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NOTE

from:	Presidency
to:	Delegations
No. prev. doc.:	17879/11 COPEN 350 JURINFO 76 EJUSTICE 94
Subject:	Exchange of information extracted from criminal records (ECRIS) Implementation of the Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) and the Council Framework Decision 2009/315/JHA on the exchange of information extracted from criminal records - discussion paper on the possible further support required by Member States during the implementation and beyond.

The Framework Decision on the Organisation and Content of the Exchange of Information Extracted from Criminal Records between Member States and the Council Decision on ECRIS were adopted in 2009. The exchange of information from criminal records between the Member States of the EU should as of 27th April 2012 be carried out on the basis of the ECRIS system for standardised exchange of information.

In accordance with Article 6 of the ECRIS Council decision, the working Party on cooperation in criminal matters has been tasked with providing for a forum for the competent authorities of the Member States and the Commission to coordinate the work necessary for the implementation and operation of the ECRIS.

At this stage the technical aspects of the ECRIS implementation have been largely achieved with the following technical instruments adopted: "Business Analysis", "Detailed Technical Specifications" and "Reference Implementation".

In parallel the work on the Manual for Practitioners has been carried out and concluded, to the extent possible, in December 2011 during the Polish Presidency¹.

In this note the Presidency would like to submit to the attention of the delegations a number of points linked to the follow up to the implementation and the need and possible solutions to ensure sustainability of the ECRIS. Accordingly this document outlines three connected elements for consideration, including the possible setting up of a future helpdesk or equivalent function. Currently, a large part of the future tasks is ensured by the Member States themselves and by the ECRIS Support Programme (ESP) financed from the funds of the Commission Financial Programmes. Its expiry date is however set by June 2013.

SPECIFIC OUTSTANDING ISSUES

I. Non-binding Manual for Practitioners and Website based information depository

During the development of the European Criminal Record Information System (ECRIS), the practitioners agreed that it was important to make available guidance to the designated central authorities in every Member State and their respective end users including judges, prosecutors and the police. As mentioned above the ECRIS Non-binding Manual for Practitioners was agreed in December 2011 by all Member States.

¹ doc. 17879/11 COPEN 350 JURINFO 76 EJUSTICE 94

It is apparent that, as ECRIS becomes more embedded, the Manual will need to be further developed in order to fully meet the needs of the practitioners. There is also a maintenance function including the requirement to regularly review the information contained within the supporting annexes A and B (the lists of national offences and types of sentences etc.) that do not form part of the main text to ensure that it is accurate and up to date.

In that respect establishing a central depository of data needs to be discussed.

As it is today, the GSC is responsible in accordance with Article 5 of the Council decision for collecting all Member States input on offences and sanctions. Following this obligation the GSC will continue doing so. However, to enable easy access to the manual and the country-specific parts, it has been understood that the information should be readily available online. It is suggested in the Manual that this should happen at various places: EJV website, CIRCA, e-Justice etc. The Presidency is informed that meanwhile the CIRCABC website has been established by ESP in coordination with the European Commission. This web facility allows already now for ensuring maintenance and updating of the Manual for practitioners (the information is routinely checked). It appears that, since the access to CIRCABC is straightforward (those seeking access apply to a central point, currently the ESP who effectively authorise access), a number of practitioners, not just Central Authority representatives have started to make use of the facility, recognizing the wider benefits to the criminal justice arena. It is also noted that on previous occasions the representatives of some Member States stated that a user forum where best practice could be shared would be very useful. CIRCABC provides for this functionality.

If more than one website is necessary, a solution needs to be found to ensure that information uploaded on CIRCABC and on EJV and E-Justice websites is identical.

Delegations are invited to indicate their observations on the following points:

- whether information should be available at more websites than CIRCABC and, if so, whether delegations would agree that information is uploaded and updated only on one website (CIRCABC) while other websites merely link to or make reference to that website in order to avoid the risk of having different versions online,*
- whether a central coordinating body is needed in order to ensure the uploading and updating of information on the website.*

II. Central support and guidance/ helpdesk.

There are various opinions about what a helpdesk or equivalent function should do, ranging from technical support, to operational support, to judicial support. To a certain extent this question is already addressed above where it comes to the updating and making available of the Manual for Practitioners.

Furthermore, it stems from Article 3 of the ECRIS decision that the Commission shall provide general support and technical assistance, including the collection and drawing up of statistics and the reference implementation and S-Testa General Network. This entails an obligation for the Commission to assist Member States with the use of ECRIS and operational exchange of information.

At the national level the support should be provided by Central Authorities. However, there are many operational issues which cannot be dealt with within a single Member State or where the sharing of best practices between Member States would be essential or could prove beneficial to the functioning of ECRIS.

Therefore, it appears that an operational support function is needed. Currently, the ESP is providing such support and guidance to all Member States through a support network and is available to respond to email and telephone enquiries on a short notice.

Once ECRIS begins to roll out, it is anticipated that there will be an increased requirement to respond to detailed enquiries relating to the retention and sharing of conviction information and the functioning of the Reference Implementation for example. It is probably not until ECRIS is actually implemented and the criminal record exchange commences that the nuances of the exchange mechanism will actually become clearer to Member States. A possible solution could be the setting up of a user forum available i.e at CIRCABC, or to allocate these types of support to a helpdesk which should then carry on the work of the ESP, or to extend the ESP beyond June 2013. If preferred, a helpdesk solution might assume also the role as a central coordinating body for the uploading and updating of ECRIS information online if this is needed and assist the Commission in its tasks providing other forms of support, for instance the drawing up of and analysing statistics, identifying training requirements and organising training.

Delegations are invited to submit their observations and proposals in respect of this issue and to indicate whether a helpdesk function is needed beyond the current timeframe (June 2013) and, if so, whether the Commission should be asked to identify the most appropriate method of providing and funding such a function.

III. The future role of the ECRIS Expert Group.

In follow up to the above outlined issue the Presidency would like to invite the delegations to reflect upon the future role of the ECRIS Expert Group. On the basis of Article 6 of the ECRIS Decision COREPER has mandated the COPEN Working Party to ensure the work necessary to the implementation and operation of the ECRIS. The competence and tasks of the COPEN Working Party are clearly stated in the ECRIS decision. In the process of preparation for the implementation of ECRIS it has proved extremely useful to engage a Commission Experts Group to carry out preparatory technical work. On the basis of that experience it could now be envisaged that this Experts Group is recognized as a permanent decision making platform dealing with specific technical and operational issues, however clearly limiting its competence to such issues and not general issues related to the overall functioning of ECRIS or legal questions which should still be addressed to COPEN. COPEN will hold meetings whenever necessary to discuss and decide issues of general and of legal nature. It will also remain to be for the Working Party to endorse decisions taken by the Commission Experts Group.

Delegations and Commission are invited to reflect upon the “modus operandi” suggested above and endorse it, if acceptable.

CONCLUSIONS

Delegations are invited to reflect upon the issues submitted above.