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

2005/0267(CNS) - 22/12/2005 - Legislative proposal

PURPOSE : to lay down rules on the transmission, storage and content of information extracted from criminal records between Member States.

PROPOSED ACT : Council Framework Decision.

CONTENT : the need to improve the quality of information exchanged on convictions was prioritised in the European Council Declaration on Combating Terrorism of 25 and 26 March 2004 and was reiterated in the Hague Programme, adopted by the European Council on 4 and 5 November 2004.

Information on convictions is currently exchanged between Member States through systems set up by the European Convention on Mutual Assistance in Criminal Matters of 1959 Council of Europe Convention ("1959 Convention"). These systems present certain shortcomings. The result is that national courts often pass sentences on the sole basis of the past convictions featuring in their national register, with absolutely no knowledge of other convictions in other Member States. The Council Decision of 21 November 2005 on the exchange of information extracted from criminal records, which was designed to improve the systems of the 1959 Convention in the short term, chiefly by speeding up transmission times did not make any fundamental changes to these systems and is only a first step to addressing their shortcomings.

The aim of this proposal is a thorough reform of these systems, with a view to ensuring that the Member State of the person's nationality is able to respond properly and fully to the requests made to it. Coordinated action at European level is accordingly required.

The purpose of the draft Framework Decision is:

- 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");

- to define storage obligations for the Member State of the person's nationality and to specify the methods to be followed when responding to a request for information taken from criminal records;

- to lay down the framework for a computerised conviction-information exchange system between Member States to be built and developed on the basis of a "standardised European format" which will allow such information to be exchanged in a uniform, electronic and easily machine-translatable form.

Obligations of the convicting Member State: the proposal:

- lays down that convictions entered into national criminal records must be accompanied by the nationality of the convicted person, if they are a national of a Member State. Without this information, national criminal records will be able to give no information to the Member State of the person's nationality about convictions handed down against its nationals. The proposal does, however, leave it to Member States to decide at which stage of proceedings and in what form the information should be collected;

- incorporates the principle of the compulsory transmission of information to the Member State of the person's nationality but removes the notification waiver contained in the 1959 Convention for people who also have the nationality of the convicting Member State. The removal of this exception will enable either Member State of the person's nationality to be called upon and is essential if the requesting State – which will not always be aware of the person's double nationality – is to have full access to all information;

- requires Member States to store information transmitted to it but leaves it to each Member State to decide how such information is stored.

Obligations of the Member State of the person's nationality: the proposal lays down rules on the obligation to store and update transmitted information. Any alterations or deletions made by the convicting Member State must be reflected in the Member State of the person's nationality, while the latter must only use updated information. These rules, however, may not lead to the person being treated less favourably than if they would have been convicted by a national court. For instance, where national rules governing entries in national criminal records would have prompted the deletion of a national conviction, the Member State of the person's nationality may no longer use such information in national proceedings; it must, however, always be able to transmit such information to another Member State upon request.

Reply to a request for conviction information: the draft Framework Decisiondraws a distinction between information transmitted before and after the entry into force of the Framework Decision, in order to make clear that the storage and updating obligations only apply to information transmitted after the entry into force of the Framework Decision.

Conditions for the use of personal data: the provisions on this are taken over from the Decision of 21 November 2005, and made more flexible by allowing limited re-use of information transmitted in order to prevent some immediate and serious danger to public security.

Format and committee procedure: Improving mutual understanding requires the creation of a "standardised European format" allowing information to be exchanged in a uniform, electronic and easily machine-translatable way. This Framework Decision sets up a committee which will assist the Commission in defining and developing this exchange system.

Relation to other legal instruments: This proposal supplements Article 13 of the 1959 Convention. It does not replace the possibility available to judicial authorities of transmitting information concerning criminal records directly to each other under the Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 29 May 2000. However, it replaces Article 22 of the 1959 Convention as regards relations between Member States and repeals the Decision of 21 November 2005, the relevant provisions of which are taken over.

Fundamental rights: the proposal contains several provisions designed to ensure a high and satisfactory level of protection for personal data transmitted by the convicting Member State to the Member State of the person's nationality: it limits the use the requesting Member State can make of information asked for and lays down specific rules applying where the Member State of the person's nationality forwards information transmitted to it by the convicting Member State, making a distinction between requests involving criminal proceedings and other requests. If the request is not related to criminal proceedings, only the convicting Member State will be able to assess, on the basis of the purpose of the request, whether or not full information on convictions should be transmitted. The Member State of the person's nationality should therefore check with the convicting Member State to what extent it may transmit such information to the requesting Member State. The same applies for requests from third countries under Article 13 of the 1959 Convention, with a view to ensuring that the Member State of the person's nationality does not give them more information than to a Member State.

FINANCIALIMPLICATIONS :

Remark : the only budgetary implication of this proposal is that regarding the operation of the committee procedure it sets up. Any decision adopted pursuant to this procedure which may have budgetary implications will be covered by the "Fundamental Rights and Justice" Framework Programme (see **COD /2005/0037**).

ABM/ABB Framework : Chapter **1806** – Establishing a genuine area of freedom, security and justice in criminal and civil matters.

Total indicative cost of the action : administrative costs only <u>not</u> included in the reference amount (human resources) : EUR 1.2 million for an indicative period of 6 years (start of the action "n", until "n+6"), that is **EUR200.000 per year.**