



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 March 2011**

**7488/11**

**LIMITE**

**COPEN 40  
EJUSTICE 27  
JURINFO 12**

**OUTCOME OF PROCEEDINGS**

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of:	Working Party on Cooperation in Criminal Matters (COPEN)
on :	9 March 2011
Subject :	Summary of discussions

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**1. Adoption of the agenda.**

The agenda as set out in CM 1770/11 was adopted.

**2. Exchange of information extracted from criminal records (ECRIS) –Adoption of technical specifications on the basis of Article 6 (2) (b) 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.**

**- Information on the state of play on the implementation**

The Presidency and the Commission provided delegations with the information concerning the examination of the elements of Technical Specifications on ECRIS. A number of specific points, identified below, have been addressed.

## **A: Final Examination of the Business Analysis**

The Commission thanked delegations for their comments submitted on the **Business Analysis** during the experts meeting which took place on 16 February 2011. The revised text following this meeting has been set out in doc 7144/11 COPEN 33 EJUSTICE 12 JURINFO 8. In the course of the written procedure for the adoption of this document objections were submitted on specific points by BE/FR; ES/CZ and PL. These objections have been presented to the COPEN Working Party by these delegations. The BE/FR and CZ/ES observations are set out in the Annex to 7488/11 COPEN 40 EJUSTICE 27 JURINFO 12. The Polish observations are set out in 7401/11 COPEN 39 EJUSTICE 24 JURINFO 11. Following the examination of these issues it has been suggested that the following modifications be introduced into the text of the Business Analysis:

### 1. Remarks submitted by Spain and Czech Republic:

- In their proposal the two delegations suggested to define two separate fields for indicating (1) the period of time during which the suspension is running and may be revoked and (2) the part of the sanction that is actually being suspended.
- Accordingly two separate entries have been introduced into the "suspension" entity with the following characteristics: the "Duration" property provides the duration of the suspension of the sanction in years, months, days and hours. It provides the period during which the suspension is running and during which it may be revoked if the convict behaves badly; the "Duration of Suspended Part" provides the duration of the part of the sanction being suspended, expressed in years, months, days and hours.
- The details of this proposal as set out in the Annex to doc 7488/11 COPEN 40 EJUSTICE 27 JURINFO 12.
- Following an exchange of views delegations agreed to the introduction of this modification into the Business Analysis and to the Detailed Technical Specifications.

## 2. Remarks submitted by Belgium and France

- France and Belgium in their remarks have informed about a specific legal matter which is not currently covered by the ECRIS Detailed Technical Specifications and which regards the necessity to introduce in the current ECRIS Detailed Technical Specifications a specific possibility that allows the Member States to annul on judicial grounds a previously transmitted conviction.
- The current proposal is based on particular provisions existing in several Member States' national legislations according to which a conviction sentenced as a result of a default judgement (i.e. a binding judgement taken by default based on failure to defend/take action by the defendant party) may be annulled through a relief from the default judgement. The new proposal consists of the following changes to be implemented in the ECRIS Business Analysis document:
  - An additional definition is inserted in the "Business Analysis" document for describing in detail the concept of "judicial annulment";
  - The current domain model described in the "Business Analysis" document is updated, in order to accommodate the possibility to correctly transmit the "judicial annulment";
- It is proposed to add the following specific definition: "The "judicial annulment" refers to the discharge of a convicted person from the effects of a conviction previously sentenced through a default judgement. Such annulment occurs at the initiative of the convicted person which, in a specific timeframe and based on specific conditions foreseen by the national legislation, applies for a motion for vacating the default judgement and obtains a relief from the default conviction from a competent judicial authority. As a consequence, the initial default conviction is annulled and it sets back the convicted person in the same legal state as if the conviction had never occurred. Depending on the Member State, this judicial annulment **can** have as result the deletion of the conviction from the person's criminal record. Independently of this deletion from the person's criminal record, when the legal annulment is pronounced in the convicting Member State and once it has been notified to the Member State of nationality, the Member State of nationality may no longer retransmit this conviction to other Member States."

- The details of this proposal are set out in the Annex to doc 7488/11 COPEN 40 EJUSTICE 27 JURINFO 12.
- Following an extensive discussion, delegations could agree to this proposal. SE entered a scrutiny reservation.
- Accordingly, this proposal will be introduced as a modification into the Business Analysis and submitted for the adoption of the Member States. Once agreed, relevant modifications will also need to be introduced into the ECRIS Detailed Technical Specifications documents.

### 3. Remarks submitted by Poland

- In respect of the adoption of the Business Analysis Poland submitted an objection to the obligation stipulated in chapter 5.2.3 of the BA document, which imposes on central authorities of Member States of nationality to store, for the purpose of retransmission, notifications containing personal data of convicted person on the basis of whom it is not possible to univocally and unambiguously identify a person that is referred to, so called “multiple persons found” rule - a situation when personal data of a convicted person can be linked with identities of multiple persons.
- The Polish delegation proposed therefore that the BA is modified so as to indicate that no obligation be imposed on the member state of nationality to store information received where identification refers to "multiple persons".
- Details of this proposal are set out in 7401/11 COPEN 39 EJUSTICE 24 JURINFO 11.
- The Polish proposal was extensively examined during the meeting, the Opinion of delegations were divided into two opposing groups. Some of them supported PL view and noted that indeed, in case of "multiple persons found" the information could not be properly stored in the national criminal system and could not therefore be retransmitted upon the request to other member states. On the other hand, a number of delegations pointed out to the obligation stemming from Article 5 of the ECRIS Framework Decision, whereby all information received by the member state of nationality should be stored in its criminal records. These delegations indicated, that as the system develops and new means for identification of the person became available, the information, which at first place could maybe not fully match may be clarified latter.

- The attention of the delegations was drawn to the fact that the concept of the system is based on the assumption that all information on the person's criminal past is stored in the criminal records of his/her nationality. It is towards this criminal record that the requests are submitted, and not to the criminal records of the member state of conviction. Therefore, the non storage of information received from the member state of conviction may result in this information being "lost" and thus not anymore accessible upon request.
- The discussion has proved that the issue put forward by the PL delegation brings a number of questions related not only to the practical operability of the system, but that are also linked with the interpretation of the specific provisions of the ECRIS instrument.
- The Presidency has therefore sought the consultation of the Commission and its Legal Services to clarify the question.
- The examination of the issue raised by PL will be continued also in the light of the contribution submitted from the Commission's Legal Services.

## **B. Examination of the Detailed Technical Specifications**

The **Detailed Technical Specifications (DTS)** document was examined by the experts at the experts meeting which took place on the 16 February 2011. A revised document containing these technical specifications was issued under doc 7188/11 COPEN 35 EJUSTICE 15 JURINFO 10. In the course of a written procedure for the adoption of the document, no objections were received from the delegations as to the content of this document. However, in view of the fact that certain objections were made to the Business Analysis document, some necessary adjustment of the DTS will be necessary. These shall be introduced once all outstanding issues in respect of the Business Analysis are clarified. Subsequently, the DTS will be submitted to delegations for adoption.

### **C. Examination of the Logging, Monitoring and Statistics Analysis**

The **Logging, Monitoring and Statistics Analysis** document was examined by the experts at the experts meeting which took place on 16 February 2011. A revised document containing these technical specifications was issued under doc 7146/11 COPEN 34 EJUSTICE 14 JURINFO 9. In the course of a written procedure for the adoption of this document no objections were received from the delegations as to the content of this document. Accordingly the ECRIS Technical Specifications -**Logging, Monitoring and Statistics Analysis** were adopted as set out in the above document.

### **D. Examination of the Verification of Conformity Analysis**

The **Verification of Conformity Analysis** document was examined by the experts at the experts meeting which took place on the 16 February 2011. A revised document containing these technical specifications was issued under doc 7133/11 COPEN 31 EJUSTICE 10 JURINFO 7. In the course of a written procedure for the adoption of this document no objections were received from the delegations as to the content of this document. Accordingly the ECRIS Technical Specifications -**Verification of Conformity Analysis** were adopted as set out in the above document.

### **3. First discussion on the preparation of the non-binding Manual for Practitioners**

Delegations has held a first exchange of views on the preparation of the non-binding Manual for Practitioners on the basis of 6654/1/11 REV 1 COPEN 24 JURINFO 6 EJUSTICE 9. The drafting will continue on the basis of this document, taking into account comments received. In particular a number of delegations cautioned against making the manual too long and detailed. A new and more extensive draft of the Manual will be circulated to delegations in advance of the next COPEN meeting dedicated to ECRIS.

#### **4. Any other business**

##### **Next steps forward**

The Commission announced the following future developments:

- In September 2011 the beta version of the Reference Implementation shall be provided by the Commission
- In January 2012 - a full version of ECRIS base line and users' specifications shall be finalised.

The Presidency informed that the next meeting of COPEN ECRIS Working Party will examine outstanding elements of the technical specifications as well as continue the work on the Manual for Practitioners.