European Criminal Records Information System (ECRIS): exchange of information on third country nationals

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Timothy KIRKHOPE (ECR, UK) on the proposal for a directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA.

The committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Subject Matter: the Framework Decision shall:

- define the **ways and conditions** under which a convicting Member State shares information on convictions with other Member State;
- define **storage and privacy obligations** for the convicting Member State, and specifies the methods to be followed when replying to a request for information extracted from criminal records;
- define **storage obligations for the Member States of the person's nationality** and specifies the methods to be followed when replying to a request for information extracted from criminal records.

Database: each Member State shall take all the necessary measures to ensure that when convictions are handed down within its territory, they are entered into its criminal records database, and that information on the nationality or nationalities of the convicted person is included if the person is a national of another Member State or a third country national.

Obligations of the convicting Member State as regards convictions against third country nationals: Members introduced an amending seeking to ensure that the data stored at the national level regarding convicted third-country nationals is **categorised in the same way as for convicted EU nationals**, with "obligatory information" and "optional information" in order to avoid any unnecessary discrimination.

Bilateral agreements: where, in the context of criminal proceedings, a Member State receives, on the basis of bilateral agreements compliant with Union law, information on a conviction relating to terrorist offences or serious criminal offences handed down by a judicial authority in a third country to a third country national residing on the territory of the Union, that Member State should be able to create and transmit to other Member States an index-filter with this information, within the limitations of the bilateral agreements.

Use of index-filters: each designated central authority should distribute to the other Member States an index-filter which includes, in a **pseudonymised** form, the identification data of the third country nationals convicted in its Member State.

Member States shall not enter information in the index-filter:

- on convictions related to irregular entry or stay into the index-filter;

- on convictions of third country national minors other than those relating to serious crime, punishable by a maximum deprivation of liberty of at least four years.

While the Commission proposes that the Directive should apply also to a third country national who holds the nationality of a Member State, Members introduced an amendment which seeks to **eliminate the risk of discrimination** by making sure that citizens with two nationalities (one EU, one third-country national) are considered as EU citizens.

Another amendment ensures that third-country nationals requesting a criminal records extract shall receive, if they have committed no offences, a certificate that there was no hit on ECRIS, which proves that they have no criminal records in the 28 Member States.

Background checks: Members consider that the scope for background checks should be extended beyond just those persons working with children, but also include those individuals working with **vulnerable persons, including those with disabilities**, and those working more generally in the healthcare and education sectors.

The aim is to ensure that a person convicted of a sexual or violent offence against a child or vulnerable person can no longer conceal this conviction or disqualification with a view to carrying out such work in another Member State.

Access to the ECRIS database: Members introduced new provisions to enable **Europol and Frontex** to access the ECRIS database for the performance of its tasks.

The Commission shall take all the necessary measures to achieve **interoperability and interconnection** of the common communication infrastructure of ECRIS with all the other relevant Union databases for law enforcement, border control and judicial cooperation purposes.

Protection of data and procedural rights: ECRIS shall ensure the confidentiality, protection, privacy and integrity of criminal record information transmitted to other Member States. All criminal records data shall be stored solely in databases operated by the Member States within the territory of the Union.

Lastly, Members also called for clear references to the need for **data protection provisions, and the presumption of innocence and a fair trial**, as well as a clear list of provisions which should form part of a detailed review of the system.