

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

Framework Decision

2005/0267(CNS) - 08/05/2007

The Committee on Civil Liberties, Justice and Home Affairs adopted by a comfortable majority the report drafted by Mr Agustín **DÍAZ DE MERA GARCÍA CONSUEGRA** (EPP-ED, ES) amending - via the consultation procedure - the proposal for a Council framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

Overall, Members welcome the proposal but consider that some of its provisions need to be further clarified and that provisions regarding the protection of personal information that is forwarded. Members also wish to facilitate (or at the very least try not to hamper) the exchange of information by laying down provisions that are clearer and simpler with respect to the exchange of data.

The main amendments are as follows:

- **strengthening legal effectiveness and certainty** : to avoid the situation that different legal systems may apply to a single criminal conviction, the Committee wants the convicting Member State to 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 forwarded, 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 forwarded by it to any other State (whether another Member State or a third country).

Members therefore want to ensure that the mechanism proposed by the Commission complies with the following principles:

1. **the Member State of nationality will be responsible** for keeping the information on convictions of its **own nationals**;

2. any **alteration or deletion of information on criminal records** that occurs in the convicting Member State must entail the same alteration or deletion **in the Member State of nationality**.

- **alteration /deletion of criminal records and the problem of multiple nationality**: Members stress the importance of the alteration or deletion of criminal records. In this regard, there are two possibilities: those alterations or deletions can follow either the law of the Member State of nationality of the convicted person, or that of the convicting Member State . With the first option, criminal records arising from a sentence of a national court would be available or not to the other Member States depending on the convicted person's nationality. A Member State asking for information from the register of the Member State of nationality **would not necessarily obtain all the information existing on the person concerned** but only those data as the Member State of nationality believed it should keep under its own law. This is why Members propose that the law of the convicting Member State be applied. In this case, even if there would be no guarantee that the same rules would apply on the time-period for keeping criminal records, the formula avoids distortions arising from nationality and **ensures the integrity of the data contained in the registers of criminal records**.

In addition, the text of the proposal has been amended to take into account the possibility that a convicted person may have more than one nationality.

- **nature of information exchanged:** in principle, only offences included in the register (i.e. those that are not considered spent once the sentence has been served) may be exchanged with another Member State. Distinctions were therefore made in the proposal regarding the information that can be exchanged according to its nature. Furthermore, certain provisions in the initial draft decision were amended because they would entail creating sub-indexes or sub-registers which would slow down the exchange of information. The Committee therefore amended these aspects of the proposal.

Members also relaxed the provisions regarding the forwarding of information to the **requesting Member State** (which is neither that of the person's nationality nor that which handed down the conviction) shall be permitted as a general rule and unless there are instructions to the contrary for specific reasons.

- **formulation, new provisions and clarification of wording :** the Committee improved the overall presentation of the text by introducing clearer and more precise wording without making any radical changes to the general spirit of the proposal. It proposed the replacement of conditional formulations which could give the impression that the transmission of information could be purely a matter for Member States' goodwill. In addition, the legal terminology in each of the language versions of the proposal needs to correspond in full with that in use in each of the Member States concerned.

The clarifying amendments include:

- specific provision regarding particular cases in which certain types of information may be forwarded in line with the legislation of the convicting Member State or the Member State of nationality, in order to be used outside the framework of a criminal procedure;
- changes with regard to the **protection of personal data** with a view to strengthening this aspect of the proposal and to ensuring greater consistency with the rules applicable in this field (**Art. 9a** was introduced on the rights of data subjects to ensure that they are informed of the fact that personal data concerning them are being processed);
- the introduction, in the scope of the data to be transferred, the number of the legal decision, and the removal of the place where the crime was committed from the data to be transferred, for reasons of legal consistency and harmonization between the Member States.

Entry into force of technical alterations: Committee members want the technical alterations provided for in the proposal to be carried out within **oneyear** (and not three) from the date the format and the ways in which information on convictions may be exchanged electronically are adopted.

Compatibility with other related Community texts: lastly, Members want this text to be compatible with the Council framework decision on the taking into account of convictions in the Member States of the EU in the course of new criminal proceedings . Similarly, this text should be compatible with the future framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.