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From: Presidency
To: Delegations

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Subject: Proposal for a Directive of the European Parliament and of the Council of amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA
- Revised text submitted by the Presidency

This **Addendum 1** contains two explanatory texts in relation to the revised text by the Presidency for the above mentioned proposal, as set out in doc. 11568/17:

Annex I: a text showing the changes that have been made in the revised Presidency text in comparison to the previous text (as set out in doc. 8999/1/16 REV 1), with explanatory footnotes;

Annex II: a text showing how Framework Decision 2009/315/JHA will look like if it is modified in accordance with the proposal for a Directive, as revised by the Presidency.

Changes that have been made in the revised Presidency text for a Directive in comparison to the previous text (set out in doc. 8999/16 REV 1), with explanatory footnotes

*New text in comparison to the previous version is marked with **bold and underlined**; deleted parts are ~~striked through~~.*

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of

amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA

[...]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Framework Decision 2009/315/JHA is amended as follows:

(1) Article 1 is replaced by the following:

"Article 1

Subject Matter

This Framework Decision

- (a) defines the ways in which a convicting Member State shares information ~~on convictions~~ with other Member States **on convictions**.
- ~~(aa) establishes an information technology system for the exchange of information on such convictions, the European Criminal Record Information System (ECRIS);¹~~
- (b) defines storage obligations **under this Framework Decision** for the convicting Member State **and for the Member State of nationality**, and specifies the methods to be followed when replying to a request for information extracted from criminal records;
- (c) establishes a decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Record Information System (ECRIS).";
- ~~(ba) lays down the conditions under which Member States' central authorities may use the Central [Index] System of convicted third country nationals for comparison of (fingerprint and alphanumeric) data of convicted third country nationals with its own data.~~

¹ The original wording proposed by the Commission (as in point c below) describes ECRIS as a decentralised information system. The central system is called the ECRIS-TCN system in the Regulation, so reverting back to the initial wording would keep the distinction clear between the two systems.

(2) in Article 2, the following points are added:

- "(d) 'convicting Member State' means the Member State where a conviction is handed down;
- (e) 'third country national' means a national of a country other than a Member State, or a stateless person **as defined by the UN Convention relating to the Status of Stateless Persons**², or a person whose nationality is unknown to the **convicting** Member State ~~where a conviction is handed down against the person.~~";³
- ~~(f) 'eu LISA' means the European Agency for the operational management of large-scale information IT systems in the area of freedom, security and justice as established by Regulation (EU) No 1077/2011;~~
- ~~(g) 'Central [Index] System' means the ...[fingerprints and alphanumeric database as well as a communication structure at EU level] of ECRIS;~~⁴
- ~~(h) 'alphanumeric data' means the data listed in Article 2a, paragraph [...];~~⁵
- (if) 'fingerprint data' means the data relating to fingerprints of plain and rolled impressions of all ten fingers. of a convicted person;**⁶
- ~~(j) 'hit' means the existence of a match or matches established by comparison between data recorded in the Central [Index] System and those transmitted used for search by a Member State with regards to a convicted person;~~
- ~~(k) 'supervisory authority' means [...]~~
- ~~(l) 'national supervisory authority' means [...];~~⁷
- (g) 'ECRIS reference implementation' means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS.**

² UN Convention relating to the Status of Stateless Persons, UN, Treaty Series, vol. 360, p.117.

³ The definition of third country national is left unchanged for now, but will have to be aligned with the definition in the Regulation as soon as the definition is agreed upon.

⁴ eu-LISA does not need to be defined according to COM Legal Service, and the central system will be defined in the Regulation.

⁵ The term "alphanumeric data" will not be used in the Directive, nor in the Framework Decision.

⁶ Definition aligned with the definition in the Regulation.

⁷ These definitions will be included in the Regulation.

~~(2a) the following new articles are inserted:~~

~~"Article 2a~~

~~Information exchange via ECRIS~~

~~For the purposes of this Framework Decision and subject to Articles [...] information on a convicted person exchanged via ECRIS may comprise the following:~~

- ~~(a) information on the convicted person:
full name, date of birth, place of birth (town and country), gender, nationality(ies) and previous name(s) as well as pseudonym(s) and/or alias name(s), fingerprints data and reference number, identity number or type and number of the person's identification document, the convicted person parents' [first] names;~~
- ~~(b) information on the nature of the conviction:
date of conviction, name of the court, date on which the decision became final and reference number of the conviction;~~
- ~~(c) information on the offence giving rise to the conviction:
date and place of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions;~~
- ~~(d) information on the contents of the conviction:
notably the sentence as well as any supplementary penalties, security measures, subsequent decisions modifying the enforcement of the sentence as well as any other information concerning the conviction entered in the criminal record;~~
- ~~(e) disqualifications arising from the conviction;~~
- ~~(f) additional information related to the conviction and the convicted person;⁸~~

~~Article 2b~~

~~European Criminal Records Information System (ECRIS)~~

~~[...]~~

(3) in Article 4, paragraph 1 is replaced by the following:

- "1. Each **convicting** Member State shall take the necessary measures to ensure that ~~when convictions handed down within its territory are accompanied, when provided entered into its criminal records, by~~ information on the nationality or nationalities of the convicted person ~~is included~~ if the person is a national of another Member State or a third country national, ~~unless such information is unknown.~~ **In case the citizenship information is unknown or where the convicted person is a stateless person the criminal record shall reflect this.**"⁹

⁸ As the Directive only regulates the issues regarding ECRIS, but not ECRIS-TCN, this additional article will probably not be necessary.

⁹ The wording is amended to reflect the principle that information on nationality shall always be included in the conviction.

(4) the following article is inserted:

"Article 4a

Obligations of the convicting Member State concerning convictions of third country nationals

1. The central authority of the convicting Member State where a conviction is handed down against a third country national shall store created a file in the Central [Index] System containing the following information relating to a convicted third country national, unless, in exceptional individual cases, this is not possible such information is not known:

(a) information on the convicted person (full name, date of birth, and place of birth (town and country), gender, nationality, fingerprint data and reference number, the convicted person's identity number or the type and number of the person's identification document, [the convicted person's parents' names] and if applicable previous name(s) as well as pseudonym(s) and alias name(s);

Where a file was already created previously by the same Member State on the same person, that file shall be updated when necessary.

(b) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final;

(c) 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);

(d) 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);

(e) the convicted person's parents' names;

(f) the reference number of the conviction;

(g) the place of the offence;

(h) if applicable, disqualifications arising from the conviction;

(i) the convicted person's identity number, or the type and number of the person's identification document;

(j) fingerprints of the person;

(k) if applicable, pseudonym and/or alias name(s).

2. The central authority shall create an index filter containing anonymised information of the types referred to in points (a), (e), (i), (j) and (k) of paragraph 1 concerning third country nationals convicted in its Member State. The central authority shall transmit this index filter, and any updates to it, to all Member States.

- ~~2a. The central authority of the convicting Member States that has created a file in the Central [Index] System shall be responsible for ensuring the immediate update of that file as well as for the immediate any alteration or deletion of the data in such a file, referred to in paragraph 1, in the Central System.~~
- ~~3. Any alteration or deletion of the information referred to in paragraph 1 shall immediately entail identical alteration or deletion of the information stored in accordance with paragraph 1 and contained in the index filter created in accordance with paragraph 2 by the central authority of the convicting Member State.~~
- ~~3a. Paragraph 1, with the exception of fingerprint data, and paragraph 2 apply equally to EU nationals who hold also the nationality of a third country.~~
- ~~4. Paragraph 2 and paragraph 3 apply with respect to the index filter also regarding third country nationals who hold the nationality of a Member State, to the extent that the information referred to in points (a), (e), (i), (j) and (k) of paragraph 1 is stored by the central authority in respect of nationals of Member States.~~
- ~~4a. The data referred to in paragraph 1 shall be transmitted to the Central [Index] System in relation to convictions handed down after (00 00 20[...]). With regard to convictions prior to this date the obligations under paragraph 1 apply to the extent that such data had already been stored in the criminal record.~~
- ~~5. Paragraph 1 shall apply to convictions handed down after [12 months after adoption]. Paragraph 2 shall apply to information already included in the criminal record on [12 months after adoption] and to information on convictions handed down after [12 months after adoption].";~~

(4) the following article is inserted:

"Article 4b

Use of the index filters Central [Index] System

- ~~1. For the purpose of identifying those Member States holding criminal record information on a third country national, the central authorities of the Member States may search the index filters transmitted in accordance with Article 4a Central [Index] System in order to match any information in these index filters with their own information of the types referred to in Article 4a(2) establish whether there is a hit or no hit. The result of a search in the index filters Central [Index] System shall may only not be used for other purposes than those referred to in Article 6 to make a request according to Article 6.~~
- ~~2. This Article applies also regarding a third country national who holds the nationality of a Member State.";¹⁰~~

¹⁰ Deletion of articles 4a and 4b: these topics will be covered in the Regulation.

(4) Article 6 is amended as follows:

- (a) ~~paragraph 2 is deleted;~~
- (b) paragraph 3 is replaced by the following:

"3. Whenever a national of a Member State 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, that central authority shall, ~~provided that the person concerned is or was a resident or a national of the requesting or requested Member State,~~ 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.

3a. Where a third country national ~~who does not hold the nationality of a Member State~~ asks the central authority of a Member State for information on his own criminal record, that central authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of this person for information and related data to be extracted from the criminal record in order to be able to include ~~such information and related data~~ **it** in the extract to be provided to the person concerned¹¹.";

(5) in Article 7, paragraph 4 is replaced by the following:

"4. When information extracted from the criminal record on convictions handed down against a national of a Member State 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 **such** information ~~on convictions handed down in the requested Member State~~ to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

4a. When information extracted from the criminal record on convictions handed down against third country nationals is requested under Article 6 for the purposes of criminal proceedings, the requested Member State shall transmit information ~~to the central authority of the requesting Member State~~ [...] on any conviction handed down in the requested Member State and on any conviction handed down in third countries and subsequently transmitted to it and entered into the criminal record.

If such information is requested for any purpose other than that of criminal proceedings, paragraph 2 of this Article shall apply accordingly.";

¹¹ For both paragraphs 3 and 3a a recital may be added saying that the requested central authority may ask the TCN to provide such information as is necessary to perform the search in the ECRIS-TCN database.

- (6) Article 9 is amended as follows¹²:
- (a) [in paragraph 1, the phrase "Article 7(1) and (4)" is replaced by "Article 7(1), (4) and (4a)";
 - (b) in paragraph 2, the phrase "Article 7(2) and (4)" is replaced by "Article 7(2), (4) and (4a)";
 - (c) in paragraph 3, the phrase "Article 7(1), (2) and (4) is replaced by "Article 7(1), (2), (4) and (4a)"]";
- (7) **Article 11 is amended as follows:**
- (a) in point c of paragraph 1, point (iv) is added:**
- "(iv) facial image."**¹³
- (b) paragraphs 3 to 7 are replaced by the following:
- "3. Central authorities of Member States shall transmit the information referred to in Articles 4 ~~and 4a~~¹⁴; ~~the index filter referred to in Article 4a~~, requests referred to in Article 6, replies referred to in Article 7 and other relevant information electronically using ECRIS and a standardised format in accordance with the standards laid down in implementing acts.
 - 4. If the mode of transmission referred to in paragraph 3 is not available and for as long as it is not available, central authorities of Member States shall transmit all information referred to in paragraph 3, ~~with the exception of the index filter~~ **transmission of data to the Central System** referred to in Article 4a, 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.
 - 5. Each Member State shall carry out the necessary technical alterations to be able to use the standardised format, referred to in paragraph 3, ~~and the index filter to~~ **transmit the data to the Central [Index] System** referred to in Articles 4a and ~~to search the Central [Index] System as referred to in Article 4b,~~ and¹⁵ to electronically transmit all information referred to in paragraph 3 to other Member States via ECRIS. It shall notify the Commission of the date from which it will be able to carry out such transmissions ~~and searches use the index filter referred to in Articles 4a and 4b."~~;

¹² Brackets have been placed because all references must be checked after the substance of the previous articles.

¹³ Considering that it is possible to add facial images to the ECRIS-TCN database, it would make sense to include this possibility also for ECRIS as an optional category, which would assist in identification of persons.

¹⁴ Now that the Central System will be in the Regulation, this should only refer to exchanges using ECRIS as such, not the ECRIS-TCN system.

¹⁵ Deletions to ensure that this paragraph only refers to ECRIS, not to the ECRIS-TCN system.

(8) the following articles is **are** inserted:

"Article 11a

European Criminal Records Information System (ECRIS)

1. In order to exchange information extracted from criminal records in accordance with this Framework Decision electronically, a ~~the~~ decentralised information technology system based on the criminal records databases in each Member State, the European Criminal Records Information System (ECRIS), is established. It is composed of the following elements:

~~(aa) a Central [Index] System composed of:~~

~~(i) a Central Unit containing two separate central databases, one for fingerprints and one for alphanumerical data;~~

~~(ii) a communication infrastructure between the Central System and the central authorities that provides an secured encrypted network enabling the central authorities to transmit their data pursuant to Article 4a encrypted to the Central [Index] System and to search the Central [Index] System pursuant to Article 4b (Central [Index] System Communication infrastructure).~~

~~(ab) a system composed of:~~

~~(a) ECRIS reference implementation interconnection software built in compliance with a common set of protocols enabling the exchange of information between Member States' central authorities criminal record databases;~~

~~(b) index filter software built in compliance with a common set of protocols enabling the central authorities to match their data pursuant to Articles 4a and 4b with that of other central authorities while ensuring full protection of personal data;~~

~~(b) a common communication infrastructure between central authorities that provides an encrypted network. (**Communication network**)¹⁶;~~

~~(ae) **The best available techniques** ECRIS shall be used to ensure the confidentiality and integrity of criminal record information transmitted to other Member States and the Central [Index] System.~~

2. ~~**Without prejudice to the provisions related to the storage of data in the Central [Index] System,** All criminal records data shall be stored solely in databases operated by the Member States.~~

3. Central authorities of the Member States shall not have direct online access to criminal records databases of other Member States.

¹⁶ This definition might be moved to the definitions article.

4. The software **ECRIS reference implementation** and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned. **eu-LISA shall support the Member States in accordance with its tasks as laid down in [Regulation XX/XXX]**¹⁷
5. The common communication infrastructure shall be operated under the responsibility of the Commission. It shall fulfil the necessary security requirements and fully meet the needs of ECRIS.
6. **eu-LISA** ~~The Commission~~ shall provide, **further develop and maintain** the **ECRIS reference implementation** software referred to in paragraph 1, ~~general support and technical assistance, including the collection and drawing up of statistics.~~
7. Each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the **installation and use of the** software referred to in paragraph 1.

The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future development of the common communication infrastructure of ECRIS, ~~together with the implementation and future development of the interconnection software and the software referred to in paragraph 1.~~”;

1. Article 11aa

Operational management

1. ~~The software and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned, without prejudice to the operation of the Central System.~~
 2. ~~The common communication infrastructure shall be operated under the responsibility of the Commission. It shall fulfil the necessary security requirements and fully meet the needs of ECRIS. This Communication infrastructure shall be the s-TESTA Communication network or any further development thereof or any alternative secure network.~~
 3. ~~The Commission shall provide the software referred to in Article 11a (1) aa (ii) and ab(b) and (c), general support and technical assistance, including the collection and drawing up of statistics.~~
 4. ~~Notwithstanding the possibility of using the European Union financial programmes in accordance with the applicable rules, each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the software referred to in Article 11a, (1) (b) and (c).~~
- ~~The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future development of the s-TESTA Communication network or any further development thereof or any alternative secure network, together with the implementation and future development of the interconnection software referred to in paragraph 1.~~¹⁸

¹⁷ This should refer to the ECRIS-TCN Regulation.

¹⁸ This article is replaced with an amended version of the COM initial proposal of article 11a.

5. ~~eu LISA shall be responsible for the initial development and operational management of the Central Unit of the Central [Index] System. The operational management shall consist of all the tasks necessary to keep the Central [Index] System functioning in accordance with this Framework Decision, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the response time of the central database~~
6. ~~eu LISA shall ensure, in cooperation with the Member States that at all times the best available and most secure technology and techniques, subject to a cost-benefit analysis, are used for the Central Unit of the Central [Index] System.~~
7. ~~The Commission shall be responsible for all tasks relating to the Central [Index] System communication infrastructure, in particular the implementation of the budget, acquisition and renewal and contractual matters.~~

Article 11ab

Recording of Data

2. ~~Only the following data shall be recorded in the Central [Index] System:~~

[...]

Articles X—Z

Data protection";

- (9) the following article is inserted:

"Article 11b

Implementing Acts

1. The Commission shall lay down the following in implementing acts:
 - (a) the standardised format referred to in Article 11(3), including as regards information on the offence giving rise to the conviction and information on the content of the conviction;
 - (b) the rules concerning the technical implementation of ECRIS, ~~the index filter referred to in Articles 4a and 4b~~ and the exchange of fingerprints [...] ¹⁹;
 - (c) any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:
 - (i) the means of facilitating the understanding and automatic translation of transmitted information;
 - (ii) the means by which information may be exchanged electronically, particularly as regards the technical specifications to be used and, if need be, any applicable exchange procedures.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 12a(2).";

¹⁹ This may require further details, including on the drawing up of statistics.

(10) the following article is inserted:

"Article 12a

Committee procedure²⁰

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.

2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.";

(11) the following article is inserted:

"Article 13a

Reporting by the Commission and review

1. By [24 ... months after implementation], the Commission shall submit a report on the application of this Framework Decision to the European Parliament and the Council **and make the report available s well as to the national parliaments**²¹. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision, including the technical implementation.

2. The report shall be accompanied, where appropriate, by relevant legislative proposals.

~~2a. eu-LISA shall draw up statistics on the work of the Central [Index] System every quarter, indicating in particular ([...] number of fingerprint data transmitted, [...] number of fingerprint data with more than one reference number, [...] the number of hits on fingerprints, [...] number of hits on alphanumeric data, [...])²².~~

3. The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics referred to in Article 11a **paragraph (2a6) and on ECRIS requests**. This report shall be published for the first time one year after the report referred to in paragraph 1 is submitted."

Article 2

Replacement of Decision 2009/316/JHA

Decision 2009/316/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for implementation of that Decision into national law.

²⁰ The suggestion has been made for the inclusion of the "no opinion clause": "Where the committee delivers no opinion, the Committee shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply". However it requires further discussion.

²¹ This is not obligation under the TFEU, but national parliaments are more and more concerned about the effectiveness of exchange of sensitive national information.

²² Provisions on statistics are included in the Regulation

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [~~12~~ ... months after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
3. Member States shall carry out the technical alterations referred to in Article 11(5) by [~~12~~ ... months after adoption].

Article 4

Entry into force

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

Article 2 shall apply from [*the date for transposition of this Directive*]

Article 5

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President

Text showing how Framework Decision 2009/315/JHA will look like if it is modified in accordance with the proposal for a Directive, as revised by the Presidency

COUNCIL FRAMEWORK DECISION 2009/315/JHA

of 26 February 2009

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 Parliament,

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 matters. 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 matters called on the Member States to simplify the procedures for transferring documents between States, using, if necessary, standard forms to facilitate mutual legal assistance.
- (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 Programme 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.
- (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 2000.

- (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 proceedings.
- (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 record 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.

- (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
Subject Matter

This Framework Decision

- (a) **defines the ways in which a convicting Member State shares information with other Member States on convictions.**
- (b) **defines obligations under this Framework Decision for the convicting Member State and for the Member State of nationality, and specifies the methods to be followed when replying to a request for information extracted from criminal records;**
- (c) **establishes a decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Record Information System (ECRIS).**

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;**
- (d) **'convicting Member State' means the Member State where a conviction is handed down;**
- (e) **'third country national' means a national of a country other than a Member State, or a stateless person as defined by the UN Convention relating to the Status of Stateless Persons, or a person whose nationality is unknown to the convicting Member State;**
- (f) **'fingerprint data' means the data relating to plain and rolled impressions of the fingerprints of all ten fingers;**
- (g) **'ECRIS reference implementation' means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS.**

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 convicting Member State shall take the necessary measures to ensure that when convictions are accompanied by information on the nationality or nationalities of the convicted person if the person is a national of another Member State or a third country national. In case the citizenship information is unknown or where the convicted person is a stateless person the criminal record shall reflect this.**
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. Whenever a national of a Member State 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, that central authority 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 include such information and related data in the extract to be provided to the person concerned.**
- 3a. Where a third country national asks the central authority of a Member State for information on his own criminal record, that central authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of this person for information and related data to be extracted from the criminal record in order to be able to include it 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 27 April 2012, 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 27 April 2012, 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 27 April 2012, and has been entered in its criminal record.

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 on convictions handed down against a national of a Member State 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 such information to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

4a. When information extracted from the criminal record on convictions handed down against third country nationals is requested under Article 6 for the purposes of criminal proceedings, the requested Member State shall transmit information on any conviction handed down in the requested Member State and on any conviction handed down in third countries and subsequently transmitted to it and entered into the criminal record. If such information is requested for any purpose other than that of criminal proceedings, paragraph 2 of this Article shall apply accordingly.

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), **(4)** and **(4a)** 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), **(4)** and **(4a)** 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), **(4)** and **(4a)** 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;
 - (iii) if applicable, pseudonym and/or alias name(s); and
 - (iv) facial image.**

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. **Central authorities of Member States shall transmit the information referred to in Article 4, requests referred to in Article 6, replies referred to in Article 7 and other relevant information electronically using ECRIS and a standardised format in accordance with the standards laid down in implementing acts.**
4. **If the mode of transmission referred to in paragraph 3 is not available and for as long as it is not available, central authorities of Member States shall transmit all information referred to in paragraph 3, 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.**
5. **Each Member State shall carry out the necessary technical alterations to be able to use the standardised format, referred to in paragraph 3, to electronically transmit all information referred to in paragraph 3 to other Member States via ECRIS. It shall notify the Commission of the date from which it will be able to carry out such transmissions.**

Article 11a

European Criminal Records Information System (ECRIS)

1. **In order to exchange information extracted from criminal records in accordance with this Framework Decision electronically, a decentralised information technology system based on the criminal records databases in each Member State, the European Criminal Records Information System (ECRIS), is established. It is composed of the following elements:**
 - (a) **ECRIS reference implementation;**
 - (b) **a common communication infrastructure between central authorities that provides an encrypted network.**

The best available techniques shall be used to ensure the confidentiality and integrity of criminal record information transmitted to other Member States.
2. **All criminal records data shall be stored solely in databases operated by the Member States.**
3. **Central authorities of the Member States shall not have direct online access to criminal records databases of other Member States.**
4. **The ECRIS reference implementation and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned. eu-LISA shall support the Member States in accordance with its tasks as laid down in [Regulation XX/XXX].**

- 5. The common communication infrastructure shall be operated under the responsibility of the Commission. It shall fulfil the necessary security requirements and fully meet the needs of ECRIS.**
- 6. eu-LISA shall provide, further develop and maintain the ECRIS reference implementation referred to in paragraph 1.**
- 7. Each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the installation and use of the software referred to in paragraph 1.**
The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future development of the common communication infrastructure of ECRIS.";

Article 11b

Implementing Acts

- 1. The Commission shall lay down the following in implementing acts:**
 - (a) the standardised format referred to in Article 11(3), including as regards information on the offence giving rise to the conviction and information on the content of the conviction;**
 - (b) the rules concerning the technical implementation of ECRIS-and the exchange of fingerprints;**
 - (c) any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:**
 - (i) the means of facilitating the understanding and automatic translation of transmitted information;**
 - (ii) the means by which information may be exchanged electronically, particularly as regards the technical specifications to be used and, if need be, any applicable exchange procedures.**
- 2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 12a(2).**

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 2001⁸.
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 in relations between Member States which have taken the necessary measures to comply with this Framework Decision and ultimately with effect from 27 April 2012 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.
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.

Article 12a

Committee procedure

- 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.**
- 2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.**

Article 13

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 27 April 2012.
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 27 April 2015, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

Article 13a

Reporting by the Commission and review

- 1. By [... months after implementation], the Commission shall submit a report on the application of this Framework Decision to the European Parliament and the Council and make the report available to the national parliaments. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision, including the technical implementation.**
- 2. The report shall be accompanied, where appropriate, by relevant legislative proposals.**
- 3. The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics on ECRIS requests. This report shall be published for the first time one year after the report referred to in paragraph 1 is submitted.**

Article 14

Entry into force

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 26 February 2009.

ANNEX

Form referred to in Articles 6, 7, 8, 9 and 10 of the Council Framework Decision 2009/315/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:

(b) Information on the identity of the person concerned by the request [\(1\)](#):

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:

(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.

[\(i\)](#) To facilitate the identification of the person as much information as possible is to be provided.
