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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL FRAMEWORK DECISION on the organisation and content
of the exchange of information extracted from the criminal record
between Member States

COUNCIL FRAMEWORK DECISION 2008/.../JHA

of

**on the organisation and content of the exchange
of information extracted from the criminal record
between Member States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(b) thereof,

Having regard to the proposal from the Commission and the initiative of the Kingdom of Belgium,

Having regard to the opinion of the European Parliament¹,

¹ Opinion delivered on 17 June 2008 (not yet published in the Official Journal).

Whereas:

- (1) 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.
- (2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council of 15 and 16 October 1999, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters¹. This Framework Decision contributes to achieving the goals provided for by measure 3 of the programme, which calls for the establishment of a standard form like that drawn up for the Schengen bodies, translated into all the official languages of the Union, for criminal records requests.
- (3) The Final Report on the first evaluation exercise on mutual legal assistance in criminal matters² called on the Member States to simplify the procedures for transferring documents between States, using, if necessary, standard forms to facilitate mutual legal assistance.

¹ OJ C 12, 15.1.2001, p. 10.

² OJ C 216, 1.8.2001, p. 14.

- (4) 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 Programme¹, adopted by the European Council on 4 and 5 November 2004, which called for greater exchange of information from national conviction and disqualification registers. These objectives are reflected in the Action Plan jointly adopted by the Council and the Commission on 2 and 3 June 2005 with a view to carrying out the Hague Programme.
- (5) With a view to improving the exchange of information between Member States on criminal records, projects developed with the aim to achieve this objective are welcomed, including the existing project for the interconnection of national criminal registers. The experience gathered from these activities has encouraged the Member States to further enhance their efforts and showed the importance to continue streamlining the mutual exchange of information on convictions between the Member States.
- (6) This Framework Decision is a response to the wishes expressed by the Council on 14 April 2005, following the publication of the White Paper on exchanges of information on convictions and the effect of such convictions in the European Union and the subsequent general discussion thereof. Its main aim is to improve the exchange of information on 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.

¹ OJ C 53, 3.3.2005, p. 1.

- (7) The application of the mechanisms established by this Framework Decision only to the transmission of information extracted from criminal records concerning natural persons should be without prejudice to a possible future broadening of the scope of application of such mechanisms to the exchange of information concerning legal persons.
- (8) Information on convictions handed down in other Member States is currently governed by Articles 13 and 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. These provisions are not, however, sufficient to meet the present requirements of judicial cooperation in an area such as the European Union.
- (9) As between the Member States, this Framework Decision should replace Article 22 of the European Convention on Mutual Assistance in Criminal Matters. In addition to the obligations of a convicting Member State to transmit information to the Member States of the person's nationality concerning convictions handed down against their nationals which this Framework Decision incorporates and further defines, an obligation on the Member States of the person's nationality to store information so transmitted is also introduced, in order to ensure that they are able to reply fully to requests for information from other Member States.

- (10) This Framework Decision should be without prejudice to the possibility of judicial authorities' directly requesting and transmitting information from criminal records pursuant to Article 13 in conjunction with Article 15(3), of the European Convention on Mutual Assistance in Criminal Matters and without prejudice to Article 6(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, established by Council Act of 29 May 2000¹.
- (11) Improving the circulation of information on convictions is of little benefit if Member States are not able to take transmitted information into account. On 24 July 2008, Council adopted Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings².

¹ OJ C 197, 12.7.2000, p. 3.

² OJ L 220, 15.8.2008, p. 32.

- (12) The main objective of the initiative of the Kingdom of Belgium is attained by this Framework Decision to the extent that the central authority of every Member State should request and include all information provided from the criminal records of the Member State of the person's nationality in its extract from criminal records when it replies to a request from the person concerned. Awareness of the existence of the conviction as well as, where imposed and entered in the criminal record, of a disqualification arising from it, is a prerequisite for giving them effect in accordance with the national law of the Member State in which the person intends to perform professional activity related to supervision of children. The mechanism established by this Framework Decision aims at inter alia ensuring 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.

- (13) This Framework Decision establishes 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 Framework Decision. Furthermore, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data applies to the personal data handled on the basis of this Framework Decision. This Framework Decision also incorporates the provisions of Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record¹ which limit the use the requesting Member State can make of information asked for. This Framework Decision supplements such provisions with specific rules applying where the Member State of the person's nationality forwards information on convictions transmitted to it by the convicting Member State.
- (14) This Framework Decision does not modify obligations and practices established in relation to third States under the European Convention on Mutual Assistance in Criminal Matters, in so far as that instrument remains applicable.

¹ OJ L 322, 9.12.2005, p. 33.

- (15) Under Council of Europe Recommendation No R (84) 10 on criminal records and rehabilitation of convicted persons, the main aim of establishment of criminal records is to inform the authorities responsible for the criminal justice system of the background of a person subject to legal proceedings with a view to adapting the decision to be taken to the individual situation. Since all other use of criminal records that might compromise the chances of social rehabilitation of the convicted person must be as limited as possible, the use of information transmitted under this Framework Decision for purposes other than that of criminal proceedings can be limited in accordance with the national law of the requested Member State and the requesting Member State.
- (16) The aim of the provisions of this Framework Decision concerning the transmission of information to the Member State of the person's nationality for the purpose of its storage and retransmission is not to harmonise national systems of criminal records of the Member States. This Framework Decision does not oblige the convicting Member State to change its internal system of criminal records as regards the use of information for domestic purposes.

- (17) Improving the circulation of information on convictions is of little benefit if such information cannot be understood by the Member State receiving it. Mutual understanding may be enhanced by the creation of a "standardised European format" allowing information to be exchanged in a uniform, electronic and easily machine-translatable way. Information on convictions sent by the convicting Member State should be transmitted in the official language or one of the official languages of that Member State. Measures should be taken by Council to set up the information exchange system introduced by this Framework Decision.
- (18) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.
- (19) This Framework Decision respects the principle of subsidiarity referred to in Article 2 of the Treaty on European Union and set out in Article 5 of the Treaty establishing the European Community since the improvement of systems for the transmission of information on convictions between Member States cannot be carried out adequately by the Member States unilaterally and requires coordinated action in the European Union. In accordance with the principle of proportionality, as set out in the Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objective

The purpose of this Framework Decision is:

- (a) to define the ways in which a Member State where a conviction is handed down against a national of another Member State (the "convicting Member State") transmits the information on such a conviction to the Member State of the convicted person's nationality (the "Member State of the person's nationality");
- (b) to define storage obligations for the Member State of the person's nationality and to specify the methods to be followed when replying to a request for information extracted from criminal records;
- (c) to lay down the framework for a computerised system of exchange of information on convictions between Member States to be built and developed on the basis of this Framework Decision and the subsequent decision referred to in Article 11(4).

Article 2
Definitions

For the purposes of this Framework Decision:

- (a) "conviction" means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record of the convicting Member State;
- (b) "criminal proceedings" means the pre-trial stage, the trial stage itself and the execution of the conviction;
- (c) "criminal record" means the national register or registers recording convictions in accordance with national law.

Article 3
Central authority

1. For the purposes of this Framework Decision, each Member State shall designate a central authority. However, for the transmission of information under Article 4 and for replies under Article 7 to requests referred to in Article 6, Member States may designate one or more central authorities.

2. Each Member State shall inform the General Secretariat of the Council and the Commission of the central authority or authorities designated in accordance with paragraph 1. The General Secretariat of the Council shall notify the Member States and Eurojust of this information.

Article 4

Obligations of the convicting Member State

1. Each Member State shall take the necessary measures to 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 if he is a national of another Member State.
2. The central authority of the convicting Member State shall, 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, as entered in the criminal record.

If it is known that the convicted person is a national of several Member States, the relevant information shall be transmitted to each of these Member States, even if the convicted person is a national of the Member State within whose territory he was convicted.

3. Information on subsequent alteration or deletion of information contained in the criminal record shall be immediately transmitted by the central authority of the convicting Member State to the central authority of the Member State of the person's nationality.
4. Any Member State which has provided information under paragraphs 2 and 3 shall communicate to the central authority of the Member State of the person's nationality, on the latter's request in individual cases, a copy of the convictions and subsequent measures as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measure at national level.

Article 5
Obligations of the Member State
of the person's nationality

1. The central authority of the Member State of the person's nationality shall store all information in accordance with Article 11(1) and (2) transmitted under Article 4(2) and (3), for the purpose of retransmission in accordance with Article 7.
2. Any alteration or deletion of information transmitted in accordance with Article 4(3) shall entail identical alteration or deletion by the Member State of the person's nationality regarding information stored in accordance with paragraph 1 of this Article for the purpose of retransmission in accordance with Article 7.

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 of this Article.

Article 6

Request for information on convictions

1. When information from the criminal record of a Member State is requested for the purposes of criminal proceedings against a person or for any purposes other than that of criminal proceedings, the central authority of that Member State may, in accordance with its 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.
2. When a person asks for information on his own criminal record, the central authority of the Member State in which the request is made may, in accordance with its 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 person concerned is or was a resident or a national of the requesting or requested Member State.

3. Once the time limit set out in Article 11(7) has elapsed, whenever a person asks the central authority of a Member State other than the Member State of the person's nationality for information on his own criminal record, the central authority of the Member State in which the request is made shall submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.
4. All requests from the central authority of a Member State for information extracted from the criminal record shall be submitted using the form set out in the Annex.

Article 7

Reply to a request for information on convictions

1. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for the purposes of criminal proceedings, that central authority shall transmit to the central authority of the requesting Member State information on:
 - (a) convictions handed down in the Member State of the person's nationality and entered in the criminal record;

- (b) any convictions handed down in other Member States which were transmitted to it after ...*, in application of Article 4, and stored in accordance with Article 5(1) and (2);
- (c) any convictions handed down in other Member States which were transmitted to it by ...*, and entered in the criminal record;
- (d) any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record.

2. When information extracted from the criminal record is requested under Article 6 from the central authority of the Member State of the person's nationality for any purposes other than that of criminal proceedings, that central authority shall in respect of convictions handed down in the Member State of the person's nationality and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in its criminal record, reply in accordance with its national law.

In respect of information on convictions handed down in another Member State, which have been transmitted to the Member State of the person's nationality, the central authority of the latter Member State shall in accordance with its national law transmit to the requesting Member State the information which has been stored in accordance with Article 5 (1) and (2) as well as the information which has been transmitted to that central authority by ...*, and has been entered in its criminal record.

* Three years after the date of entry into force of this Framework Decision.

When transmitting the information in accordance with Article 4, the central authority of the convicting Member State may inform the central authority of the Member State of the person's nationality that the information on convictions handed down in the former Member State and transmitted to the latter central authority may not be retransmitted for any purposes other than that of criminal proceedings. In this case, the central authority of the Member State of the person's nationality shall, in respect of such convictions, inform the requesting Member State which other Member State had transmitted such information so as to enable the requesting Member State to submit a request directly to the convicting Member State in order to receive information on these convictions.

3. When information extracted from the criminal record is requested from the central authority of the Member State of the person's nationality by a third country, the Member State of the person's nationality may reply in respect of convictions transmitted by another Member State only within the limitations applicable to the transmission of information to other Member States in accordance with paragraphs 1 and 2.
4. When information extracted from the criminal record is requested under Article 6 from the central authority of a Member State other than the Member State of the person's nationality, the requested Member State shall transmit information on convictions handed down in the requested Member State and on convictions handed down against third country nationals and against stateless persons contained in its criminal record to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

5. The reply shall be made using the form set out in the Annex. It shall be accompanied by a list of convictions, as provided for by national law.

Article 8

Deadlines for replies

1. Replies to the requests referred to in Article 6(1) shall be transmitted by the central authority of the requested Member State to the central authority of the requesting Member State immediately and in any event within a period not exceeding ten working days from the date the request was received, as provided for by its national law, rules or practice, using the form set out in the Annex.

When the requested Member State requires further information to identify the person involved in the request, it shall immediately consult the requesting Member State with a view to providing a reply within ten working days from the date the additional information is received.

2. Replies to the request referred to in Article 6(2) shall be transmitted within twenty working days from the date the request was received.

Article 9

Conditions for the use of personal data

1. Personal data provided under Article 7(1) and (4) for the purposes of criminal proceedings may be used by the requesting Member State only for the purposes of the criminal proceedings for which it was requested, as specified in the form set out in the Annex.
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 only for the purposes for which it was requested and within the limits specified by the requested Member State in the form set out in the Annex.
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.
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 country in accordance with Article 7(3), is subject to the same usage limitations as those applicable in a requesting Member State in accordance with paragraph 2 of this Article. Member States shall specify that personal data, if transmitted to a third country for the purposes of a criminal proceeding, may be further used by that third country only for the purposes of criminal proceedings.

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

Article 10

Languages

When submitting a request referred to in Article 6(1), the requesting Member State shall transmit to the requested Member State the form set out in the Annex in the official language or one of the official languages of the latter Member State.

The requested Member State shall reply either in one of its official languages or in any other language accepted by both Member States.

Any Member State may, at the time of the adoption of this Framework Decision or at a later date, indicate, in a statement to the General Secretariat of the Council, which are the official languages of the institutions of the European Union that it accepts. The General Secretariat of the Council shall notify the Member States of this information.

Article 11

Format and other ways of organising and facilitating exchanges of information on convictions

1. When transmitting information in accordance with Article 4(2) and (3), the central authority of the convicting Member State shall transmit the following information:
 - (a) information that shall always be transmitted, unless, in individual cases, such information is not known to the central authority (obligatory information):
 - (i) information on the convicted person (full name, date of birth, place of birth (town and State), gender, nationality and – if applicable – previous name(s));
 - (ii) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
 - (iii) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions), and
 - (iv) information on 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);

- (b) information that shall be transmitted if entered in the criminal record (optional information):
 - (i) the convicted person's parents' names;
 - (ii) the reference number of the conviction;
 - (iii) the place of the offence, and
 - (iv) disqualifications arising from the conviction;
- (c) information that shall be transmitted, if available to the central authority (additional information):
 - (i) the convicted person's identity number, or the type and number of the person's identification document,
 - (ii) fingerprints, which have been taken from that person, and
 - (iii) if applicable, pseudonym and/or alias name(s).

In addition, the central authority may transmit any other information concerning convictions entered in the criminal record.

2. The central authority of the Member State of the person's nationality shall store all information of the types listed in points (a) and (b) of paragraph 1, which it has received in accordance with Article 5(1) for the purpose of retransmission in accordance with Article 7. For the same purpose it may store the information of the types listed in point (c) of the first subparagraph and in the second subparagraph of paragraph 1.
3. Until the time limit set out in paragraph 7 has elapsed, central authorities of Member States which have not carried out the notification referred to in paragraph 6 shall transmit all information in accordance with Article 4, requests in accordance with Article 6, replies in accordance with Article 7 and other relevant information by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof.

Once the time limit set out in paragraph 7 of this Article has elapsed, central authorities of Member States shall transmit such information electronically using a standardised format.

4. The format referred to in paragraph 3 and any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States shall be set up by the Council in accordance with the relevant procedures of the Treaty on the European Union by ...*.

* Three years after the date of entry into force of this Framework Decision.

Other such means include:

- (a) defining all means by which understanding and automatically translating transmitted information may be facilitated;
 - (b) defining the means by which information may be exchanged electronically, particularly as regards the technical specification to be used and, if need be, any applicable exchange procedures;
 - (c) possible alterations to the form set out in the Annex.
5. If the mode of transmission referred to in paragraphs 3 and 4 is not available, the first subparagraph of paragraph 3 shall remain applicable for the entire period of such unavailability.
6. Each Member State shall carry out the necessary technical alterations to be able to use the standardised format and electronically transmit it to other Member States. It shall notify the Council of the date from which it will be able to carry out such transmissions.
7. Member States shall carry out the technical alterations referred to in paragraph 6 within three years from the date of adoption of the format and the means by which information on convictions may be exchanged electronically.

Article 12

Relationship to other legal instruments

1. In relations between the Member States, this Framework Decision supplements the provisions of Article 13 of the European Convention on Mutual Assistance in Criminal Matters, its additional Protocols of 17 March 1978 and 8 November 2001, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol of 16 October 2001¹.
2. For the purposes of this Framework Decision, Member States shall waive the right to rely among themselves on their reservations to Article 13 of the European Convention on Mutual Assistance in Criminal Matters.
3. Without prejudice to their application in relations between Member States and third States, this Framework Decision replaces, with effect from ...*, the provisions of Article 22 of the European Convention on Mutual Assistance in Criminal Matters, as supplemented by Article 4 of said Convention's additional Protocol of 17 March 1978, in relations between Member States.
4. Decision 2005/876/JHA is hereby repealed.
5. This Framework Decision shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States.

¹ OJ C 326, 21.11.2001, p. 1.

* Date of entry into force of this Framework Decision.

Article 13

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by ...*.
2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.
3. On the basis of that information the Commission shall, by ...**, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

Article 14

Entry into force

This Framework Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President

* Three years after the date of entry into force of this Framework Decision.

** Six years after the date of entry into force of this Framework Decision.

ANNEX

Form referred to in Articles 6, 7, 8, 9 and 10 of the
Council Framework Decision 2008/.../JHA *
on the organisation and content of the exchange of
information extracted from the criminal record
between Member States

Request for information
extracted from the criminal record

Members States are to consult the Manual of Procedures for assistance in filling in this form
correctly

(a) Information on the requesting Member State:

Member State:

Central authority(ies):

Contact person:

Telephone (with STD code):

Fax (with STD code):

E-mail address:

Correspondence address:

File reference, if known:

* OJ: please insert number of this Framework Decision.

(b) Information on the identity of the person concerned by the request*:

Full name (forenames and all surnames)

Previous names:

Pseudonym and/or alias, if any:

Gender: M ☐ F ☐

Nationality:

Date of birth (in figures: dd/mm/yyyy):

Place of birth (town and State):

Father's name:

Mother's name:

Residence or known address:

Person's identity number or type and number of the person's identification document:

Fingerprints:

Other available identification information:

* To facilitate the identification of the person as much information as possible is to be provided.

(c) Purpose of the request:

Please tick the appropriate box

(1) ☐ criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number)

.....

(2) ☐ request outside the context of criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number, while ticking the relevant box):

(i) ☐ from a judicial authority.....

.....

(ii) ☐ from a competent administrative authority

.....

(iii) ☐ from the person concerned for information on own criminal record

.....

Purpose for which the information is requested:

Requesting authority:

☐ the person concerned does not consent for this information to be divulged (if the person concerned was asked for its consent in accordance with the law of the requesting Member State).

Contact person for any further information needed:

Name:

Telephone:

E-mail address:

Other information (e.g. urgency of the request):

Reply to the request

Information relating to the person concerned

Please tick the appropriate box

The undersigned authority confirms that:

- ☐ there is no information on convictions in the criminal record of the person concerned
- ☐ there is information on convictions entered in the criminal record of the person concerned; a list of convictions is attached
- ☐ there is other information entered in the criminal record of the person concerned; such information is attached (optional)
- ☐ there is information on convictions entered in the criminal record of the person concerned but the convicting Member State intimated that the information about these convictions may not be retransmitted for any purposes other than that of criminal proceedings. The request for more information may be sent directly to..... (please indicate the convicting Member State)
- ☐ in accordance with the national law of the requested Member State, requests made for any purposes other than that of criminal proceedings may not be dealt with.

Contact person for any further information needed: Name: Telephone: E-mail address: Other information (limitations of use of the data concerning requests outside the context of criminal proceedings): Please indicate the number of pages attached to the reply form:
Done at on Signature and official stamp (if appropriate): Name and position/organisation:

If appropriate, please attach a list of convictions and send the complete package to the requesting Member State. It is not necessary to translate the form or the list into the language of the requesting Member State.
