

Tuesday 17 June 2008

Exchanges between the Member States of information extracted from the criminal record *

P6_TA(2008)0279

European Parliament legislative resolution of 17 June 2008 on the proposal for a Council framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States (5968/2008 — C6-0067/2008 — 2005/0267(CNS))

(2009/C 286 E/31)

(Consultation procedure — renewed consultation)

The European Parliament,

- having regard to the Council draft (5968/2008),
 - having regard to the Commission proposal (COM(2005)0690),
 - having regard to its position of 21 June 2007 ⁽¹⁾,
 - having regard to Articles 31 and 34(2)(b) of the EU Treaty,
 - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council again consulted Parliament (C6-0067/2008),
 - having regard to Rules 93, 51 and 55(3) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0207/2008),
1. Approves the Council draft as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the draft substantially or replace it with another text;
 5. Calls on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to give priority to any future proposal to amend the Framework Decision in accordance with Declaration No 50 concerning Article 10 of the Protocol on transitional provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community;
 6. Is determined to examine any such future proposal by urgent procedure in accordance with the procedure referred to in paragraph 5 and in close cooperation with national parliaments;
 7. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ Texts Adopted, P6_TA(2007)0279.

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TEXT PROPOSED
BY THE COUNCIL

AMENDMENT

Amendment 1**Proposal for a Council framework decision****Recital 5a (new)**

(5a) The fact that different legal regimes may apply to a single criminal conviction leads to the circulation of unreliable information between Member States and creates legal uncertainty for the convicted person. To avoid this situation, the convicting Member State should 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 transmitted, 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 transmitted by it to any other State, being another Member State or a third country.

Amendment 2**Proposal for a Council framework decision****Recital 9aa (new)**

(9aa) Where information is received pursuant to the third subparagraph of Article 7(2), the central authority of the Member State of nationality must ensure that the replies to requests from an individual for information concerning his criminal record contain a general reference to the applicant's criminal record, including the information transmitted by the convicting Member State.

Amendment 3**Proposal for a Council framework decision****Recital 10**

(10) The provisions of this Framework decision establish rules on the protection of personal data transmitted between the Member States as a result of its implementation. 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 instrument. Furthermore, the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of the present Framework Decision. This Framework Decision also incorporates the provisions of the Decision of 21 November 2005 on the exchange of information extracted from the criminal records¹, which limit the use the requesting Member State can make of information asked for. It supplements them with specific rules applying where the Member State of the person's nationality forward conviction information transmitted to it by the convicting Member State.

(10) The provisions of this Framework decision establish rules on the protection of personal data transmitted between the Member States as a result of its implementation. 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 instrument, **in particular the basic principles set out in Article 9**. Furthermore, the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of the present Framework Decision. This Framework Decision also incorporates the provisions of the Decision of 21 November 2005 on the exchange of information extracted from the criminal records, which limit the use the requesting Member State can make of information asked for. It supplements them with specific rules applying where the Member State of the person's nationality forward conviction information transmitted to it by the convicting Member State.

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AMENDMENT

Amendment 4**Proposal for a Council framework decision****Recital 10a (new)**

(10a) In this context the adoption of a framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is of paramount importance in order to provide for an adequate level of data protection, including for the processing of personal data at national level.

Amendment 5**Proposal for a Council framework decision****Recital 12a (new)**

(12a) Knowledge concerning the existence of convictions and of the prohibitions arising therefrom, and also concerning the place in which these were handed down and recorded, must be provided in order to ensure that extracts from criminal records are easy to understand. Hence the Member States must establish comparable formats for extracts containing convictions, with a special section to be created for convictions relating to sexual offences.

Amendment 6**Proposal for a Council framework decision****Article 5 — paragraph 2**

2. Any alteration or deletion of information transmitted in accordance with Article 4(4) shall entail identical alteration or deletions by the Member State of the person's nationality regarding information stored in accordance with paragraph 1 **for the purpose of retransmission in accordance with Article 7.**

2. Any alteration or deletion of information transmitted in accordance with Article 4(4) shall entail identical alteration or deletions by the Member State of the person's nationality regarding information stored in accordance with paragraph 1.

Amendment 7**Proposal for a Council framework decision****Article 5 — paragraph 3**

3. **For the purpose of retransmission in accordance with Article 7** the Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2.

3. The Member State of the person's nationality may only use information which has been updated in accordance with paragraph 2.

Amendment 8**Proposal for a Council framework decision****Article 6 — paragraph 1a (new)**

1a. Where information is requested from the register of criminal records in the Member State of the person's nationality for any purpose outside the framework of criminal proceedings, the requesting Member State shall specify its reasons for requesting it.

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Amendment 9**Proposal for a Council framework decision****Article 6 — paragraph 2**

2. When a person asks for information on *their* own criminal record, the central authority of the Member State in which the request is made **may**, in accordance with national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record, provided the interested party is or has been a resident or a national of the requesting or requested Member State.

2. When a person asks for information on *his or her* own criminal record, the central authority of the Member State in which the request is made **shall**, in accordance with national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record, provided the interested party is or has been a resident or a national of the requesting or requested Member State.

Amendment 10**Proposal for a Council framework decision****Article 9 — paragraph - 1 (new)**

-1. The processing of personal data for the purposes of this Framework Decision shall comply with at least the following basic principles:

- (a) data processing shall be permitted by law, and shall be necessary and proportionate to the purposes of collection and/or further processing;**
- (b) data shall be collected only for specified and legitimate purposes and further processed in a way compatible with those purposes;**
- (c) data shall be accurate and up-to-date.**

Amendment 11**Proposal for a Council framework decision****Article 9 — paragraph - 1a (new)**

- 1a. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership and data concerning health or sex life shall be prohibited. By way of exception, the processing of such data may be carried out if, in addition to the principles laid down in paragraph - 1:

- (a) the processing is provided for by law, following prior authorisation by a competent judicial authority, on a case-by-case basis and is absolutely necessary for the purpose of a specific case; and**
- (b) the Member States provide for suitable specific safeguards, for example access to the data concerned only for personnel who are responsible for the performance of the legitimate task that justifies the processing.**

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Amendment 12**Proposal for a Council framework decision****Article 9 — paragraph 1**

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State, **solely** for the purposes of the particular proceedings they were requested for, in accordance with the annexed form.

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State **in accordance with the principles referred to in paragraphs - 1 and - 1a and exclusively** for the purposes of the particular proceedings they were requested for, in accordance with the annexed form.

Amendment 13**Proposal for a Council framework decision****Article 9 — paragraph 2**

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used by the requesting Member State, in accordance with its national law, **solely** for the purposes of the particular proceedings they were requested for and within the limits set out by the requested Member State in the relevant form.

2. Personal data provided under Article 7(2) and (4) for any purposes other than that of criminal proceedings may be used by the requesting Member State, in accordance with its national law **and with the principles referred to in paragraphs - 1 and - 1a and exclusively** for the purposes of the particular proceedings they were requested for and within the limits set out by the requested Member State in the relevant form.

Amendment 14**Proposal for a Council framework decision****Article 9 — paragraph 3**

3. Notwithstanding paragraphs 1 and 2, personal data provided under Article 7(1), (2) and (4) may be used by the requesting Member State for preventing an immediate and serious threat to public security.

3. Notwithstanding paragraphs 1 and 2, personal data provided under Article 7(1), (2) and (4) may be used by the requesting Member State **if such use is necessary and proportionate for the purpose of** preventing an immediate and serious threat to public security; **in such a case, the requesting Member State shall provide the requested Member State with an ex post notification setting out the fulfilment of the conditions of necessity, proportionality, urgency and seriousness of the threat.**

Amendment 15**Proposal for a Council framework decision****Article 9 — paragraph 4**

4. Member States shall take the necessary measures to ensure that personal data received from another Member State under Article 4, if transmitted to a third State in accordance with Article 7 paragraph 3, are subject to the same usage restrictions as those applicable in a requesting Member State according to paragraphs 2 of this Article. Member States shall specify that personal data, if transmitted to a third State for the purpose of a criminal proceeding, may be further used by that State only for the purposes of criminal proceedings.

4. **In addition,** Member States shall take the necessary measures to ensure that personal data received from another Member State under Article 4, if transmitted to a third State in accordance with Article 7 paragraph 3, are subject to the same usage restrictions as those applicable in a requesting Member State according to paragraphs 2 of this Article. Member States shall specify that personal data, if transmitted to a third State for the purpose of a criminal proceeding, may be further used by that State only for the purposes of criminal proceedings.

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Amendment 16**Proposal for a Council framework decision****Article 9 — paragraph 5**

5. *This article does* not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

5. *Paragraphs 1 to 4 shall* not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

Amendment 17**Proposal for a Council framework decision****Article 9 — paragraph 5a (new)**

5a. Each Member State shall ensure that its national data protection authorities are systematically informed of the exchange of personal data under this Framework Decision and, in particular, of the use of personal data in the circumstances referred to in Article 9(3).

The Member States' data protection authorities shall monitor the exchange referred to in paragraph 1 and cooperate with one another for that purpose.

Amendment 18**Proposal for a Council framework decision****Article 9a (new)****Article 9a****Rights of the data subject**

1. A data subject shall be informed of the fact that personal data concerning him or her are being processed.

The provision of that information shall be delayed when necessary in order not to hamper the purposes for which the data are being processed.

2. A data subject shall have the right to obtain without undue delay the information as to which data are being processed in a language which he or she understands, as well as to rectify and, where appropriate, erase data processed in breach of the principles referred to in Article 9(- 1) and (- 1a).

3. The information referred to in paragraph 1 may be refused or delayed if strictly necessary in order:

(a) to protect security and public order;

(b) to prevent a crime;

(c) not to hamper the investigation and prosecution of criminal offences;

(d) to protect the rights and guarantees of third parties.

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Amendment 19**Proposal for a Council framework decision****Article 11 — paragraph 1 — point a — point iva (new)*****(iva) information on disqualifications arising from a criminal conviction,*****Amendment 20****Proposal for a Council framework decision****Article 11 — paragraph 1 — point b — point iv*****(iv) information on disqualifications arising from a deleted criminal conviction,*****Protection of the euro against counterfeiting ***

P6_TA(2008)0280

European Parliament legislative resolution of 17 June 2008 on the proposal for a Council regulation amending Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting (COM(2007)0525 — C6-0431/2007 — 2007/0192(CNS))

(2009/C 286 E/32)

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2007)0525),
 - having regard to Article 123(4) of the EC Treaty, in particular the third sentence, pursuant to which the Council consulted Parliament (C6-0431/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Economic and Monetary Affairs (A6-0230/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.