



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 September 2011

12151/11

LIMITE

**COPEN 165
JURINFO 54
EJUSTICE 59**

NOTE

from:	Presidency
to:	Working Party on Co-operation in Criminal Matters (COPEN)
No. prev. doc.:	9300/1/11 COPEN 84 JURINFO 21 EJUSTICE 34
Subject:	Draft Manual for practitioners - ECRIS

A first exchange of views on the initial draft on a non-binding manual for practitioners, setting out the procedure for the exchange of information through "ECRIS" - the European Criminal Records Information System - took place at the meeting of the Working Party on Co-operation in Criminal Matters (COPEN) on 9 March 2011. A second meeting in COPEN took place on 19 May 2011 followed by a short discussion on 24 June, where delegations had an exchange of views on the draft of the manual on the basis of 9300/11 COPEN 84 JURINFO 21 EJUSTICE 34.

Delegations stressed in particular the need for a user-friendly manual, not too long and detailed, and to avoid repeating what is already in the Business Analysis, Technical Specifications, Council (Framework) Decisions, etc, and concentrating on filling the gaps. Following this, the manual has been re-worked to reflect these and other comments received before and after the 24 June COPEN meeting. Apart from being re-worded, the text has been substantially shortened. Some sections have been deleted altogether, albeit at times with smaller parts being carried over into other sections.

The next COPEN meeting dedicated to ECRIS will take place on 20 September 2011 where the new version of the manual will be discussed.

Following comments received, some outstanding issues that the Presidency would like to discuss during the meeting include:

- Deletion / rehabilitation
- "open" / "other" category of offences
- links to documentation on the technical specifications of ECRIS
- the concept of "decision" in the context of the information of sanction

The Presidency invites delegations to scrutinize this new version of the draft manual before the next COPEN meeting dedicated to ECRIS on 20 September.

Comments concerning the drafting, which delegations wish to make, are warmly welcome. In view of the changes made, and the complexity of the document, delegations are kindly requested to submit comments in writing in advance of the next meeting, (e-mail to the attention of Peter BRÖMS, Secretariat DGH 2B (peter.broms@consilium.europa.eu)).

ECRIS MANUAL

TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	ECRIS - GENERAL INFORMATION	7
2.1.	Exchange of convictions	7
2.2.	Requests	9
2.3.	Replies.....	10
2.4.	Data protection.....	12
2.5.	Cooperation and helpdesk.....	13
3.	ECRIS – COUNTRY SPECIFIC INFORMATION	14
3.1.	Central Authorities (addresses, e-mails)	14
3.2.	Modalities of identification of offenders.....	15
3.3.	Member States' approach concerning the usage of languages in the ECRIS framework	15
3.4.	Procedures applied to requests for any other purposes than criminal.....	16
3.4.1.	Requests for administrative purposes	16
3.4.2.	Requests from individual persons.....	17
3.4.3.	Requests for employment vetting	17
3.4.4.	Other information	17
3.5.	Copies of convictions – addresses of authorities	18
3.6.	Common understanding of annexes A and B of Decision 2009/316/JHA – National Tables	18

ECRIS MANUAL FOR PRACTITIONERS

1. INTRODUCTION

Information on convictions has been exchanged through systems set up by the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, and by EU-instruments developing the mutual legal assistance system, for instance the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29 May 2000) which has supplemented the system established by the 1959 Convention. In November 2005 the Council adopted the decision on the exchange of information extracted from criminal record¹. It was designed to improve the systems established in the 1959 convention, chiefly by speeding up transmission times. This decision was repealed by (FD) 2009/315/JHA (Article 12(4)).

The aim of this publication is to provide, according to recital 16 and Article 6(2)(a) of the Council Decision 2009/316/JHA, a non-binding manual for practitioners. It sets out the procedure for the exchange of information through ECRIS, the European Criminal Records Information System, a decentralised information technology system, set up to facilitate the exchange of data extracted from criminal records and to make the shared information more understandable, addressing in particular the modalities of identification of offenders, as well as the common understanding of the categories of offences and sanctions.

¹ Council Decision 2005/876/JHA of 21 November on the exchange of data extracted from the criminal record.

ECRIS is established on the basis of below-mentioned legal acts :

- Council Framework Decision (FD) 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.²
- Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA³ of 6 April 2009.

FD 2009/315/JHA established a mechanism for improving the circulation of information on convictions in the European Union. The FD has also provided for the establishment of a computerised exchange of information on convictions between Member States, set up in the ECRIS Decision 2009/316/JHA.

ECRIS will allow automated exchange of data between central criminal records and creates an obligation for Member States to use common tables (offences and sanctions) to transmit information on convictions. The purpose of ECRIS is to enable the effective and systematic exchange between the competent authorities of the Member States of information extracted from criminal records in such a way that would guarantee its common understanding and the efficiency of using this information both within the context of criminal proceedings and outside the criminal proceedings

The information system will not allow direct access to Member States' criminal records, but will speed up the transmission of notifications on convictions requests for information on convictions and replies to requests.

² OJ L 93, 7.4.2009, p. 23.

³ OJ L 93, 7.4.2009, p. 33.

The Manual shall address in particular the modalities of identification of offenders, as well as records the common understanding of the categories of offences and penalties and measures. Article 5(2) of Council Decision 2009/316/JHA foresees that Member States shall update to the General Secretariat of the Council the list of national offences and the list of types of sentences, possible supplementary penalties and security measures, as well as possible subsequent decisions modifying the enforcement of the sentence as defined in national law.

Due to the size of the Manual only an electronic version of the Manual is envisaged. The Manual will be available at the following platforms: CIRCA (Communication & Information Resource Centre Administration), E-justice, and at the website of the ECRIS support programme (run by the United Kingdom). Such format would allow for efficient updating of the document and would allow for the Manual to be easily accessible to practitioners concerned.

Any suggestions on the text of this manual and any updated data should be sent to the Council of the EU, General Secretariat, Unit DG H 2B (Fundamental Rights and Judicial Cooperation in Criminal Matters), Rue de la Loi 175, B-1040 Brussels (e-mail: secretariat.criminal-law@consilium.europa.eu) or to the European Commission, DG JLS, Unit for Judicial Cooperation in Criminal Matters, European Commission, B-1049 Brussels.

2. ECRIS - GENERAL INFORMATION

2.1. Exchange of convictions

The Council ECRIS Framework Decision Stipulates in Articles 4, 5, 11 the procedure of exchange of convictions.

The convicting Member State shall inform the Central Authority of the Member State of the convicted person's nationality on the convictions that have been handed down within its territory against this person, as well as of any subsequent alterations or removal of information affecting the information on these convictions. The FD stipulates the minimum set of transmitted personal data as the following: full name, date of birth, place of birth (town and state), gender, nationality and - if applicable – previous name(s), unless in particular case these data are not known.

As understanding of foreign convictions is one of the key issues of ECRIS, Member States shall provide an information (convictions, its subsequent alterations or deletions) in the most understandable way for end users.

The Member State of nationality should store received conviction for the purposes of retransmission, therefore a key issue in the whole process of exchange of notifications is to identify, by the Member State of nationality, with absolute certainty one single person matching the identification data provided in the notification message. Otherwise the Member State of the person's nationality should request additional identification data from the convicting Member State.

After receiving a conviction Member State of nationality has a several options to chose :

1. If data transmitted are correct the Member State should store the notified conviction information for the purpose of retransmission and inform the convicting Member State that the notification has been correctly received, but that no matches have been found.
2. Central Authority can ask for additional personal data:
 - If the person found is not a national of the Member State, or rather when no match has been found during the search and the Member State receiving the notification information has the absolute certainty that the convicted person either does not exist or is not a national of the country, the receiving Member State decides not to store the notified conviction information for the purpose of retransmission and informs the convicting Member State of the problem.
 - If multiple persons match the identification data, and the central authority does not manage to narrow down univocally and without ambiguity the list of matches to one single person, one of two routes should be followed. Either the receiving Member State should store the notified conviction information for the purpose of retransmission and informs the convicting Member State that the notification has been correctly received, or the process leads to informing the convicting Member State that the notification could not be processed and why. The notified information is not kept and the receiving Member State sends back a “Notification Problem” message indicating to the convicting Member State that the notified information could not be processed because multiple persons matching the identification criteria have been found.
 - If the person has deceased the central authority informs the convicting Member State of the fact and is entitled not to store such conviction for retransmission.

- If the person matching the fingerprints received does not correspond to the nominal identity provided, the central authority informs the convicting Member State of the fact and is entitled not to store such conviction for retransmission.

Depending on the Member State subsequent alteration can be sent in “history” mode – containing all previous alterations of the conviction or in “snapshot” mode – presenting the actual state of conviction.

2.2. Requests

Article 6 of the Council ECRIS Framework Decision sets up the procedure of requests for information. Annex attached to this decision presents the form of request.

According to the FD requests for information on past convictions can be submitted for criminal purposes but also for any other purpose. In cases where requests are issued for any other purposes than criminal, the requested Central Authority replies in accordance with its national law.

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 of the FD 2009/315/JHA concerning the paper-based versions. Using ECRIS, the requests must be sent through the electronic channel and according to the technical specifications of ECRIS.

The request message is constituted of the following elements:

- information on the requesting authority;
- identification information of the person for which convictions are to be extracted from the criminal records register, if any;
- the purpose of the request
 - 1) criminal proceedings
 - 2) other than criminal proceedings⁴
 - requests from an employer
 - requests from a judicial authority
 - requests from an administrative authority
 - requests from the person concerned
 - additional information such as the case number, the consent of the person referred to in the request, [if such consent is necessary according to national law], the urgency of the request, miscellaneous remarks, etc.

To facilitate the identification of a person, as much information as possible is to be provided. Before submitting the request, it should be checked whether the Member State from which information is requested requires specific information⁵, but also which procedures are used for the verification of an identity, e.g. national databases of inhabitants, fingerprints, etc.

2.3. Replies

Article 7 of the Council ECRIS Framework Decision lists enumerative types of convictions that should be issued as a response to the different types of requests.

⁴ See chapter 3.4.

⁵ See chapter 3.2.

All replies from the central authority of a Member State concerning the paper-based versions shall be submitted using the form set out in the Annex of the FD 2009/315/JHA. Using ECRIS, the replies must be sent through the electronic channel and according to the technical specifications of ECRIS

After receiving a request a Member State has a several options to chose from when responding :

1. If request is correct requested Central Authority shall issue a reply.
2. If, in accordance with its national law, the request is not considered valid the Central Authority is entitled to send request denial (only in case of requests for other purposes than criminal).
3. The Central Authority can ask for additional personal data or details of purpose of a request.
 - If the person is not a national of the Member State (i.e. the requested Member State has the absolute certainty that the person is not one of its nationals or that he/she does not exist), the request shall be rejected.
 - If the personal data transmitted in the request does not allow the Member State to identify unambiguously a person (multiple persons have been found on the basis of personal data), the request shall be rejected.
 - If the person has deceased the request shall be rejected.
 - If the person matching the fingerprints received does not correspond to the nominal identity provided in the request message, the request shall be rejected.

Deadlines for replies are specified in Article 8 of FD 2009/315/JHA. Deadlines should be based on the requested Member State's own calendar (taking into account public holidays, office closing days, etc.). The technical specifications provided for the use of ECRIS stipulate that the deadline for any requests will be counted automatically on the basis of the calendar of the requested Member State and transmitted to the requesting Member State.

Requests from a central authority should be answered as soon as possible. In any event the deadline for transmitting a reply should not exceed ten working days counting from the date the request was received. If the Member State asked to provide the information needs additional information to identify the person involved in the request, it shall consult the requesting Member State immediately. The deadline of ten working days then counts from the date the additional information is received.

Replies to a request from a person concerned should be given within a deadline of 20 working days from the date the request was received.

2.4. Data protection

Conditions for the use of personal data are regulated in Article 9 of FD 2009/315/JHA. Personal data provided under Article 7(1) and (4) of FD 2009/315/JHA *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.

Personal data provided under Article 7(2) and (4) of FD 2009/315/JHA *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.

These rules apply with one exception: the data may be used by the requesting Member State for preventing an immediate and serious threat to public security.

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 is subject to the same usage limitations as those applicable in a requesting Member State. 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.

2.5. Cooperation and helpdesk

To improve the operational effectiveness performance of the system and to elaborate the future versions of the ECRIS technical specifications meetings of the ECRIS workgroup should continue to be chaired by the specific Member State ensuring the Presidency of the Council of the European Union as often as important matters arise from the monitoring of ECRIS.

According to Art. 3 of the Council Decision the European Commission provides general support and technical assistance of ECRIS and may decide on organization of expert meetings devoted to ECRIS matters. Such meetings should be organized as often as important matters arise from monitoring of the system.

In line with Council Decision 2009/316/JHA, Article 3(7) general support and technical assistance in the framework of ECRIS is provided by the European Commission. Regarding that Commission provides Helpdesk to support Member State in operational exchange of information.

3. ECRIS – COUNTRY SPECIFIC INFORMATION

Bearing in mind that the effective exchange of information through ECRIS requires a common understanding of some procedures used by particular Member States as well as the setting up of Central Authorities and rules of cooperation between Member States after launching ECRIS this section aims at detecting and informing on the main issues that relates to the whole system. The section is divided into different topics that play important roles within ECRIS.

3.1. Central Authorities (addresses, e-mails)

According to Article 3 of the Council ECRIS Framework Decision, Member States are obliged to designate a central authority or authorities. The central authority of each Member State ensures the exchange of information on conviction in the framework of the system.

Each Member State shall inform the General Secretariat of the Council and the Commission of the central authority or authorities designated. The General Secretariat of the Council shall notify the Member States of this information. As practise of cooperation under regulations provided for in Council Decision 2005/876/JHA proved it is reasonable to indicate in the Manual contact details of each Central Authority.

(Contact details of Central Authorities will be presented according to the below mentioned schema)

Member State :

Central Authority

- name:
- address :
- telephone
- e-mails
- contact persons (for technical and legal issues) - if it is possible to add such information

3.2. Modalities of identification of offenders

In line with Article 6(2)(b)(i) of the Council Decision each Member State shall present a set of data which is used in the identification process.

(Details of personal data used in the identification process will be presented as below)

Member State

- Enumerative lists of data that are used to identify an offenders
- Registers that are used to identify a person, for instance Criminal record, National records of citizens

3.3. Member States' approach concerning the usage of languages in the ECRIS framework

As it is envisaged in Article 10 of the Council Framework Decision the requested Member State shall reply either in one of its official languages or in any other language accepted by both Member States. The question arises when a response to a request will contain a foreign notification. Such a foreign notification could be, before transmission, translated to official language of the requested Member State then transmitted to the requesting Member State.

However, the wording of the Council ECRIS Framework Decision allows the Member States to decide bilaterally in particular cases on the language that will be used in a particular response. Thus it is possible to send foreign notification as a response to a request in the original language of the convicting Member State, according to the Member States decisions listed below.

(Member States position regarding usage of language)

Member State:

3.4. Procedures applied to requests for any other purposes than criminal

According to Article 7 of the Council ECRIS Framework Decision responses submitted for any other purposes than criminal are issued in line with national law of the requested member State. To facilitate the exchange of such data information that concerns basic national rules on issuing responses to requests other than for criminal purposes is presented below.

(Member State should contribute to below requested question)

Member State :

3.4.1. Requests for administrative purposes

1. Is it possible to issue a information for administrative purposes?
2. Should request specify the detailed purpose of the request for which the information is sought?
3. Do you require the consent of the person concerned in order to release information about their criminal convictions in such cases?

3.4.2. *Requests from individual persons*

1. What is the procedure of issuing information?
2. Should request specify the purpose of the request for which the information is sought?
3. What is the cost of issuing information?
4. Do you require documents or their copies?
5. Procedure that relates to art. 6.3 of the Framework Decision

3.4.3. *Requests for employment vetting*

1. Is it possible to issue a information for employment vetting?
2. What is the procedure of issuing information?
3. Should request specify the detailed purpose of the request for which the information is sought?
4. What is the cost of issuing information?

3.4.4. *Other information*

Any other information about the national law, regulations or practice of Member State which would assist a requesting authority in making a request for information extracted from a criminal record.

Please note, neither Decision 2009/316/JHA, nor FD 2009/315/JHA establishes any obligation to exchange information about non-criminal rulings.

3.5. Copies of convictions – addresses of authorities

FD 2009/315/JHA foresees the possibility to provide copies of the original convictions in individual cases⁶. This is not supported by the electronic format defined for the ECRIS software system. If the originals are required, these need to be transmitted in parallel to the ECRIS notification message and through other means (i.e. e-mail, fax). Member States need to indicate under which conditions the original copies would be required.

(*Contact details of Authorities dealing with copies of convictions*)

Member State :

Authority

- name:
- address:
- telephone:
- e-mails:

3.6. Common understanding of annexes A and B of Decision 2009/316/JHA – National Tables

In line with Article 5 of the Council ECRIS Decision Member States are requested to transmit lists of national offences and sanctions assigned to particular codes from Annexes A and B of the Council Decision. These lists are attached to the Manual. Member States could also transmit short description of the consecutive elements of offences and sanctions.

Provided tables are attached as annexes to the Manual.

⁶ FD 2009/315/JHA, Article 4(4).

MEMBER STATE:

A - TABLE OF OFFENCES

B - TABLE OF SANCTIONS

(Member States are requested to provide above mentioned information)
