



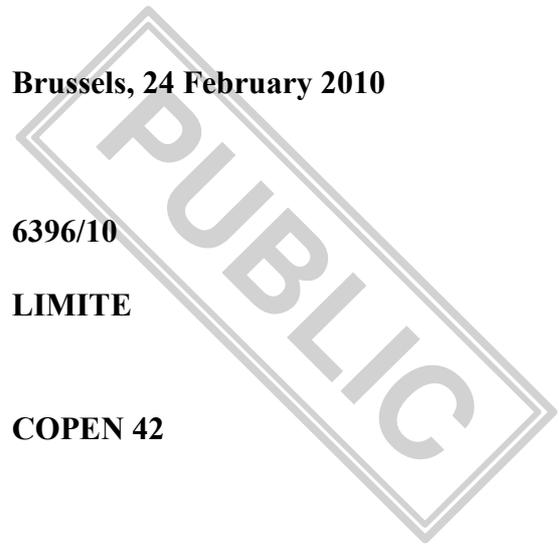
**COUNCIL OF
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NOTE

from:	Presidency
to:	delegations

Subject:	Exchange of information extracted from criminal records (ECRIS) - Implementation of the Council Decision 2009/316/JHA ¹ on the establishment of the European Criminal Records Information System (ECRIS) and the Council Framework Decision 2009/315/JHA ² on the exchange of information extracted from criminal records
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I. INTRODUCTION

The Council Decision 2009/316/JHA³ on the establishment of the European Criminal Records Information System (ECRIS) was adopted by the Council in April 2009. This decision aims at implementing the Council Framework Decision 2009/315/JHA⁴ on the exchange of information extracted from criminal records. By 7 April 2012 Member States shall take the necessary steps to comply with the ECRIS Decision. The implementation of both instruments will result in the setting up of a computerised system of exchange of information on convictions between the Member States of the EU. The system should be based on an electronic interconnection of the Member State's criminal records by the means of which the information will be exchanged in a standardised way.

¹ OJ L 93, 7.4.2009, p. 33

² OJ L 93, 7.4.2009, p. 23

³ OJ L 93, 7.4.2009, p. 33

⁴ OJ L 93, 7.4.2009, p. 23

The Council Decision on ECRIS sets out a general framework for the electronic exchange system. Article 6(2) of this Decision specifies that Member States and the Commission shall inform and consult one another within the Council in order to undertake further implementing measures needed in order for the system to be fully established and operational between the Member States. In respect of this provision, COREPER has decided, in June 2009, that the Working Party on Cooperation in Criminal Matters (COPEN) is the relevant forum to examine the implementing measures referred to in Article 6(2) of the ECRIS Decision.

On the other hand, Article 5 (1) foresees that, in view of the drawing-up of a non binding manual for practitioners mentioned in referred Article 6 (2) of ECRIS Decision, Member States shall communicate to the Council General Secretariat certain information concerning 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.

The latter question raises practical problems, which demand a common understanding regarding the modus operandi of information exchange, including in particular how to inform about the possible subsequent decisions modifying the enforcement of the sentence.

In this note the Presidency intends to outline main elements of the implementation work which needs to be done in the near future as well as to put forward suggestions concerning the organisation of the discussions in the Working Party.

The Presidency invites delegations to consider the points set out under II and III below in order to prepare the discussion at the next meeting of the Working Party, so that the implementation work could begin shortly.

II. MAIN ELEMENTS OF IMPLEMENTATION:

Article 6(2) of the ECRIS Decision identifies a number of issues which shall be examined by the representatives of the Member States and the Commission. In order to structure the discussions these matters have been divided into four main groups as described below.

II.A. Technical Specifications

Adoption of technical specifications of the exchange is a prerequisite for the establishment of the uniform system of exchange of information. The technical specifications should be understood as common set of protocols enabling the secure exchange of information between the Member States' criminal records databases.

It has to be noted that on the basis of these technical specifications the exchange of information between the national criminal records will take place in the future. Therefore, as far as its preparation is concerned, it is of crucial importance that these technical specifications are uniform for all Member States.

In accordance with Article 6(2) of the ECRIS Decision these technical specifications shall be agreed by the Member States and the Commission consulting one another within the Council. It has however to be decided who will take the lead in the process of their preparation, including the incorporation of amendments following observations made by the Member States' experts and the Commission, as well as carrying out operational tests at the end of the process.

These tasks could be either undertaken by Member States or by the Commission (as the Commission suggests in its non-paper) ¹.

Since the technical specifications is a basis for the other elements of the ECRIS it is important that its preparation could begin in the shortest possible delay. The Presidency considers that the decision as to who will undertake the responsibility for preparing technical specifications should be taken shortly.

¹ DS 1102/10.

The examination of the proposed technical specifications will necessarily require a number of periodical meetings of technical experts from the Member States and the Commission. In the process of examination individual specific issues (such as that mentioned in point I, how to inform about decisions modifying the enforcement of the sentence) should be discussed, in order to allow for establishing technical specifications acceptable for all Member States.

II.B. Reference Implementation Software

Reference implementation should be understood as provided by the Commission software which allows the exchanges between the national criminal records databases. In accordance with Article 3(7) of the ECRIS Decision Commission shall provide such software. The Commission has already developed its first version that will serve for the purpose of exchange of information between the national criminal records systems of the Member States participating in the National Judicial Registers pilot project. Such software will also be necessary for the connection in the framework of ECRIS. Accordingly, the already existing version will be further developed, once the technical specifications are in place, in order to comply with the requirements of ECRIS. The reference implementation proposed by the Commission will be available to all Member States willing to use it. It should be noted however, that Member States may apply their own implementation software, as long as it is compatible with the uniform technical specifications of ECRIS, as mentioned above. In any case, in the opinion of the Presidency, the development of this Reference Implementation will only be possible if the Technical Specifications mentioned in the previous point are previously agreed.

II.C. Other implementing measures referred to in Article 6(2).

In addition to the above elements Article 6(2) indicates the following implementing measures: logging system, procedures for monitoring the functioning of ECRIS, non personal statistics and procedures for verification of conformity of national software applications with the technical specifications.

As it has been indicated in respect of technical specifications, also the other implementing measures could either be prepared by Member States or by the Commission. However, since these measures are closely linked with the preparation of the technical specifications, it could be most convenient that the responsibility for their preparation is linked with the responsibility for preparation of the technical specifications.

It needs to be noted however, that the ECRIS decision specifically tasks Commission with the collection and drawing up of statistics.

II.D. Non-binding Manual for practitioners.

The exchange of information on conviction via the ECRIS system will be based on the reference tables of categories of offences and categories of penalties and measures. This should allow the automatic translation and thus facilitate the mutual understanding of the information which will be transmitted using a system of codes. The tables reflect the national legal systems of 27 Member States. In order to ensure the mutual understanding and transparency of the common categorisation, the Member States are obliged under Article 5 of the ECRIS Decision to provide and update the list of national offences, sentences as well as, facultatively, their short descriptions. This information, together with the information on the procedure for the exchange of information and the modalities of identification of offenders should be contained in the non-binding manual for practitioners.

The manual will be a "living tool", since some of the information may need to be updated as the system intensifies its operation, and as the law of Member States changes.

The delegations could already be requested to prepare the submission of the necessary information (in accordance with Article 5) to the General Secretariat of the Council. As far as the drafting of the manual is concerned, as well as the setting up the procedures and the modalities of identification, the legal experts of the Member States would be best suited to examine these issues and to take the necessary decisions in this respect.

III. FUTURE DISCUSSIONS

Regarding the scope of the necessary technical preparations the ECRIS Decision sets a rather tight implementation deadline. Therefore, the COPEN Working Party should be engaged in this work without unnecessary delay. The Presidency would like to suggest that, once the first technical elements are available, periodical meetings of the relevant experts take place in order to ensure the continuity of preparation and its compatibility with the requirements put forward by the Member States.

In order to mirror the twofold character of the discussions: on the one hand the technical implementation of the system and on the other the preparation of the non-binding manual; the Presidency would like to suggest that the ECRIS COPEN Working Party meets in two formats: 1) legal experts and 2.) technical experts. This of course does not prevent the convocation of joint meetings of all experts, in order to avoid difficulties deriving from lack of adequate coordination.

In light of the subject matter of the discussions the subgroup bringing together technical experts would necessarily need to meet more often and began its discussions shortly. The legal experts group will carry out its tasks in parallel, as a reference group for the legal questions/issues raised during the technical experts meetings, as well as a forum for examining issues related to the preparation of the non-binding manual.

IV. CONCLUSIONS

The Presidency would like to invite delegations to consider the above presented issues in order to be in a position to agree on the division of responsibility for preparing the elements of technical implementation.

The Presidency would also like delegations to indicate their opinions as to whether they agree with the proposed arrangement of the work within the COPEN Working Party.