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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from criminal record between Member States

INTRODUCTION

In a European area of Freedom, Security and Justice, every effort must be made to ensure an effective European response to criminal activities, in particular serious cross-border crime and terrorism. The European Agenda on Security[1] highlights the need to maximise EU measures on information exchange and operational cooperation.

The rapid and efficient exchange between competent Member State authorities of information extracted from criminal records is important if we are to avoid national courts passing sentences on the sole basis of past convictions registered in national criminal records, with no knowledge of convictions in other Member States, thus allowing criminals to escape their past by moving between Member States. Framework Decision 2008/675/JHA[2] requires Member States to ensure that previous convictions are taken into account in the course of criminal procedures.

Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States[3] (the 'Framework Decision' or 'FD') aims to address these shortcomings by stipulating that information on any EU citizen's previous convictions by any criminal court in the EU is available to all Member State courts and law-enforcement authorities for criminal proceedings in the pre-trial and trial stages and the execution of the conviction. By imposing a series of obligations on the convicting Member State and the Member State of nationality, the Framework Decision ensures that each Member State can provide exhaustive and complete information in relation to the criminal records of its nationals upon request by another Member State. The Framework Decision is based on the principle that each Member State stores all convictions against its nationals, including those handed down in other Member States. The exchange of information is organised on a decentralised basis between the central authorities designated by the Member States, for the purpose of criminal proceedings or for other purposes in accordance with national law. It thus contributes to the implementation of the principle of mutual recognition of judgments in criminal matters and also allows national authorities to obtain criminal record information that may be of relevance for certain activities (e.g. employment at in childcare).

The Framework Decision provided a foundation for a computerised system allowing faster and easier transmission of information on criminal convictions. The European Criminal Records Information System (ECRIS) was established by Council Decision 2009/316/JHA[4] and has been operational since April 2012. Currently, 25 Member States exchange information via ECRIS[5]. The annual volume exchange has reached over 1.8 million messages (including notifications, requests and responses to requests) by the end of 2015. On average, over 24 000 requests are made each per month, with over 30 % leading to a 'positive hit'.[6]

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1 COM(2015) 185 final.

2 Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32).

3 OJ L 93, 7.4.2009, p. 23.

4 Council Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (2009/316/JHA) adopted on 6 April 2009 (OJ L 93, 7.4.2009, p. 33).

5 MT, PT and SI are not operational yet.

6 i.e. a response containing one or more convictions.

EVALUATION OF IMPLEMENTATION

In accordance with Article 13 FD, the Commission received notifications of national transposition laws from 22 Member States:[7] AT, BE[8], BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, PT, SE, SI, SK and UK. This report is based on the transposition provisions of these Member States. Thus, where the term 'all Member States' is used in this report, it refers to the Member States having notified national transposition.

Six Member States (DK, EL, IE, IT, MT and RO) have not yet notified measures transposing the obligations under the Framework Decision, but five of these (DK, EL, IE, IT and RO) exchange criminal record information through the ECRIS system.

The Member States have taken various approaches to transpose the Framework Decision into their national legislation. AT, BG, CZ, DE, FR, HU, SE and SK have amended multiple national acts; EE, NL, PL and PT have amended their national criminal records act. In addition to these amendments, FI and BE adopted or proposed separate implementing acts. ES and LU only adopted a separate implementing act. HR, LT and LV adopted new legislation regulating matters concerning criminal records in general, and some specific secondary acts. Two Member States adopted new legislation that was wider in scope (SI: a law on international cooperation in criminal matters; UK: a law on criminal law and data protection). In CY, the text of the Framework Decision was directly integrated into national law.

In accordance with Article 10(3) of Protocol No 36 on transitional provisions, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union are fully applicable as of 1 December 2014. As of that date, the Commission is therefore in a position to launch infringement proceedings against Member States that have not or not correctly transposed a Framework Decision.

1. Definition of 'conviction'

The definition of 'conviction' in Article 2(a) FD covers only final decisions of criminal courts against a natural person in respect of a criminal offence to the extent that these decisions are entered in the criminal record of the convicting Member State. The 'criminal record' is the national register recording these convictions; Member States may have several registers. They may agree bilaterally or multilaterally, in accordance with Article 12(5) FD, on a wider scope of information to be exchanged.

Some Member States (AT, CY, CZ, FI, PL, PT, SK and UK) adopted the definition in the Framework Decision; for BG and HU, this can be inferred from the general context of the legislation. In a considerable number of Member States (BE, DE, EE, HR, LU, NL, SE and SI), 'conviction' seems to go beyond decisions of criminal courts only. For example, NL would also exchange decisions taken by a prosecutor and, in some cases, judicial data on investigations or on-going cases. Several Member States (ES, FR, LT and LV) did not provide

[7] A number of Member States transmitted the text of their national provisions to the Commission or the General Secretariat of the Council. The Commission sent two letters to the Member States in this respect, on 22 April and 10 October 2014. The Annex to this report provides an overview of the dates on which Member States submitted the notifications.

[8] BE also provided the Commission with a copy of a draft implementing act, which will complete the transposition.

an explicit definition of what they consider to be a 'conviction' for the purposes of the Framework Decision.

2. Central authorities

In 17 Member States (BE, BG, CZ, DE, EE, EL, ES, FI, FR, HR, IT, LU, NL, PL, PT, SI and SK), criminal records are under the responsibility of the Ministry of Justice and in 11 (AT, CY, DK, HU, IE, LT, LV, MT, RO, SE and UK) of the Ministry of Interior . In the Ministries of Justice, the majority of Member States nominated their criminal records offices as the central authorities for the purposes of the Framework Decision; LU and SK nominated the general public prosecutor's office. In the Ministries of Interior, Member States nominated the relevant departments of police. In accordance with Article 3(1) FD, two Member States appointed more one central authority at national level: four in the case of CY and two in the case of CZ.[9]

3. Obligations of the convicting Member State

3.1. Registering information on the nationality of the convicted person

Article 4(1) FD requires each Member State to ensure that all convictions of nationals of another Member State are accompanied by information on the nationality or nationalities of the convicted person, when provided to its criminal record. Otherwise, the convicting Member State would not be able to transmit information to the Member State of the person's nationality, and the principle of centralising information in one place would not work.

Almost all Member States (AT, BE, BG, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, PT, SI, SK and UK) included a direct reference to nationality in their national criminal records, by including 'nationality' in the list of identification details of the convicted person to be entered in the criminal records and/or by introducing a provision explicitly creating such an obligation. In CZ and SE, this obligation can be deduced from the general context of the legislative acts.

HU, LU and NL also register information on previously-held nationalities. NL has a provision ensuring that data are passed on between Member States in the event of a change of nationality by an offender.

3.2. Notifications of convictions

The Framework Decision obliges the convicting Member State to send information on convictions handed down within its territory ('notifications') as soon as possible to the offender's Member State of nationality. If the person has several nationalities, the notification should be sent to all the Member States in question, even if he/she is also a national of the convicting Member State.

Almost all Member States (AT, BE, BG, CY, CZ, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, PT, SE, SI, SK and UK) fully transposed the notification obligation. While most indicated that the notification should be sent 'immediately', 'without delay', 'as soon as possible' or 'when entered in the criminal record', three introduced a concrete deadline for transmission. This ranges from 'the next working day at the latest' (LT), through 10 days (CZ) to two months after the entry of the information in the criminal records (ES). DE and PT seem not to have stipulated in their national law when such notifications should be sent; in practice, however, DE complies with the requirement in Article 4(2) FD.

[9] A detailed list of central authorities can be found in the Annex.

Under Article11(1) FD, the convicting Member State should include in its notification to the Member State of nationality 'obligatory' information on the convicted person, the nature of the conviction, the offence giving rise to the conviction and the contents of the conviction. It should also transmit 'optional' information if entered in the criminal record and 'additional' information if available to the central authority. While the vast majority of the Member States (AT, BE, BG, CY, DE, EE, ES, FR, HR, HU, LT, LU, NL, PL, PT, SI, SK and UK) register and transmit all the obligatory information, in four cases (CZ, FI, LV and SE) the implementing provisions are more general or include some specific conditions. For instance, FI includes 'date, place and country of birth' only in the absence of a 'personal identification code' and in LV 'date of birth' is included only in the absence of such a code.[10]

Only some Member States introduced explicit legal provisions allowing for registration and transmission of the 'optional' and 'additional' information.

In order to ensure that information on convictions can be transmitted to the Member State of the person's nationality as soon as possible, it must be available promptly in the criminal records register. To that end, beyond their legal obligations under the Framework Decision, some Member States (e.g. CZ, DE, EE, LU and LV) imposed an additional obligation on the courts to deliver the information on convictions to the criminal records register.

3.3. Updates

To ensure that information is exhaustive and up to date, Article 4(3) FD requires the convicting Member State immediately to notify the Member State of nationality of any subsequent alterations or deletion of information in previous notifications. Almost all Member States (AT, BE, BG, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, PL, PT, SE, SI, SK and UK) implemented this provision, explicitly referring to the transmission of updates. In the case of CZ, the obligation can be deduced from the context. NL included a provision on correcting and erasing 'inaccurate data' in previous notifications.

3.4. Providing additional information

At the request of the Member State of nationality and in individual cases, the convicting Member State is obliged to provide a copy of convictions and subsequent measures and other information relevant thereto. Member States may appoint an additional central authority for the transmission of such information.

The majority of Member States (AT, BE, BG, CY, CZ, FI, HR, LT, LU, LV, NL, SI, SK and UK) transposed Article 4(4) FD in its entirety. BG appears to be sending transcripts of judgments not on request in individual cases, but automatically for all notifications. In many Member States, copies of judgments are not directly available to the central authorities or in the criminal records. Some Member States (CZ, LT, LV and SK) therefore imposed an explicit obligation on their courts or relevant state authorities to provide the central authority with the requested information. AT forwards such requests to its courts for further action. CZ and CY appointed additional central authorities that have direct access to copies of judgments to deal with Article 4(4) requests. PT does not explicitly refer to an obligation to respond to such requests, but its central authority may request copies of judgments from the issuing courts for the purpose of responding to requests from other Member States.

[10] SE uses some generalisations on the categories of information, but also provides that notification will take place according to the principles of the FD; CZ criminal records contain data to ensure that the convicted person 'cannot be confused with another person'.

A considerable number of Member States (DE, EE, ES, FR, HU, PL and SE) have not adopted relevant provisions. FR and PL informed the Commission that they do transmit such information, but via the channels of the MLA Convention,[11] as their central authorities do not have direct access to the copies of judgments.

4. Obligations of the Member State of nationality

4.1. Storage of information for the purpose of retransmission

Article 5(1) FD requires the Member State of the person's nationality to store all information transmitted to it for the purpose of retransmission, but leaves it to each Member State to decide how to store the information. As information on convictions handed down in other Member States is kept for retransmission purposes only, it should be stored regardless of whether a certain offence is also punishable under the law of the Member State of nationality.

Almost all Member States (AT, BE, BG, CZ, CY, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, PT, SE, SK and UK) introduced an explicit provision on the storage obligation into their legislation. Most stipulated that all information received from other Member States is to be stored in their criminal records, i.e. independently of whether the offence is punishable also under their law. AT, LT and PT made this explicit in their provisions. SI does not appear to have included a provision on storage obligations in its law.

Article 11(2) FD determines which categories of data received from the convicting Member State in relation to a person convicted abroad should be stored by the Member State of nationality. While the vast majority of the Member States (AT, BE, BG, CY, DE, EE, FI, FR, HR, HU, LT, LU, NL, PL, SK and UK) store all the required information, three (CZ, LV and SE) have adopted implementing provisions that do not specify what information needs to be stored, but are more general or include specific conditions.[12] ES and PT have not provided lists of stored information, but established a general obligation to store all information transmitted by other Member States.

Almost all Member States register information on foreign convictions of their citizens received from other Member States in their existing criminal records databases. Four (BG, FI, HU and PT) have chosen to create separate registers for storing such convictions for the purpose of retransmission. In the vast majority, there is one criminal records office with one or more criminal records register. Some (e.g. BG) have a decentralised structure of entities responsible for storing data.

4.2. Updating information

Under Article 5(2) and (3) FD, when the Member State of nationality receives notification of any alteration or deletion of information previously notified by a convicting Member State, it is obliged to amend or delete the information accordingly.

This must not, however, lead to persons being treated less favourably than if they had been convicted by their national court. For instance, where national rules on retention and deletion of information would have prompted the deletion of a certain 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 on request. The Framework Decision thus establishes the principle of 'dual legal regime', depending on

[11] Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (OJ C 197, 12.7.2000, p. 3).

[12] SE uses some generalisations on the categories of information, but also provides that the Swedish Government can issue more detailed rules in this respect. For LV and CZ, see Section 4.2.

whether information is used internally in the Member State of nationality or transmitted to another Member State.

The vast majority of the Member States (AT, BE, BG, CY, CZ, DE, ES, FI, FR, HR, HU, LV, NL, PL, PT, SK and UK) implemented these provisions, explicitly referring to the registering of updates. Some (e.g. BE, HR, HU and UK) provided that only the updated information may be retransmitted further. FR and PT developed the 'dual legal regime' principle in more detail, providing that deletion of a foreign conviction from their national registers in accordance with national rules does not prevent its transmission to another Member State unless it was deleted in the convicting Member State. In LT's provisions, the update obligation, although not explicit, can be inferred from the context. SE does not mention the registering of amendments, only deletion. In EE, only the deletion obligation can be inferred from the reference to the relevant legislation, not the amendment obligation. Two Member States provide for the compulsory deletion of foreign convictions of their citizens after a maximum of five years (DE) or 20 years (SE) from the conviction date, if deletion information has not been received from the convicting Member State in the meantime. LU and SI seem not to have regulated updates. In addition to updates of stored information, NL introduced a specific form of updates of information provided previously to another Member State in response to a request, if this information changed within a year of being provided.

5. Replies to requests for information

5.1. Requests for criminal proceedings

The Framework Decision requires the Member State of nationality to reply to other Member States' requests for information on its nationals for the purpose of criminal proceedings. The criminal proceedings encompass the pre-trial and trial stages and the execution of the conviction. The reply includes information on national convictions, convictions handed down in other Member States and obligatorily transmitted after 27 April 2012, or transmitted by them before that date and entered in the criminal record. This obligation also covers convictions handed down in third countries and entered in the criminal record of the Member State of nationality.

All Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, PT, SE, SI, SK, UK)transposed Article 7(1) FD in its entirety into their national law. The majority have taken over the exact list of categories of information as provided in the Article. The others provided for an obligation to respond with the relevant information included in their register (DE, EE, FI, HU, LV, NL and PL) or in a national extract issued for criminal purposes (FR and LU). EE would also send a copy of the conviction.

5.2. Requests for purposes other than criminal proceedings

Article 7(2) FD stipulates that, if information is requested for purposes other than criminal proceedings (this applies to around 20 % of all requests), the central authorities may reply in accordance with national law. The information that may be included in the reply is potentially the same as in the case of requests for the purposes of criminal proceedings, depending on the national law, which might regulate differently the scope of information or arrangements for its provision. Additionally, the Framework Decision lays down specific rules for transmitting information that the convicting Member State has declared not retransmissible for purposes other than criminal proceedings. In such cases, the Member State of nationality would need to tell the requesting Member State to contact the convicting Member State directly. This ensures a high level of protection for personal data transmitted by the convicting Member State to the Member State of nationality.

Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children[13] contains special provisions in Article 10(3) laying down an obligation of Member States to transmit information on criminal convictions for child sex abuse offences and resulting disqualifications, following a request under Article 6 FD, in order to ensure that employers can become aware of those convictions when recruiting a person for professional or voluntary activities involving direct and regular contacts with children. The implementation by Member States of these special provisions will be dealt with in the specific implementation report on Directive 2011/93/EU.

All Member States transposed Article 7(2) FD into their national law, but the detailed provisions vary considerably. The majority (BE, BG, CZ, CY, DE, EE, ES, FR, HR, LT, NL, SE, SI and UK) would reply to requests for other purposes in accordance with their national rules; more specifically:

- BE would respond in accordance with the BE code of criminal procedure;
- CZ and DE would not send certain convictions handed down in other Member States that their national courts would not regard as convictions as well;
- DE and ES would send information for the same purposes and to the same extent as to their respective national authorities;
- EE would reply where permitted under its criminal records act;
- FR referred to information included in a national extract issued for purposes other than criminal proceedings;
- HR would reply in certain specified situations;
- LT would reply without the consent of the convicted person if its national legislation restricts the person's rights and freedoms in a concrete case due to his/her conviction; otherwise the person's consent is needed;
- NL provides that a reply may be given after a careful assessment of each case; the scope of transmitted information would depend on this assessment;
- in SE, the information would be given if SE is also entitled to receive such information from the requesting Member State; additionally, there are some categories of information that cannot be transmitted for purposes other than criminal proceedings;
- SI would exchange information only on national criminal convictions and those handed down in third countries, but not on convictions handed down in other Member States and transmitted to it;
- the UK stipulated that only 'spent' convictions, as defined in its national legislation, can be transmitted.

Three Member States require additionally the consent of the person concerned if the reply is to be given:

- in ES, this is always the case, except where the law obliges an individual to present the criminal records extract;
- in LT, consent is required in those cases where the person's rights and freedoms are not restricted by LT legislation due to his/her conviction;
- in LU, exchanges take place only for the purpose of working with children and consent is always required.

[13] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

AT, LV, PL and SK do not include a reference to national law in replies to requests for other purposes, nor any other information limitations, allowing in this way for transmissions comparable to those for criminal proceedings. Four Member States do not exchange information for purposes other than criminal proceedings, except for requests from an individual (FI, HU and PT) or for the purpose of working with children (thus implementing Directive 2011/93/EU) (LU). Two of these countries (HU and LU), together with SI, which does not transmit convictions handed down in other Member States, did not include in their provisions restrictions on transmitting information further in line with rules set by the convicting Member State. FI, HU, LU, SI, EE, FR and NL did not include an obligation to indicate the convicting Member State from which the restricted information can be obtained. While some Member States (e.g. BG, EE, and SE) have provided that, when sending notifications on convictions on their territory, they may restrict the further transmission of this information to criminal purposes only, notifications from ES and PT would always be restricted in this way.

5.3. Requests from a third country

Under Article 7(3) FD, when replying to requests from third countries (i.e. non-EU countries), the Member State of nationality may, subject to the conditions in Article 7(1) and (2), transmit conviction information received from other Member States.

In Member States' legislation, the transmission of criminal records information to third countries is governed by conventions on mutual legal assistance, other international agreements or specific provisions in criminal records law.

The vast majority of the Member States (BE, BG, CY, CZ, DE, EE, ES, FI, HR, HU, LV, NL, PL, SE, SI, SK and UK) explicitly included the Article 7(3) condition in their legislation. In LT, it can be deduced from the context. PT provides for requests from non-EU countries to be replied to under the terms of the applicable international agreements, subject to reciprocity. AT, FR and LU have not adopted provisions in this area.

5.4. Requests to a Member State other than the Member State of nationality

It may be that a request for information is addressed to a Member State other than the Member State of nationality. For example, the convicting Member State may be asked for information on convictions prior to the entry into force of the Framework Decision that might not have been transmitted to the Member State of nationality, or a request may concern a third country national who does not have EU nationality also.

Article 7(4) FD requires the Member State that receives the request to respond by providing the information it holds in its criminal record on convictions handed down in its territory and convictions on non-EU country nationals and stateless persons. The reply is subject to the same conditions as those in Article 13 of the MLA Convention, i.e. it is obligatory and must contain all information (in the case of requests for the purpose of criminal proceedings) or be in accordance with national law (in the case of requests for other purposes).

As regards third country nationals, the ECRIS mechanism whereby 'blanket' requests are sent to all Member States in order to determine where such a person was convicted, combined with the Article 7(4) FD obligation to respond, produces a huge administrative burden for all Member States, including the Member States (the majority) that do not hold the requested information. For this reason, the Commission is proposing an amending directive on the exchange of criminal records information regarding third country nationals convicted in the EU.

The vast majority of Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LT, LV, NL, PL, PT, SE and UK) have implemented Article 7(4) FD in its entirety. Most (AT, CZ, DE, EE, ES, FI, FR, LT, NL, PL and SE) did not make any distinction between replies to requests regarding their own citizens, citizens of other Member States and third country nationals, for criminal proceedings or other purposes; all are governed by the same broad provisions. In addition to such provisions, two Member States stipulate more specifically that the information should be provided according to the MLA Convention (HU) or international treaties (LV). FI, HU and PT would reply to requests only for the purpose of criminal proceedings. BE, BG, CY, HR and UK adopted a separate provision, mostly reproducing the content of Article 7(4) FD, specifically for replies to requests regarding citizens of other Member States. Two other Member States have a similar separate provision, but in SI this addresses only replies concerning third country nationals and stateless persons (not the citizens of other Member States) and in SK it is mentioned only that the information should be provided to the extent required by international agreement. LU seems not to have transposed this provision.

5.5. Deadline for replies

Replies to requests for the purpose of criminal proceedings and other purposes should be given immediately and in any event within ten working days, or 20 working days if the request is from an individual asking for information on his/her own record. If the Member State receiving the request requires further information to identify the subject of the request, it should consult the requesting Member State immediately and reply within ten working days of receiving the information.

Almost all Member States (AT, BE, CY, CZ, BG, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PL, SI, SK and UK) transposed the provisions on deadlines. HU and PL did not adopt detailed provisions on asking for additional information. CZ, NL and SK apply the ten-day deadline also to requests from an individual. SE regulated replies to requests for criminal proceedings, but not for other purposes. DE did not mention the deadline for replies to requests in accordance with Article 6(1) FD, only for those from an individual. PT seems not to have laid down deadlines in its legislation.

6. Requests for information

When information is requested at national level for the purpose of criminal proceedings or other purposes, the central authority of the Member State may, in accordance with its national law, make a request for information to the central authority of another Member State (Article 6(1) FD).

Almost all Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, HR, HU, LU, LV, NL, PL, PT, SE, SI, SK and UK) adopted a provision allowing a central authority to request information where needed for domestic authorities . Some (BG, EE, FI, HR, HU, LV, PL, PT, SE and SI) indicated exactly who can request the information and in what circumstances from the central authority at national level. CZ, FI and HU would request information only for the purpose of criminal proceedings. PL requests information in accordance with the law of the addressee Member State, rather than its own. FR and LT have not adopted explicit provisions on requests under Article 6(1).

Particular considerations apply where an EU citizen asks the central authority of a Member State other than his/her Member State of nationality for information from his/her own criminal record dating from 27 April 2012 or later. In order to ensure that the addressee Member State does not issue an extract that does not include exhaustive information about his/her criminal past, Article 6(3) FD obliges it to request information from the Member State

of nationality and include this in the extract. This provision is particularly important in the context of obtaining criminal records extracts for employment purposes in sensitive sectors such as the security sector or working with children (see Directive 2011/93/EU).

While the vast majority of Member States (AT, BE, BG, CY, CZ, DE, ES, FI, FR, HR, LT, LU, LV, PL, PT, SE, SI and SK) introduced an obligation for the central authority to request information on behalf of a citizen of another Member State, a few (BG, FI, LV, SE and SK) did not explicitly provide that the information obtained should be included in the extract issued to the citizen. In HR, in general, individuals cannot obtain criminal records extracts, but only read the record in the presence of a clerk. A special certificate can be issued exceptionally for the purpose of activities involving regular contact with children or for exercising a specific right abroad or in an international organisation. In DE, HR and NL, the citizen receives a special 'certificate of conduct'. EE, HU, NL and UK have not transposed the obligation in Article 6(3) FD. In NL, as in HR, an individual cannot apply for an extract from his/her criminal records, but only has the right to inspect them. A certificate of 'good behaviour' can be obtained, for example for job screening purposes, but this is regulated in separate provisions, not notified to the Commission. The UK transposed only Article 6(2) FD, with no obligation to request information.

7. Conditions for the use of personal data

The Framework Decision contains several provisions designed to ensure a high level of protection of personal data (Articles 7 and 9 FD). Personal data provided in response to requests may be used only for the purposes for which they were requested. Additionally, personal data provided for purposes other than criminal proceedings may be used in accordance with the national law of the requesting Member State, within any limits specified by the addressee Member State. Similarly, personal data transmitted to a third country are subject to any limitations on purpose and usage indicated by the convicting Member State.

Almost all Member States (AT, BE, BG, CY, CZ, DE, EE, ES, FI, HR, HU, LT, LV, NL, PL, PT, SE, SI, SK and UK) implemented these personal data safeguards. While all mirrored to a certain extent the provisions of the Framework Decision, BG, FI and LT added an explicit reference to processing data in accordance with their national data-protection instruments. FI, LU, LT and PT directly included provisions on the protection of the rights of the data subject; in FI, for example, the individual is entitled to ask to whom and for what purpose his/her data have been disclosed in the past year. In any case, national data-protection legislation applies to the processing of personal data in the national criminal records databases and to the exchange of any such data with other Member States. FR and LU seem not to have adopted relevant provisions in this area, although FR included a statement that information may be disclosed only where this is provided for by law.

8. Adoption of electronic standardised format of transmission

The ECRIS system, allowing information to be exchanged electronically according to a 'standardised European format', was created on the basis of the Framework Decision. From 27 April 2012 onwards, Member States are obliged to use it for all transmissions, on the basis of Article 11(3) FD. Currently, Member States except SI, PT and MT[14] exchange information via ECRIS.

[14] By the end of 2014, the interconnection rate was 66 % of all interconnections possible between all Member States. MT has said that it started interconnecting in 2015.

The majority of Member States (BE, BG, CY, CZ, EE, ES, FR, FI, HR, LT, LV, NL, PL, PT, SI and SK) introduced an obligation in their national law to exchange information electronically using a standardised format. Many (BE, BG, EE, HR, LT, PL, SI, SK and UK) explicitly referred to the ECRIS system as the electronic channel for the exchange of criminal records. In SI, the minister of justice will issue an order setting a date on which the electronic exchange of information via ECRIS will begin. In AT, the use of the electronic format can be inferred from the context. DE, HU, LU, SE and UK did not mention the electronic format in their national provisions, but do in practice exchange information via ECRIS.

CONCLUSION

The transposition of the Framework Decision by 22 Member States has led to significant progress in improving the exchange of criminal records information within the Union. It has proved to be an indispensable tool used on a daily basis in 25 Member States which has provided a real added-value in practice to judicial authorities.

There are areas identified in this report where transposition of particular provisions is incomplete and therefore the Commission considers that it is important that Member States fully transpose this Framework Decision and as a matter of urgency take all necessary measures. In that regard, the Commission will closely follow developments and take any appropriate action.

ANNEX

OVERVIEW OF MEMBER STATES' NOTIFICATIONS

	Transposing measures notified? Date of notification	*Implementation measures*	*Transposition date/entry into force*	*Notification on competent authorities (Article 3(2))*
AT	Yes 20.8.2013	Amendment of the Federal Act on Judicial Cooperation in Criminal Matters with the Member States of the EU of 27.12.2011; Amendment of the Criminal Records Act of 20.4.2012; Amendment of the Spent Convictions Act of 20.4.2012	27.4.2012	Police — Criminal Records Office of the Federal Police Directorate in Vienna
BE	Yes 30.1.2015 18.7.2014	Articles 589-597 of the Criminal Procedure Code as amended by the Law of 25 April 2014 on various questions in the matter of justice; Draft Circular on the exchange of criminal records information between EU Member States	Circular: end March 2015; previous measures: 24.5.2014	Ministry of Justice — Central Criminal Records Office (*Casier Judiciaire Central*), Brussels
BG	Yes 30.7.2014 20.3.2013	Amendments to the Judiciary System Act and Regulation No 8 of 26 February 2008 on the Functioning and Organisation of the Criminal Records Bureaux	15.2.2013 1.9.2012	Ministry of Justice — Central Criminal Records Bureau, Sofia
CY	Yes 23.4.2012	Decision No 71.068 of 8 October 2010, adopting Framework Decision 2009/315/JHA		Police — Chief of Police; Previous Convictions Office (Department C); Previous Convictions Office: Police HQ Traffic Offences (Department B); Police HQ EU and International Police Cooperation Directorate
CZ	Yes 25.3.2015 9.7.2014 1.2.2013	Act No 357/2011 amending Act No 269/1994 on Criminal Records, as amended, and certain other laws	27.4.2012	Ministry of Justice — Criminal Records Office in Prague; Ministry of Justice
DE	Yes 25.6.2014 16.3.2012	Act improving the Exchange of Criminal Record Data between Member States of the European Union and amending provisions under the Law governing Records of 15 December 2011	27.4.2012	Ministry of Justice — Central Federal Register, Bonn
DK	No			Police — Danish

				National Police Communications Centre, Copenhagen
EE	Yes 12.2.2015	Punishment Register Act of 17 February 2011	1.1.2012	Ministry of Justice — Centre of Registers and Information Systems, Tallinn
EL	No			Ministry of Justice — Department of Criminal Records, Athens
ES	Yes 14.11.2014 7.7.2014	Organic Law 7/2014 of 12 November 2014 on the exchange of information on previous convictions and taking account of criminal judgments in the European Union	1.12.2014	Ministry of Justice — Central register of convicted persons, Madrid
FI	Yes 26.6.2014 29.5.2012	Act on storing and disclosing criminal records between Finland and other Member States of the European Union (214/2012) of 11 May 2012; Act amending the Criminal Records Act (215/2012) with the exception of the amendment to Section 4a of 11 May 2012; Act amending Section 24 of the Act on International Legal Assistance in Criminal Matters (217/2012) of 11 May 2012	15.5.2012	Ministry of Justice — Legal Register Centre, Hameenlinna
FR	Yes 10.3.2015 20.1.2015 22.1.2013	Law 2012-409 of 27 March 2012 concerning the execution of convictions; Decree No 214 of 28 November 2014 concerning the national criminal records and exchanges with other EU Member States	1.12.2014	Ministry of Justice — National Criminal Records Register, Nantes
HR	Yes 18.6.2014 28.6.2013	Act No 143/12 on the Legal Consequences of Convictions, Criminal Records and Rehabilitation; Amendments to the Rulebook on Criminal Records (NN, No 66/2013)	1.7.2013	Ministry of Justice, Zagreb
HU	Yes 30.12.2014 28.11.2014	Act XLVII of 2009 on the criminal records system, the registry of convictions handed down against Hungarian nationals by courts of the Member States of the European Union, and the recording of criminal and law enforcement biometric data; Act LXXVIII of 2013 amending certain acts on criminal matters; Act CLXXXVI of 2013 amending certain acts on criminal law matters and other acts associated therewith; Act XIX of 1998 on criminal		Ministry of Interior — Central Institute of Administrative and Electronic Public Services, Budapest

		proceedings; Government Decree No 276 of 23 December 2006 on the establishment, responsibilities and competence of the Central Office for Administrative and Electronic Public Services; Act CXII of 2011 on informational self-determination and freedom of information		
IE	No — draft law received			Ministry of Interior — Garda Commissioner (National Police), Tipperary
IT	No			Ministry of Justice — Criminal Records Office, Rome
LT	Yes 27.5.2014	Law on the Register of Suspects, Accused and Convicts No XI-1503, adopted on 22 June 2011; Regulations for the Register of Suspects, Accused and Convicts, approved by Resolution No 435 of the Government of the Republic of Lithuania of 18 April 2012; Rules for the registration of subjects and disclosure of data from the Register of Suspects, Accused and Convicts of 10 August 2012	1.7.2012	Ministry of Interior — Information Technology and Communications Department, Vilnius
LU	Yes 3.7.2014 24.5.2013	Law of 29 March 2013 on the organisation and exchange of information extracted from criminal records between the EU Member States	1.8.2013	General Public Prosecutor Office, Luxembourg
LV	Yes 27.1.2015 24.7.2014	Criminal Record Law of 10 October 2013; Cabinet Regulation of 10 December 2013 No 1427 regarding the content and layout of the form for requesting and providing information on convictions; Cabinet Regulation regarding the provision and receipt of information from the Criminal Record, the amount of duty and the preparation of the extract	1.1.2014	Ministry of Interior — Information Centre, Riga
MT	No			Police — Criminal Investigation Department, Floriana
NL	Yes 12.4.2012	Decree of 23 March 2012 amending the Judicial Data and Criminal Records Decree	1.4.2012	Ministry of Justice — Judicial Information Service, Almelo
PL	Yes	Act of 16 September 2011 amending	27.4.2012	Ministry of Justice

	31.7.2013	the act on National Criminal Register		— National Criminal Records Information Office, Warsaw
PT	Yes 15.6.2015 5.5.2015	Law No 37/2015 of 5 May 2015 setting out the general principles governing the organisation and operation of criminal identification and transposing Framework Decision 2009/315/JHA into national law.	22.7.2015	Ministry of Justice — Criminal Identification Services, Lisbon
RO	No			Ministry of Interior —General Inspectorate of the Police: Directorate of Criminal Records, Statistics and Operational Registers, Bucharest
SE	Yes 21.5.2013	Act amending the Act on criminal records (1998:620); Act amending the Police Data Act (2010:361); Act amending the Act on international legal assistance in criminal matters (2000:562); Act amending the Act on Public Access to Information and Secrecy (2009:400); Regulation amending the Police Data Ordinance (2010:1155); Ordinance amending the Ordinance containing instructions for the National Police Board (1989:773); Ordinance amending the Ordinance on criminal records (1999:1134); - all issued on 29 November 2012	1.1.2013	Police — National Police Board, Kiruna
SI	Yes 12.12.2013 22.10.2013	Act on International Cooperation in Criminal Matters between the Member States of the European Union of 23 May 2013	20.9.2013	Ministry of Justice — Department for Criminal Records, Ljubljana
SK	Yes 10.6.2014	Act No 334/2012 amending Act No 330/2007 on criminal records and amending certain acts	1.1.2013	General Public Prosecutor's Office, Bratislava
UK	Yes 09.01.2015	Regulations 62-74 of the Criminal Justice and Data Protection (Protocol no 36) Regulations 2014 (International Cooperation) Act 2003	01.12.2014	Police – Criminal Records Office (ACRO) in Southampton