# The European Criminal Records Information System (ECRIS) creates new risks for the protection of personal data.

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On June 2007, the Council reached a political agreement on a project for a directive on the organization and the content of exchanges between member states of information extracted from criminal records. On May the 27th, 2008, the Commission presented a proposal for a Council decision on the establishment of the European criminal records information system (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA. On October the 9th, 2008, the European Parliament adopted the report on this proposal and submitted amendments to the text of the Commission. The Council has now to elaborate the definitive version of the decision on ECRIS. Yet this decision plans the elaboration of a computerized system that facilitates the exchange of information on past criminal convictions between member states. The AEDH is preoccupied with the implementation of this system as it carries new risk for the protection of personal data.

As emphasized by Peter Hustinx, the European data protection supervisor, in a recent position paper, "the processing of personal data relating to criminal convictions is of a sensitive nature". Yet, nowadays, no global legal framework guarantees the prevention of sensitive data and private life from police cooperation.
The AEDH considers as necessary and urgent that efficient standards regulate the information-exchange system, in order to provide guarantees to each EU resident regarding protection of personal data and privacy.

The decision must therefore make provision for and organize explicitly:

- A reliable technical infrastructure and an efficient control of the system, a better legal safety.
- Reliability of the exchanged data
- The right to privacy

**A reliable infrastructure and an efficient control of the system, a better legal safety, under the responsibility of the Commission.**

ECRIS does not establish a global system of criminal records, but organizes an interaction between each member state's criminal records. Each state will then be responsible for its own national data base and for the efficiency of the information exchange, and therefore responsible for the interconnection software. However, the risk of a different use of the system from a member state to the other jeopardizes the efficiency of information exchanges. As well, the sharing out of responsibilities between the member states won't be done by itself. The safety of the network is then not immediately guaranteed. **The Commission must be responsible for the interconnection software of ECRIS in order to assure the harmonization of the utilization of the network and the coordination of the control of the exchanges.**

Even if it is not a global system, ECRIS needs a common infrastructure, provided by the Commission. **The responsibility of the Commission for the common infrastructure must be therefore clearly defined in the decision.** The AEDH is also deeply concerned about the complete lack of protection of personal data. Indeed, the legal basis of ECRIS is title IV of the EU Treaty (i.e. the third pillar). No community legal framework is therefore meant to apply to activities led within this system. It would be inconceivable that the Council don't modify its decision proposal in order **to guarantee the implementation of the regulation 45/2001** on the processing of personal data extracted from criminal records.
These clarifications are essential if we want to guarantee the legal safety of European citizens.

**The reliability of exchanged data: the foundation of a fair justice.**

An increasing control should allow the exchange of **perfectly updated and correctly translated data**. The resort to automatic translators must be very clearly specified and delimited. It can lead to a quicker mutual understanding and therefore increase the efficiency of the network. But, it cannot affect the quality of the information transmitted nor be ambiguous.
**The AEDH worries about the common table of offence categories and the latitude the judicial authorities will then have for the interpretation.** The categories are wide, and if all the elements needed to improve the comprehension of the offence are not transmitted, the risk to have a defendant condemned more severely on the legal basis of misled criminal records is higher. The reliability and the precision of the data are essential in order to assure fair justice for all Europeans.

**The limitation of data transmission for the respect of the right to privacy.**

Personal data transmissions should be restricted to the ones that are essential for the good justice process. All the information registered under national criminal records is not meant to be transmitted. Article 11 of the framework decision supports this statement as it makes a distinction between obligatory information and optional information. **But the principles of necessity and proportionality, which narrows the domain of transmissible data, must be explicitly recalled in the decision and be indicated in the form the national authorities will have to fill out.** Otherwise, the transmission of personal data, not strictly necessary to the purpose of the system, would be a breach of privacy of the defendant or of his relatives (transmission of the family name and address for instance).

ECRI can only support a better process of the European justice only if it does not constitute by itself an infringement of the citizen's fundamental rights. **Facing the multiplication of data bases and exchanges of personal information, we need to be watchful, today more then ever.**

**The respect of privacy is a fundamental right. ECRIS decision must guarantee the protection of personal data.**

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**Note to editors:**

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