



**COUNCIL OF
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NOTE

From : The Polish Delegation
To : Working Party on Cooperation in Criminal Matters

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
-Proposals of Poland regarding the chapter 5.2 of Business Analysis

Delegations find attached the proposals from Poland regarding ECRIS Technical Specifications -
chapter 5.2 of Business Analysis.

PL proposals for the implementation of ECRIS - chapter 5.2 of Business Analysis

During the experts meeting organized by the European Commission on 16th February 2011 regarding ECRIS technical specification, the Polish delegation expressed its observations on the current version of chapter 5.2.3 of “Business Analysis”. They were also included in Polish written comments to versions 0.8 and 1.1 of “Business Analysis” and emphasized by Poland during the teleconference between Poland, European Commission and the Contractor who is preparing the technical specification of ECRIS that was carried out on 9th February 2011.

Our objections arise from the obligation stipulated in chapter 5.2.3 of „Business Analysis” that impose 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.

It was raised during experts meeting on 16th February 2011 that a proper forum to put this issue into the agenda is the COPEN working party. Polish delegation agree with it. Because of this we informed the Presidency, General Secretariat of the Council and also European Commission that Poland would like to put this "multiple persons found" issue into the agenda of the COPEN working party on 9th March 2011.

Poland would like to continue discussion on the subject “multiple persons found” on the COPEN meeting and on behalf of the Polish delegation I would like to present our proposal, which is following :

Chapter 5.2.7 of ‘Business Analysis’ stipulating causes of the problems that prevents the central authority from storing the convictions information for the purpose of retransmission should be extended to “multiple persons found” issue. "Multiple persons found" event stipulated in chapter 5.2.3 may lead to rejection of received notification (according to the decision of Member State receiving notification).

This decision about rejecting notifications with ambiguous personal data should be optional. The decision on storing or rejecting of such notifications should lay upon Member States.

Below you will find detailed explanation of our proposal.

In our opinion notifications with ambiguous personal data will never be used by central authority of Member State of nationality as a response to a request. Lack of unambiguous identification of a convict prevents from issuing responses to requests both in national/internal cases and for the purpose of retransmission. Because in such situations it is not possible to univocally confirm that the request concerns particular personal data of a particular convicted person registered in criminal records. This position was also confirmed in chapter 5.3.6 of “BA” where it is stipulated that if several persons registered in criminal register match the identification data that has been provided by requesting state and the central authority does not manage to narrow down univocally and without ambiguity the list of matches to one single person, so called “multiple persons found” event, the requested Member State informs the requesting Member State that the request cannot be answered.

Framework Decision 2009/315/JHA lays down in art. 5 that central authority of a Member State of nationality is obliged to store notifications for the purpose of its latter retransmission in line with art. 7, which governs the circulation of requests and responses to them. However, chapter 5.3.6 of “BA” describes in details events which occurrence does not allow to issue an answer to the request, thus cases when purpose of retransmission will not be fulfilled. "Multiple persons found" is defined as such event - situation when personal data included in request match multiple identities stored in criminal register. According to chapter 5.3.6 in such case the request cannot be answered due to lack of unambiguous identification of a person. Therefore, towards these notifications, concerning persons whom unambiguous identification is not possible, the purpose of retransmission stipulated in art. 5 will not be fulfilled. Taking into consideration the foregoing, Member States should not be obliged to store such notifications.

We think that there is no reason why the same notification could not be send again with more data as a new notification in cases the first one was rejected due to “multiple persons found” error. In our opinion it is better solution than storing useless information on convictions without chance to obtain more data.

In this very first draft of "Business Analysis" this issue had not been properly recognize by us. However, due to above mentioned facts, and also due to fact that without any alteration of chapter 5.2.3 final version of “BA” would be in some part inconsistent. Polish delegation thinks that “Multiple persons found” issue should be discussed once again on the meeting of COPEN working party on 9th March 2011. Therefore the Polish delegation proposes to add to the agenda of the meeting of COPEN working party this issue of "multiple persons found".