEMENTATION: 27/04/2012. Decision 2005/876/JHA is repealed. Without prejudice to their application in relations between Member States and third States, this Framework Decision replaces the relevant provisions of the European Convention on Mutual Assistance in Criminal Matters.