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Subject:	Draft Manual for practitioners - ECRIS

A first exchange of views on the initial draft of 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 COPEN meeting took place on 19 May 2011 followed by a brief discussion on 24 June. On 20 September, a new version was discussed in COPEN, based on document 12151/11 COPEN 165 JURINFO 54 EJUSTICE 59. The revised draft non-binding manual for practitioners, document 12151/1/11 REV 1 COPEN 165 JURINFO 54 EJUSTICE 59, was further discussed on 25 October. The main issues which were examined are set out below:

1. The question of which platform to use for publishing the manual was raised. In this regard the UK delegation referred to the need for a webpage dedicated to ECRIS Support programme allowing more interactive modus operandi as the best option.

2. The Spanish delegation presented a proposal for the best practise regarding the issue of updating the notification of convictions transmitted between the Member States before the entering into force of the ECRIS Decision and the Framework Decision. Although the proposal was welcomed as an interesting one, several Member States indicated that implementation of this proposal could cause administrative burden, it was said that such option should be added to the “Business Analysis”, the Presidency expressed the view that at this point there is no need to include it in the manual as any doubts can be resolved by dialogue between the Member States.

3. Several Member States expressed their concerns regarding the use of languages for transmitting the information on convictions. Some Member States supported the proposal to reduce the number of translations and thus avoid loss of information.

4. It was clarified that the helpdesk should be contacted with a view to follow up to the implementation of the ECRIS. The Commission will ensure assistance in respect of technical issues. Legal issues will continue to be dealt with at COPEN meetings.

The delegations were reminded that they should provide their national contributions to the country-specific part of the non-binding manual for practitioners. The deadline for the contributions regarding the national tables was set to 18 November.

Delegations are invited to scrutinise the current version of the draft non-binding manual for practitioners. Delegations are invited to send in their contributions by 30 November COB to the General Secretariat of the Council to the attention of **DELETED**

ECRIS MANUAL

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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 such as 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 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 (Article 12(4)).

The aim of this publication is to provide, according to recital 16 and Article 6(2)(a) of Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA² of 6 April 2009, a non-binding manual for practitioners³. It sets out the procedure for the exchange of information through the European Criminal Records Information System (ECRIS), 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 2005 on the exchange of data extracted from the criminal record.

² OJ L 93, 7.4.2009, p. 33.

³ The term "practitioners" means central authorities designated in accordance with the Framework Decision and end users (judges, prosecutors, police etc.)

ECRIS is established on the basis of the following legal acts :

- 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 States⁴ – hereinafter Framework Decision.
- Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA⁵ – hereinafter ECRIS Decision.

The Framework Decision established a mechanism for improving the circulation of information on convictions in the European Union. This act has also provided for the establishment of a computerised exchange of information on convictions between Member States, set up in the ECRIS Decision.

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

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

⁴ OJ L 93, 7.4.2009, p. 23.

⁵ OJ L 93, 7.4.2009, p. 33.

The Manual addresses in particular the modalities of identification of offenders, as well as recording the common understanding of the categories of offences and penalties and measures. Article 5(2) of the ECRIS Decision provides that Member States shall send the General Secretariat of the Council updated information concerning their lists of national offences and their lists of types of sentences, possible supplementary penalties and security measures, as well as possible subsequent decisions modifying the enforcement of the relevant sentences as defined in national law.

It is out of discussion that not every issue that could affect efficiency of exchange of data is covered in this document. Having this in mind Central Authorities are encouraged to maintain contacts and cooperation with Central Authorities of other Member States. Such approach will facilitate efficiency of ECRIS and will allow to solve faster possible problems that could occur during exchange of data.

Given its size, the Manual will only be produced in an electronic version. The Manual is available on the following platforms⁶: EUR-Lex, CIRCA⁷ (Communication & Information Resource Centre Administration), and on the website of the ECRIS support programme (run by the United Kingdom). This format allows for efficient updating of the document and allows for the Manual to be easily accessible to practitioners concerned.

Any suggestions concerning the text of the 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.

⁶ The Manual for Practitioners is available on following web addresses :

- <http://eur-lex.europa.eu/pl/index.htm>
- <http://circa.europa.eu/>
- Website of ECRIS support programme (?)

⁷ The access is limited.

1.1. Exchange of information on convictions

The Framework Decision sets out the procedure for exchanging information on convictions in Articles 4, 5 and 11 .

The convicting Member State shall inform the Central Authority of the Member State of the convicted person's nationality of any 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 Framework Decision 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 individual cases, such information is not known.

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

The Member State of nationality shall store information it has received concerning convictions for the purposes of retransmission. A key issue in the whole process of exchanging notifications is ~~thus~~ for the Member State of nationality to identify with absolute certainty one single person matching the identification data provided in the notification message. Otherwise the Member State of the person's nationality is encouraged to request additional identification data from the convicting Member State.

After receiving information on a conviction the Member State of nationality:

1. shall store the notified conviction information for the purpose of retransmission and inform the convicting Member State that the notification has been received
2. may ask for additional personal data if data previously received does not make it possible to identify a convicted person without ambiguity
3. moreover, in the following cases the Central Authority is entitled to reject a received notification:

(a) If the person found is not a national of the Member State. Such a situation occurs when a Member State receiving the notification information is able to check whether the convicted person exists and is a national of this Member State. In this case the Member State decides not to store the notified conviction information for the purpose of retransmission and informs the convicting Member State of the problem.

(b) 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. In this case one of two routes should be followed. The receiving Member State should either store the notified conviction information for the purpose of retransmission and inform the convicting Member State that the notification has been correctly received, or inform 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 cannot be processed because multiple persons matching the identification criteria have been found.

(c) If the person is deceased. In this case the Central Authority informs the convicting Member State of the fact and is entitled not to store such conviction for retransmission.

d) If the person matching the fingerprints received does not correspond to the nominal identity provided. In this case the Central Authority which received the fingerprints informs the convicting Member State of the fact and is entitled not to store such conviction for retransmission. The exchange of fingerprints is optional according to Framework Decision⁸, which means that this case will be used only by these Member States that in the framework of ECRIS exchange fingerprints.

Depending on the Member State, subsequent alterations can be sent in “snapshot” mode or in “history” mode. The “snapshot” mode presents the current status of the conviction, i.e. the status resulting from subsequent changes. Snapshot notification contains the most up-to-date information about one conviction. The “history” mode contains the original conviction and all subsequent alterations to this one conviction. History notification includes all subsequent alterations to the conviction that have occurred.

1.2. Requests

Article 6 of the Framework Decision lays down the procedure for requests for information. The request form is set out in Annex to that Decision.

According to the Framework Decision requests for information on past convictions may be submitted for criminal purposes but also for any other purpose. In cases where requests are issued for any other purposes, the requested Central Authority replies in accordance with its national law⁹.

⁸ Article 11(1)(c)(ii) of the Framework Decision. Fingerprints are currently exchanged by the following Member States:

⁹ See chapter 3.4.

Requests in the context of ECRIS shall be sent through electronic channels and in accordance with the ECRIS technical specifications. In exceptional cases¹⁰ where a paper version is used, requests from the Central Authority for information extracted from the criminal record shall be submitted using the form set out in the Annex to the Framework Decision.

The request message is constituted of the following elements:

- 1) information on the requesting authority;
- 2) identification information of the person for whom convictions are to be extracted from the criminal records register, if any;
- 3) the purpose of the request
 - (a) criminal proceedings
 - (b) other than criminal proceedings¹¹, for instance¹² :
 - requests from an employer
 - requests from a judicial authority
 - requests from an administrative authority
 - requests from the person concerned
- 4) 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 information¹³, but also which procedures are used for the verification of an identity, e.g. national databases of inhabitants, fingerprints, etc.

¹⁰ See art. 11(5) of the Framework Decision.

¹¹ See chapter 3.4.

¹² Full list of purposes derives from technical specification of ECRIS (ECRIS-BA-Common Reference Tables) and these purposes are detailed extensions of general purposes set up in Annex A to the Framework Decision.

¹³ See chapter 3.2.

1.3. Replies

Article 7 of the Framework Decision lays down the procedure for issuing replies to requests received.

Replies in the context of ECRIS shall be sent through electronic channels and in accordance with the ECRIS technical specifications. In exceptional cases¹⁴ where a paper version is used, replies shall be submitted using the form set out in the Annex to the Framework Decision.

After receiving a request the Member State:

- 1) shall issue a reply if the request fulfils the necessary requirements.
- 2) may ask for additional information if personal data or the purpose given for the request are not sufficient for a reply to be issued.
- 3) may send a request denial stating that the request for purposes other than criminal proceedings cannot be dealt with due to national legal provisions.
- 4) moreover, in the following cases the Central Authority may reject the request:
 - a) If the personal data transmitted in the request does not allow the Member State to identify a person unambiguously (multiple persons have been found on the basis of personal data)

¹⁴ See footnote 10.

b) If the person concerned in the request is deceased

c) If the person matching the fingerprints received does not correspond to the nominal identity provided in the request message. The exchange of fingerprints is optional according to Framework Decision¹⁵, which means that this case will be used only by these Member States that in the framework of ECRIS exchange fingerprints.¹⁶

Deadlines for replies are specified in Article 8 the Framework Decision. 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 is counted automatically on the basis of the calendar of the requested Member State and transmitted to the requesting Member State.

Requests for criminal purposes and for purposes other than criminal¹⁷ 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 concerned¹⁸ should be given within a deadline of 20 working days from the date the request was received.

¹⁵ Article 11(1)(c)(ii) of Framework Decision.

¹⁶ Please be aware that in line with Article 11(1)(c)(ii) of the Framework Decision exchange of fingerprints is optional.

¹⁷ Article 6(1) of the Framework Decision

¹⁸ Article 6(2) of the Framework Decision.

1.4. Data protection¹⁹

Conditions for the use of personal data are regulated in Article 9 of the Framework Decision. Personal data provided under Article 7(1) and (4) of this act *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 the Framework Decision *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 criminal proceedings, may be further used by that third country only for the purposes of criminal proceedings.

1.5. Helpdesk

In case of any problem (legal, technical, operational) that refers to functionality of ECRIS practitioners should contact with respective persons from their Central Authority.

¹⁹ See recital 13 of the Council Decision, recital 18 of the ECRIS Decision.

If such problem requires additional discussion on EU level Central Authority should contact with relevant EU bodies : Council of the European Union, European Commission, Presidency of the Council of the European Union.

According to Article 3(7) of the ECRIS Decision, general support and technical assistance in the framework of ECRIS is provided by the European Commission. The Commission provides a helpdesk to assist Member States with the operational exchange of information.

Contact details:

European Commission : e-mail :@ ec.europa.eu, telephone :

In case of operational problems Member State may contact with ECRIS Support Programme run by United Kingdom.

Contact details :

ESP : e-mail :....., telephone:.....

2. 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 for cooperation between Member States once ECRIS has been launched, this section aims to provide information on the main issues relating to the system as a whole. The section is divided into different topics that play an important part within ECRIS.

2.1. Central Authorities (addresses, e-mails)

According to Article 3 of the 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 convictions 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. Experience of cooperation under Council Decision 2005/876/JHA has shown, it is advisable to indicate in the Manual contact details of each Central Authority.

(Contact details of Central Authorities will be presented in line with the following model)

Member State:

Central Authority

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

2.2. Modalities of identification of offenders

In line with Article 6(2)(a) of the ECRIS 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 are presented below)

Member State

- Enumerative lists of data that are used to identify an offender.
- Registers that are used to identify a person, for instance criminal record, national database of inhabitants.

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

Article 10 of the Framework Decision regulates the language regime that is used for exchanging convictions.

Article 10 (second sentence) stipulates that when replying to requests a Member State is entitled to use its official language or language accepted by both the requesting and requested Member State.

Moreover, according to Article 10 (third sentence) any Member State may, at the time of the adoption of the 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 European Union that it accepts.

The question arises when a response to a request contains a foreign notification. Such a foreign notification could be, before transmission, translated²⁰ into the official language of the requested Member State and then transmitted to the requesting Member State. However Member States are also entitled to settle the issue of accepted languages by means of a bilateral agreement, which specifies the accepted languages (allowing to send conviction in language(s) of a convicting Member State).

Thus, in specific situations Member States may ~~thus~~ use languages other than its official language(s) for exchanges. In order to facilitate the exchange of information the list of Member States and their position on the language regime they prefer to use is reported below.

(Member States position regarding language use)

Member State:

Official languages of the European Union accepted by the Member State for the exchange of requests - Article 10 (third sentence): *(information accumulated by ESP will be attached here)*

MS as a requested party: Language(s) used in responses to requests received from another Member State: national official language(s) or original language of conviction (if response contains convictions from other EU Member State or third state);

MS as a requesting party: Accepted languages in responses received to requests: official language(s) of requested Member State or original language of conviction (if response contains convictions from other EU Member State or third state).

²⁰ See chapter 4.3 of the "Business Analysis". "While most of the information elements are standardised and codified in the domain model (e.g. common offence and sanction codes, dates, durations, offence and sanction parameters, etc.), several information elements remain as free text information elements that need to be translated at some point in time in order to be used." – chapter 4.3.4 of the "Business Analysis".

2.4. Procedures applied to requests for any purposes other than criminal proceedings

According to Article 7(2) of the Framework Decision, replies transmitted for any purpose other than criminal proceedings are issued in line with national law of the requested member State. To facilitate the exchange of such data, information concerning basic national rules on issuing replies to requests other than for criminal purposes is set out below.

(The Member State should reply to the questions below)

Member State:

2.4.1. Procedures applied to received requests for administrative purposes

- 1) What is the procedure for issuing information?
 - a) Is it possible to issue a request for information for administrative purposes?
 - b) Should a request specify in detail the purpose of the request for which the information is sought?
 - c) Do you require the consent of the person concerned in order to release information about their criminal convictions in such cases?
 - d) What is the cost of issuing information?
 - e) Other specific information.

2.4.2. Procedures applied to received requests from individual persons

- 1) What is the procedure for issuing information?
 - a) Should a request specify the purpose of the request for which the information is sought?
 - b) What is the cost of issuing information?
 - c) Do you require identity documents, copies thereof or any other documents?
 - d) Other specific information

2.4.3. Procedures applied to received requests for employment vetting

- 1) What is the procedure for issuing information?
- a) Is it possible to issue information for employment vetting?
- b) Should a request specify the detailed purpose of the request for which the information is sought?
- c) What is the cost of issuing information?
- d) Other specific information

2.4.4. *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 (*e.g. the scope of a reply to request for other purposes than criminal proceedings – does it contain all information stored in the criminal record, or is it limited to e.g. only specific types of offences, sanctions or to rules of rehabilitation*).

Please note, neither the ECRIS Decision, nor the Framework Decision establishes any obligation to exchange information about non-criminal rulings.

2.5. Copies of convictions

On the ground of Article 4(4) the Framework Decision allows the possibility of providing copies of the original convictions in individual cases²¹. According to the wording of the above mentioned Article Central Authorities may participate in the exchange of copies of convictions. However, the Framework Decision does not impose on Central Authorities the obligation to store and administer the copies of conviction. Such documents may not be stored by Central Authorities or in Criminal Records and they are not exchanged using the electronic format defined for the ECRIS software. If such copies are required, they have to be transmitted by other means (e.g. e-mail, fax). The more suitable way of obtaining such copies is to use judicial cooperation in criminal matters²². In order to facilitate the exchange of information, the table below contains information concerning the most suitable procedure, in relation to the exchange of copies of conviction specified by each Member State. The table informs whether it is possible to ask via Central Authority for copy on conviction and also whether it is possible to receive copy of conviction directly from Central Authority.

Member State should contribute to below mentioned questions :

1 – The most suitable procedure – described in a few sentences (e.g. Such request should be sent to the court that pronounced the conviction).

2 – Is it possible to ask for a copy of a conviction via the Central Authority?

3 – Is a copy of a conviction stored by Central Authority?

²¹ Framework Decision, Article 4(4).

²² European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

Member State :

2.6. Common understanding of Annexes A and B to Decision 2009/316/JHA – National Tables

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

MEMBER STATE:

A - TABLE OF OFFENCES

B - TABLE OF SANCTIONS

(Member States are requested to provide above mentioned information)