Bundesrat Document 42/16 (Decision)
18.3.16

Decision
of the Bundesrat

Proposal for a Directive of the European Parliament and of the Council 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

COM(2016) 7 final; Council Doc. 5438/16

At its 943rd session on 18 March 2016, the Bundesrat adopted the following opinion in accordance with Sections 3 and 5 of the Act on Cooperation between the Federation and the *Länder* in European Union Affairs (EUZBLG):

1. The Bundesrat welcomes the Commission's efforts to make criminal record information about third country nationals who are not EU citizens available through a practicable and efficient procedure.
2. It does not consider that making it generally compulsory to obtain and transmit the names of the parents of the convicted person, the place of the offence, the identity number or the type and number of the person's identification document and the fingerprints of every convicted third-country national is a necessary or proportionate way to improve the exchange of available criminal record information. Storing information about the parents is contrary to the principle of data minimisation, and in many cases such information cannot be verified. Storing information about the place of the offence, which is not to be included in the anonymised index-filter, and which, in the case of offences for which the place of perpetration and the place of result are not the same, is determined by an arbitrary choice, is irrelevant to the search for further criminal record information. Recording the identity number or the type and number of identity document of the offender - where this is even possible - will not help with the search for further criminal record entries. It is by no means guaranteed that this information will become known in a new proceeding, or that it will

correspond to the information previously recorded, if forged or more recent documents are produced. Retrospectively identifying or reviewing the above categories of information after final convictions have been handed down by the judicial authorities would involve a disproportionate administrative burden. Another reason to oppose the expansion of the personal data to be recorded is that it would weaken the keys to be created for the index-filter. Every spelling error in the name of a parent or error in the recording of an identity document number would either prevent a hit being found or increase the number of false hits if the search terms are expanded to include fuzzy matches.

3. In the Bundesrat's opinion, the investment of time and money in collecting, storing and above all comparing fingerprints would be out of all proportion to the stated purpose, particularly given the possibilities that already exist, and can be further developed, for the Member State authorities concerned to identify relevant personal data. In further consultation on this matter, there must therefore be a thorough assessment of whether using the expertise and skills which the Member States' authorities already have at their disposal for establishing identity, including by means of fingerprints, as well as expanding on the existing and technically advanced identity files, would be sufficient for the purposes specified in the proposal, rather than setting up separate judicial files for the adequate identification of the personal data of third country nationals including their previous personal data and aliases.
4. Moreover, the Bundesrat considers that a general requirement to store the fingerprints of third country nationals in a central register is a disproportionate interference with the general right to self-determination regarding personal data and a breach of the principle of equal treatment under Article 21 of the Charter of Fundamental Rights and Article 3 of the Basic Law. The disproportionate nature of this interference and the unequal treatment can be justified only if, at the time of the conviction, there is a potential risk of having no other ways of identifying the perpetrator if another offence is committed in future, or if the gravity of the crime perpetrated takes precedence over the data protection interests of the person concerned, which are constitutionally protected. In this context, existing fingerprint data should first be

consulted, and repeat collection of these data for storage in the central register should occur only in exceptional cases.

5. The Bundesrat is submitting this opinion directly to the Commission.