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from: Presidency

to: Working Party on Co-operation in Criminal Matters (COPEN)

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Subject: Draft Manual for practitioners - ECRIS

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A first exchange of views on the initial draft on 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 meeting in COPEN took place on 19 May 2011 where delegations had an exchange of views on the first draft of the manual on the basis of 9300/11 COPEN 84 JURINFO 21 EJUSTICE 34. The summary of discussions can be found in document 11144/11 COPEN 147 JURINFO 39 EJUSTICE 49.

Delegations stressed once again in particular the need for a user-friendly manual, not too long and detailed, and to avoid repeating what was already in the Business Analysis, Technical Specifications, Council (Framework) Decisions, etc, and concentrating on filling the gaps. The structure and lay-out could be improved.

Following this, in line with the written comments, it is suggested that the following sections should be deleted:

2. "(Stakeholders, roles and responsibilities)",

4.6. ("Relationship to other legal instruments"), and

4.7. ("Relationship to Third States").

The target group would be practitioners/end-users of ECRIS, meaning both the central authorities (criminal registers) and prosecutors, judges, law enforcement authorities, etc. Some delegations mentioned that, as these groups' needs differ, this should be taken into consideration when drafting. A suggestion that each Member State could complement the manual at national level was put forward. There was a general support of splitting the manual into two. The country-specific part could highlight specific features of the different Member States' systems, BE/NJR parameters would be useful in this regard.

Outstanding issues following the meeting, further addressed in the revised draft of the manual, include:

- Use of biometric data, fingerprints, etc.
- standards of notifications
- helpdesk; scope and forum (delegations supported the idea of a helpdesk, first and foremost to help solving technical issues.)
- "open" / "other category"

The drafting will continue on the basis of this document, taking into account comments received. A revised version of the draft Manual will be circulated to delegations in advance of the next COPEN meeting dedicated to ECRIS on 24 June 2011.

~~A more extensive draft of the manual is annexed to this note. The draft "table of contents" has been revised following delegations' remarks. It will appear clearly from the Annex that this is an initial draft, among other things a number of sections still need to be filled in.~~

~~Concerning the actual content of the manual, the ECRIS "Business Analysis" has been a particularly helpful tool and source of inspiration.~~

~~A number of delegations cautioned against making the manual too long and detailed. In light of this concern, the Presidency would invite delegations to reflect upon splitting the manual into two parts: One general and one country-specific part.~~

As agreed, the information provided by Member States on national offences and penalties and measures (Article 5 of the ECRIS Decision), following the request for contributions of 18 October 2010<sup>1</sup>, will be contained in the country-specific part of the manual (starting from Annex VI of the draft list of Annexes).

~~So far the Council secretariat has received contributions from ten Member States. Those Member States which have not yet sent in the information requested in relation to Article 5 of the ECRIS Decision are kindly requested to do so as soon as possible.~~

~~The technical measures – the inception report, the business analysis and the logging monitoring and statistics analysis – were elaborated by the independent consortium iLICONN and the Commission to assist Member States in preparing the technical infrastructure for interconnecting their criminal records databases. These documents will constitute an independent source of information on the operation of ECRIS for practitioners and competent authorities in the Member States. They have been a point of reference also for the preparation of the Manual.~~

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<sup>1</sup> CM 5040/10.

The Presidency invites delegations to:

- to scrutinize this draft;
- to fill in, where appropriate, the Annex (explanation of problematic national offences and penalties and measures) in order to prepare the examination of it to take place at the next COPEN meeting dedicated to ECRIS. ~~It should be noted that, concerning the Annex on~~  
~~—— "Parameters", additional information can be found in the Business Analysis;~~  
~~—— in addition, to consider if a helpdesk is needed, and if so, who/which forum would be the most~~  
~~—— appropriate?~~

Comments concerning the drafting, which delegations wish to make, are welcome. In view of the length and the complexity of the document, delegations are kindly requested to submit comments in writing in advance of the next meeting, ~~preferably by 5 May 2011~~ preferably by 22 June 2011 (e-mail to the attention of Peter BRÖMS, Secretariat DGH 2B ([peter.broms@consilium.europa.eu](mailto:peter.broms@consilium.europa.eu))).

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# ECRIS MANUAL

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<sup>1</sup> Possibly together with an example of how to fill in the request form, and an example of how to fill in the reply to the request form. Such examples are included e. g. in the European Arrest Warrant Manual and could be beneficial.

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<sup>1</sup> This annex VII should include “the list of national offences in each of the categories referred to in the table of offences of the Council Decision 2009/316, the name or legal classification of the offence and reference to the applicable legal provisions. It may also include a short description of the constitutive elements of the offence” (art. 5.1.a) Framework Decision). To clarify this better it would be advisable to relate, in the same annex, the national offence to a short description of the conduct to the ECRIS category (in order to avoid looking up in the Annex VII the name of the offence and its ECRIS Category and in another annex (the X) the description of the conduct.

<sup>2</sup> Types of sentences, possible supplementary penalties and security measures and possible subsequent decisions modifying the enforcement of the sentence as defined in national law, in each of the categories referred to in the table of penalties and measures in Annex B. It may also include a short description of the specific penalty or measure. The description of the penalty or measure must be related to its ECRIS penalty of category without it being necessary to check it in another annex.

## 1. INTRODUCTION

The aim of this publication is to provide a non-binding manual for practitioners. It sets out the procedure for the exchange of information through ECRIS, the European Criminal Records Information System, 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.<sup>1</sup>

ECRIS was created to improve the security of citizens within the European area of Freedom, Security and Justice. This objective requires that not only convictions featuring in a Member State's own national criminal register, but also information on convictions passed in other Member States is taken into account, both in order to prevent new offences and in the course of new criminal proceedings<sup>2</sup>. This forms part of the overall programme of measures to implement the principle of mutual recognition of decisions in criminal matters<sup>3</sup>. To avoid that criminals escape their past simply by moving between Member States, the content of the exchanged information and the swiftness of this exchange should be improved. When properly functioning, ECRIS will ensure an interconnection of Member States' criminal records' databases. In addition, information could also be used outside the context of the criminal proceedings, as specified below.

ECRIS is a long term project. [~~It forms part of the broader framework of the E-justice system which was also designed to facilitate increased and swifter communication between the judicial authorities of the Member States.~~] This manual should be a "living tool". Some of the information may need to be updated as the system intensifies its operation, and as the law and practice of Member States changes. Therefore also an electronic version of the manual is envisaged. Such format would allow for efficient updating of the document and would allow for the Manual to be easily accessible to practitioners concerned.

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<sup>1</sup> Council Decision 2009/316/JHA, art. 6.

<sup>2</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

<sup>3</sup> OJ C 12, 15.1.2001, s. 10.

The Stockholm Programme<sup>1</sup> stresses the importance of mobilising the necessary technological tools to keep pace with and promote the current trends towards mobility, while ensuring that people are safe, secure and free, and while fully respecting the rules concerning the protection of personal data. Also the Commission's Stockholm Action Plan<sup>2</sup> highlighted the importance of having a comprehensive protection scheme and to strengthen the EU's stance in protecting the personal data of the individual, including in the area of law enforcement and crime prevention. This has been taken into consideration while implementing the ECRIS legislation and drafting this manual.

ECRIS was inspired by a pilot project on the Network of Judicial Registers (NJR), which involves 16 Members and 7 Observer States as of April 2011 ~~which involves fourteen Member States as of March 2010~~, sharing the main aim of facilitate the exchange of data on criminal records between authorities and to make the information shared more understandable by using a system of codes. The results of the project and the experiences of the participating Member States were taken into account when drawing up the proposal for ECRIS as well as this manual.

Together with the independent consortium iLICONN (Interactive LIstening & CONNecting), and with the support of the Member States, the Commission has elaborated a number of technical measures to assist member States in preparing the technical infrastructure for interconnecting their criminal records databases. References to the substantial documentation available are provided at the end of this manual. See "Links to more information on ECRIS" below.

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<sup>1</sup> The Stockholm Programme - An open and secure Europe serving and protecting citizens (OJ C 115, 4 May 2010, p. 1).

<sup>2</sup> COM(2010)171, 20.4.2010.

## 1.1. BACKGROUND

Information on convictions has been exchanged through systems set up by the *1959 Council of Europe Convention on Mutual Assistance in Criminal Matter*, and by EU-instruments developing the mutual legal assistance system, for instance 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. (Convention 2000 also repealed the Article 53 of the Convention implementing the Schengen Agreement). In November 2005 the Council adopted the decision on the exchange of information extracted from criminal records<sup>1</sup>. It was designed to improve the systems established in the 1959 convention, chiefly by speeding up transmission times. This decision was repealed by (FD) 2009/315/JHA (Article 12(4)).

The ECRIS legal basis is:

- Council Framework Decision (FD) 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<sup>2</sup> (Annex I); and
- Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA<sup>3</sup> of 6 April 2009 (Annex II). This latter instrument establishes rules about the way in which the information should be exchanged.

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<sup>1</sup> Council Decision 2005/876/JHA of 21 November on the exchange of data extracted from the criminal record.

<sup>2</sup> OJ L 93, 7.4.2009, p. 23.

<sup>3</sup> OJ L 93, 7.4.2009, p. 33.

FD 2009/315/JHA established a mechanism for improving the circulation of information on convictions in the European Union and replaced Article 22 of the Convention on Mutual Assistance in Criminal Matters regarding notifications between EU Member States<sup>1</sup> (~~for the relationship with this and other legal instruments, see p. ...~~). The FD has also provided for the establishment of a computerised exchange of information on convictions between Member States, provided for in the ECRIS Decision, Decision 2009/316/JHA.

The ECRIS information system will allow automated exchange of data between central criminal records and creates an obligation for Member States to use ~~correlation~~ common tables (offences and sanctions) to transmit information on convictions.<sup>2</sup> The information system will not allow direct access to Member States' criminal records, but will speed up the transmission of requests and replies. The Framework Decision lays down the ground rules for the mandatory transmission, to other Member States, of information on convictions to the country of the person's nationality as well as for the storage of such information by that country and for the retransmission, upon request.

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, among other things by drawing up this non-binding manual.

Article 5(1) foresees that, in view of the drawing-up of a non-binding manual for practitioners, 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.

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<sup>1</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on the European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1).

<sup>2</sup> In the ECRIS specification, many parameters (of the penalty) appear related to the concept "decision" and not to the concept "penalty". It is important to know if the Member States can send their decisions without establishing this relation with the penalties.

Exchanging this information demands a common understanding regarding the *modus operandi* of how to do this, including in particular how to inform about possible subsequent decisions modifying the enforcement of the sentence.

Member States shall take the necessary measures to comply with the provisions of the ECRIS Decision by ~~12~~ 7 April 2012. This implies that the ECRIS system, in particular the interconnection software and the sTESTA (Trans European Services for Telematics between Administrations) network connections, should be operational in all Member States by that date.

## 1.2. THE ECRIS SYSTEM - MAIN FEATURES

ECRIS is defined as a decentralised information technology system composed of:

- (1) a piece of interconnection software, built in compliance with a common set of protocols; and
- (2) the sTESTA network as the common communication infrastructure.

~~and Member States' criminal records.~~

The purpose of ECRIS is to enable the effective and systematic exchange between the competent authorities of the Member States of information extracted from criminal records in such a way that would guarantee its common understanding and the efficiency of using this information both within the context of ~~usual~~ criminal proceedings and outside the ~~usual~~ criminal proceedings.<sup>1</sup> Its main aim is to improve the exchange of information on convictions, and where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens and [habitual] residents in the Union, together with third country nationals and stateless persons.

For the time being, ECRIS and the transmission of information extracted from criminal records applies only to *natural* persons ~~who are citizens of the EU Member States.~~

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<sup>1</sup> The exchange will take place outside the context of criminal proceedings only if permitted by the national law of Member States.

The criminal records data is to be stored solely in databases operated by the Member States and there shall be no direct online access to criminal records databases between Member States. In particular, the interconnection software and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned. The sTESTA network shall be operated under the responsibility of the European Commission.

The exchange of information on conviction via the ECRIS system is based on the reference tables of categories of offences and categories of penalties and measures (listed in the Annexes to Decision 2009/316/JHA). Each category has been given a code. When exchanging information extracted from their criminal records, Member States ~~should~~ must use these codes. This should allow automatic translation of ECRIS codes and thus facilitate the mutual understanding of the information which will be transmitted.<sup>1</sup>

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 referred to above to provide and update the list of national offences, sentences as well as, on a voluntary basis, short descriptions thereof. This information, together with the information on the procedure for the exchange of information and the modalities of identification of offenders is contained in the country-specific part of this non-binding manual for practitioners, starting from Annex VI of the draft list of Annexes.

The implementation of both ECRIS 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.

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<sup>1</sup> Offence details will still have to be translated. Using ECRIS codes alone would not provide enough detail for countries to be able to process the information in order to gain a thorough understanding.

The independent consortium iLICONN has, together with the Commission elaborated a number of technical measures to assist member States in preparing the technical infrastructure for interconnecting their criminal records databases. References to the substantial documentation available are provided at the end of this manual. See "Links to more information on ECRIS" below.

### **1.3. THE USE OF THIS MANUAL –GENERAL REMARKS**

This manual assumes that the readers - practitioners/end-users of ECRIS, meaning both the central authorities (criminal registers) and prosecutors, judges, etc. - have a good knowledge and understanding of the ECRIS legal basis and to a certain extent the ECRIS technical specifications/software.

The manual addresses in particular the procedures governing the exchange of information: the modalities of identification of offenders, the common understanding of the categories of offences and penalties and measures listed in the Annexes to Decision 2009/316/JHA.

Furthermore, it describes guidelines and practices to be followed in order to efficiently exchange information with other Member States, taking into account the specificities of each Member State, by explaining problematic national offences and penalties and measures, thereby ensuring the necessary coordination for the development and operation of ECRIS.

The manual is divided into two parts: One general part and one country-specific, *inter alia* containing personal identification data, a list of national offences and a list of types of sentences together with possible supplementary penalties and security measures.

[ *The manual* was drawn up during the [Hungarian and Polish] Presidencies with the assistance of the independent consortium iLICONN, and also with the assistance of the European Commission and the General Secretariat of the Council of the EU. It was approved by (COPEN)/(the Article 36 Committee (CATS) at its meeting on ) .. 2011/2012. ]

### Amendments/updates

This manual shall be updated in future as necessary in the light of practical experience, amendments to the Framework Decision, to related legislation, etc. It is advisable that version control is used for the evolution of the manual.

Member States are requested to provide updated information / notifications of any changes to the General Secretariat of the Council and the Commission. /...

Any suggestions on the text of this ~~handbook~~ manual should be sent to the Council of the EU, General Secretariat, Unit DG H 2B (Judicial Cooperation in Criminal Matters), Rue de la Loi 175, B-1040 Brussels (e-mail: ...@consilium.europa.eu) or to the European Commission, DG JLS, Unit for Judicial Cooperation in Criminal Matters, European Commission, B-1049 Brussels.

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## 2. STAKEHOLDERS, ROLES AND RESPONSIBILITIES

A number of stakeholders, roles and responsibilities can be identified with regards to the ECRIS system and transmission of information on criminal records. The central authorities in the Member States are key to the work, but other important ones also addressed below include:

- A helpdesk and iLICONN
- COPEN and the experts' group
- The Commission and CIRCA

### **2.1. MEMBER STATES CENTRAL AUTHORITIES**

Each Member State has already designated *one or more* **central authorities** responsible for the transmission of information on criminal records and using ECRIS<sup>1</sup> Council Decision on the exchange of information extracted from criminal records. This is further elaborated upon in the Manual of Procedure<sup>2</sup> [~~NB: doc. 8848/10~~].

The central authority of each Member State ensures the implementation of the ECRIS software and its daily operation, such as the maintenance, development and administration of the national implementation of the ECRIS software. It ensures the correct implementation of the logging procedures and collects the non-personal statistical data during the ECRIS information exchanges. Each Member State is free to choose how these tasks are fulfilled.

Member States shall bear their own costs arising from the implementation, administration, use and maintenance of its criminal records database and the interconnection software

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<sup>1</sup> Council Framework Decision 2009/315/JHA, Article 3(1).

<sup>2</sup> Council Decision on the exchange of information extracted from criminal records – Manual of Procedure, 8848/10 COPEN 104 EJM 9 EUROJUST 44, 21 April 2010.

Each time a conviction is entered in the criminal records register of a convicting Member State and concerns a person being a national of one or more other Member States, the convicting Member State must notify<sup>1</sup> these other Member States of the conviction as soon as possible.<sup>2</sup> In addition, information on subsequent alterations or removal of information contained in the criminal records of the convicting Member State must be immediately transmitted<sup>3</sup> to the Member States of nationality of the convicted person. Any such alterations or deletions of information transmitted by the convicting Member State shall entail identical alteration or deletion<sup>4</sup> by the Member State of the person's nationality regarding the information that has been stored for the purpose of the retransmission to requesting Member States.

## 2.2. A HELPDESK AND iLICONN

Given the decentralised nature of ECRIS, the creation of a central entity may prove beneficial for the effective coordination and organisational support required. A central entity should deal with general support, technical assistance as well as dealing with all horizontal tasks relating to maintenance, evolution and dissemination of information. In addition, such a central entity ~~should~~ could act as a coordinator and facilitator between the various stakeholders. In line with Council Decision 2009/316/JHA, Article 3(7), this role should be fulfilled by the European Commission.<sup>5</sup>

~~The European Commission "... shall provide general support and technical assistance, including the collection and drawing up of statistics ...". In addition, the European Commission has the mandate of producing the ECRIS Reference Implementation and of operating and maintaining the sTESTA network.~~

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<sup>1</sup> Council Framework Decision 2009/315/JHA, Article 4, paragraph 2.

<sup>2</sup> The benefit of having clear definitions around timescales and compliance issues has been underlined.

<sup>3</sup> Council Framework Decision 2009/315/JHA, Article 4, paragraph 3.

<sup>4</sup> Council Framework Decision 2009/315/JHA, Article 5, paragraph 2.

<sup>5</sup> The European Commission "... shall provide general support and technical assistance, including the collection and drawing up of statistics ...". In addition, the European Commission has the mandate of producing the ECRIS Reference Implementation and of operating and maintaining the sTESTA network. Moreover, According to Article 3 Para 8 of the 2009/316 Decision, the Commission shall bear the costs arising from the implementation, administration, use, maintenance and future developments of the common communication infrastructure of ECRIS, as well as the implementation and future developments of the reference implementation software.

*Should a helpdesk be established? – iLICONN role?*

Although the need for a judicial support function has been put forward, for practical and financial reasons the scope of the helpdesk should initially be limited to technical aspects. iLICONN could assume this role.<sup>1</sup>

### **2.3. COPEN AND THE EXPERTS' GROUP**

Member States and the Commission shall inform and consult one another within the Council in order to undertake further implementing measures needed in order to make the ECRIS system fully operational<sup>2</sup>. The Working Party on Cooperation in Criminal Matters (COPEN) has been appointed the responsible Council forum for discussion and work on implementing the ECRIS project.

COPEN will meet and discuss ECRIS-related matters at regular and specified intervals /..., in order to ensure a continuous and efficient steering of the system, to improve the operational effectiveness and the performance of the ECRIS software and to elaborate the future versions of the ECRIS technical specifications. Other COPEN tasks will be to, to correct/update the content of the information exchanges and the non-binding manual for practitioners and to clarify inconsistencies and misunderstandings resulting from the interpretation of information exchanged.

When need arises from the monitoring of ECRIS, or in case of urgent matters, COPEN could meet or contacts could be taken via telephone and video conferences on a bi-lateral and multi-lateral level.<sup>3</sup> ... {to be filled in}

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<sup>1</sup> In addition to iLICONN providing technical support, and establishing a central entity to collate statistics and up-to-date documentation, the UK has been awarded funding from the Commission to run an “ECRIS Support Programme” (ESP). This will include the establishment of a helpdesk/ information centre for Member States preparing for ECRIS focusing mainly on practitioner and project support, as well as addressing training needs.

<sup>2</sup> Council Decision 2009/316/JHA, Article 6(2).

<sup>3</sup> According to participants, this worked well during the development of the ECRIS Technical Specifications.

The Council E-justice group is to be kept informed about the stage of implementation and developments.

For the time being, appointed national legal and technical experts meet on a regular basis respectively in the judicial and technical ECRIS workgroups. They evaluate the possibility to apply changes and to produce appropriate proposals for remedial actions in order to tackle the possible problems identified through the monitoring activity. They act as an advisory board on the technical and legal aspects of the ECRIS data exchanges and provide thus support to the decision-making activity of the COPEN Working Party. In the future, the meetings of the ECRIS judicial workgroup should continue to be chaired by the specific Member State ensuring the Presidency of the Council of the European Union, and should have a frequency matching at least that of the COPEN Working Party meetings, but reconvening also as often as important matters arise from the monitoring of ECRIS.

#### **2.4. THE COMMISSION AND CIRCA**

The Commission shall regularly publish a report on the exchange through ECRIS<sup>1</sup>. On the basis of information the Commission shall by **27 April 2015** present a first report to the European Parliament and the Council on how FD 2009/315/JHA is applied. This report may be accompanied if necessary by new legislative proposals.

"CIRCA" (Communication & Information Resource Centre Administrator) is an interactive and collaborative workspace, set up by the European Commission, an extranet tool, developed under their IDA programme, and tuned towards Public Administrations needs. It enables a given community (e.g. committee, working group, project group etc.) geographically spread across Europe (and beyond) to maintain a private space on the Internet where they can share information, documents, participate in discussion fora and benefit from various other functionalities. The access and navigation in this virtual space is done via any Internet browser (Firefox, Internet Explorer), provided a User-id and Password to enter the relevant Interest Groups(s) by the European Commission.

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<sup>1</sup> Decision 2009/316/JHA, Article 7.

ECRIS deliverables have been made available in CIRCA. It should be maintained, *inter alia* as it provides a central repository for documents and ensures that up-to-date versions are available. Also, downloading documents from CIRCA means that the sending of large emails can be avoided.

~~...CIRCA role in the future? Should "Circa" be maintained, and if so for what exact purposes?~~

3. **PROCEDURES**.....

- Obligations of the convicting Member States.....

A main aim of the ECRIS legislation is to ensure that the criminal record in the Member State of the person's nationality is as complete as possible at the earliest opportunity, so that exhaustive information is quickly available on any given citizen within the territory of the European Union.<sup>1</sup>

**3.1. NOTIFICATION of convictions and subsequent changes**.....

- to whom?.....
- how?.....
- when?.....

The convicting Member State must inform the central authority of the Member State of the convicted person's nationality of the 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<sup>2</sup>.

~~[NB: section describing when a conviction is considered final; country-specific differences]~~

In other words, when a person of nationality "A" is convicted in Member State "B", at the time when this conviction is entered in the criminal records register, the central authority of Member State "B" sends a notification message to the central authority of Member State "A" containing the information on this conviction. In case the convicted person is a national of more than one Member State, information should be sent to all Member States concerned.<sup>3</sup>

<sup>1</sup> For a substantial number of specific information elements of convictions that are to be transmitted according to the Business Analysis, it will be important to collect the Member State-specific understanding of the information element and to indicate if, under which conditions and how the information element will be used.

<sup>2</sup> FD 2009/315/JHA, Article 4.

<sup>3</sup> In the country-specific part, it is important to include a section describing the conditions under which a conviction is considered final and ready for sending in a notification to the Member State of nationality. This may differ according to the national legislations.

### 3.2. CONTENTS of notifications:.....

The notification message shall provide information relevant to the event being notified. This implies that in case of subsequent notifications of subsequent alterations or deletions of information relating to the same conviction, it is assumed that, where possible, all available information relating to this conviction is sent again in each notification message, together with the information relating to the latest change.<sup>1</sup> Furthermore, as stated in part 4.1.1 “General Content of Notification Messages” of the Business Analysis, it is not the aim of such notification messages to each time carry the whole history of a convicted person. In particular, if the person has been convicted multiple times, not all convictions contained in the national register are notified each time. Only the information on the conviction that relates to the change being notified is included in the notification message. This approach follows closely the “snapshot” approach that was agreed upon in the NJR pilot project.

Article 11(1) of FD 2009/315/JHA lists the information to be transmitted. This information is divided into three categories:

- obligatory information (Article 11(1)(a)(i)-(iv));
- optional information (Article 11(1)(b)(i)-(iv)); and
- additional (Article 11(1)(c)(i)-(iii)).

In addition, the central authority may transmit any other information concerning convictions entered in the criminal record.

*~~{List of the information to be notified (Article 11) to be set out.}~~*

This information shall be introduced into the electronic form which was established in each Member State for the purpose of implementation of ECRIS. The "look" may differ, but the information is (should be) the same.

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<sup>1</sup> The ECRIS Technical Specifications and Business Analysis foresee that countries may send all previously notified information, where possible. However, some countries are not able to always send the complete history of a conviction, as it is not stored in the register.

Notification of subsequent changes

When a change occurs in the register of the convicting Member State "B" which has a bearing on the conviction information of the person of nationality "A", then "Member State B" shall send a notification message to "Member State A", which contains:

- (1) the information relating to the conviction being affected;
- (2) the result of the previous changes that have already affected this same conviction earlier; and
- (3) information relating to the latest change.

As the point of departure, a notification contains information on one single conviction, however leaving the possibility to provide in a notification message the "history" of the respective conviction, meaning the original conviction information as well as all the subsequent changes applied to it.<sup>1</sup> ~~[NB: country-specific differences]~~

- **identification of the person.....**

To facilitate the identification of the person, it is crucial that as much information as possible concerning the identification of the person, is provided. (For individual Member State's specific requirements, please see the country-specific part of this non-binding manual starting from Annex VI of the draft list of Annexes). One of the main aims of this manual is to address in particular the modalities of identification of offenders<sup>2</sup>. The Annex(es) attached to be filled in by Member States' central authorities would serve as guidelines as to the information to be provided.

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<sup>1</sup> The country-specific part describing the specifics of the Member States should indicate for each Member State the level of detail of information that is contained in the national criminal records registers and that can thus be transmitted in notifications bearing subsequent changes. Some Member States may only be able to send the updated conviction information without the history in some specific cases and for specific types of changes.

<sup>2</sup> Decision 2009/315/JHA, Article 6(2)(a).

As noted above, article 11(1) of FD 2009/315/JHA lists the information to be transmitted. ~~This information is divided into three categories:~~

- ~~obligatory information (Article 11(1)(a)(i)-(iv));~~
- ~~optional information (Article 11(1)(b)(i)-(iv)); and~~
- ~~additional (Article 11(1)(c)(i)-(iii)).~~

*Details to be listed ...*

~~In addition, the central authority may transmit any other information concerning convictions entered in the criminal record.~~

The aim of the search process in the Member State receiving the information should be 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 should request additional identification data from the convicting Member State. Some Member States identities cannot be confirmed with absolute certainty purely based on alphanumeric details. Biometric data would have to be provided, if available, in order to accurately identify a person.

- If no person is found matching the identification data, the Member State should store the notified conviction information for the purpose of retransmission and inform the convicting Member State that the notification has been correctly received, but that no matches have been found.

- If the person found is not a national of the Member State, or rather when no match has been found during the search and the Member State receiving the notification information has the absolute certainty that the convicted person either does not exist or is not a national of the country, the receiving Member State decides not to store the notified conviction information for the purpose of retransmission and informs the convicting Member State of the problem.

- 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, one of two scenarios should be followed. Either the receiving Member State should store the notified conviction information for the purpose of retransmission and informs the convicting Member State that the notification has been correctly received, or the process leads to informing 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 could not be processed because multiple persons matching the identification criteria have been found.

*{NB-PL question}...*

- **sentence**

"Conviction" or "sentence" is defined as "any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record of the convicting Member State."<sup>1</sup> This covers also non-criminal rulings<sup>2</sup> and includes also cases where several offences have been grouped during a single judgment and for which multiple sanctions may be declared, i.e. information about the deciding authority, the person being convicted, one or more offences that have been committed, and one or more sanctions to be executed.

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<sup>1</sup> FD 2009/315/JHA, Article 2(a).

<sup>2</sup> However, the parameter “non-criminal ruling” shall be indicated only in cases where information of such a ruling is provided on a voluntary basis by the Member State of nationality of the person concerned, when replying to a request for information on convictions” (Footnote “parameters” 2. ECRIS Decision and art. 4.2, last paragraph ECRIS Decision). Some Member States might not be able to put "non-criminal rulings", or specific subsets of such rulings, in their criminal records registers. This should also be identified in the country-specific document. Such convictions must still be stored for the purpose of retransmission, even if not stored in the national criminal records register.

The term "decision" is more general than "conviction" defined above. It is understood as any final decision from a **competent authority**, to the extent that these are recorded in the criminal records register of the convicting Member State and that are thus subject to be transmitted between the Member State's central authorities through ECRIS. These include obviously the convictions defined above, but also all subsequent alterations or deletions of information contained in the criminal record (see below).

- **supplementary penalties**.....

"Supplementary penalties" include sanctions that are defined in addition to the main sanction sentenced for the offences committed. This could cover disqualifications as well as alternative penalties to be executed if the main penalty is not fulfilled (decided with the initial conviction or later as a separate decision [term to be specified] cover disqualifications. "Supplementary penalties" are included in Article 11 Para 1 letter a) iv) of the FD 2009/315 under "obligatory information". The term "disqualifications arising from the conviction" is used in FD 2009/315/JHA and is referred to in article 11(b)(iv) as optional information that shall be transmitted by the central authorities of the Member States if available. These "disqualifications" are understood as being various forms of deprivation of rights or privileges of the convicted person. The most common disqualifications are already identified as sanctions and are covered by the categories that are defined in Annex B of the Council Decision 2009/316/JHA, more specifically in categories such as "2000 – Restriction of Personal Freedom", "3000 - Prohibition of a specific right or capacity", etc. and their subcategories. Such "disqualifications" are understood as being specific subsets of sanctions.

- **security measures**.....

“Security measures” are included in Article 11 Para 1 letter a) iv) of the FD 2009/315 under “obligatory information”. A security measure could be a measure involving deprivation of liberty or rights, or a measure relating to property, which is essentially intended to prevent a further offence being committed. Its function is basically preventive. It has no punitive function. Security measures are individual measures; they are coercive measures; finally, they are measures adopted against certain individuals deemed to be dangerous to society, and to prevent offences which are very likely to be committed owing to their condition. Examples of security measures could include such things as mandatory medical treatment; hospitalization; prohibition from performing a function or following a profession, trade or another occupation; expulsion of foreigners; special confiscation; prohibition from returning to the family home for an established period of time.

*~~[to be filled in]...~~*

- **subsequent decisions modifying the enforcement of the sentence.....**

*~~[any change made to a conviction that has previously been notified to a Member State should trigger a new notification so that this Member State is aware and updated]~~*

The term "decision" groups subsequent changes to the original conviction, such as the interruption of the execution of the sanction, the replacement of a sanction by another one, the revocation of a suspension, the formation of an overall penalty, the end of execution of the sanction, etc.

Changes made in the criminal records register on a conviction that has previously been notified to the Member State of nationality needs to trigger a new notification for informing the latter of the change. The initial conviction should therefore be transmitted only once the information is "stable" in the national register so that only mainly subsequent decisions will affect and modify the conviction information in the national register.

**"open category" offence code.....**

~~*{In the country specific part, each Member State should indicate (to the extent possible) for which purposes it intends to use the "other category" or "open category" code}*~~

When transmitting information on convictions, the transmitting Member State shall refer to the corresponding code for each of the offences referred to in the transmission, as provided for in Annex A. If, exceptionally, the offence does not correspond to any specific sub-category, the "open category"-code of the relevant or closest category of offences be used. Equally for all information relating to the contents of the conviction, the penalties and measures.

**"other category" offence code.....**

If, even more exceptionally, not even the "open category"-code seems applicable, the "other category"-code should be used. In the country-specific part, each Member State should indicate (to the extent possible) for which purposes and how it intends to use the "other category" or "open category" code. This may, at a later stage, help identifying criteria which would provide support to the Member States when classifying the offences.

- ~~level of completion.....~~
- ~~level of participation.....~~
- ~~total/partial exemption from criminal responsibility.....~~
- ~~recidivism.....~~
- ~~"non-criminal ruling".....~~

~~Some Member States might not be able to put "non-criminal rulings", or specific subsets of such rulings, in their criminal records registers. This should also be identified in the country specific document. It must also be clear that such convictions must still be stored for the purpose of retransmission, even if not stored in the national criminal records register.~~

~~*{to be filled in}*~~

### 3.3. REQUESTS for information on criminal record data [convictions].....

All requests from the central authority of a Member State for information extracted from the criminal record shall be submitted using the form set out in the Annex of this FD<sup>1</sup> (Annex IX to this manual) concerning the paper-based versions. Using ECRIS, the requests must be sent through the electronic channel and according to the technical specifications that have been defined for this purpose.

The request message is constituted of the following elements:

- information on the requesting authority;
- identification information of the person for which convictions are to be extracted from the criminal records register, if any;
- the purpose of the request;
- additional information such as the case number, the consent of the person referred to in the request, [or an "error" for not accepting a request when no consent has been given by the person concerned ], the urgency of the request, miscellaneous remarks, etc.

Requests are not limited to nationals or [habitual] residents, but applies also to requests relating to third country nationals and stateless persons<sup>2</sup>. This should be further specific for each Member State in the Member State-specific document. According to the provisions of the national legislation, some Member States could systematically reject such requests, some may never issue such requests, etc. The conditions for actually issuing and responding to requests for 3rd country nationals and stateless persons should be detailed for each Member State. [*specifications in the country specific part*]

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<sup>1</sup> FD 2009/315/JHA, Article 6(4).

<sup>2</sup> FD 2009/315/JHA, Article 7(4).

FD 2009/315/JHA foresees the possibility to provide copies of the original convictions in individual cases<sup>1</sup>. This is not supported by the electronic format defined for the ECRIS software system. If the originals are required, these need to be transmitted in parallel to the ECRIS notification message and through other means (i.e. e-mail, fax). Member States need to indicate under which conditions the original copies would be required. [*perhaps need for additional information in the country-specific part + not supported by the electronic format defined for the ECRIS system*]

- requirements; *identity of person, minimum identification data*.....

The requirements as far as the identity of a person is concerned appear from point (b) of the form. To facilitate the identification of a person as much information as possible is to be provided. Before submitting the request, it should be checked in the country-specific part whether the Member State from which information is requested requires specific information, but also which procedures are used for the verification of an identity, e.g. national databases of inhabitants, fingerprints, etc. (*e.g. Spain, Sweden ...*)

- purpose of the request:
  - 1) criminal proceedings
  - 2) other than criminal proceedings
- [- ~~incl.~~ requests from an employer (*cf. PL request*).....
- requests from a judicial authority.....
- requests from an administrative authority.....
- requests from the person concerned.....
- purpose of the request (other than criminal proceedings)<sup>2</sup>.....

*... to be filled in*

<sup>1</sup> FD 2009/315/JHA, Article 4(4).

<sup>2</sup> It is suggested that the Member States fill this part with the appropriate text.

Neither Decision 2009/316/JHA, nor FD 2009/315/JHA establishes any obligation to exchange information about non-criminal rulings, but national law of Member States may provide for this possibility.

- ~~request from a judicial authority.....~~
- ~~request from an administrative authority.....~~
- ~~request from the person concerned.....~~

*[to be filled in]*

**3.4. REPLIES to a request for information on convictions:.....**

- general issues (content)
- request issued for the purpose of criminal proceedings.....
- requests issued for purposes other than criminal proceedings.....

Depending on the origin of the request, the information provided may differ. The need for receiving information on the criminal records of a foreign person may arise from criminal proceedings as well as from totally different purposes, such as for example employment vetting, an individual's request to receive an extract of his/her own criminal records, a procedure for obtaining a licence for carrying firearms, etc. The purpose of the request should be taken into account when replying, as the rules applying are different. First thing to determine for the central authority of the requested Member State is consequently the purpose of the request.

When replying to a request issued by the central authority of the requesting Member State **for purposes of criminal proceedings**, the requested Member State's central authority must transmit, using the standardised format, all the person's convictions stored in its criminal records register to the requesting Member State<sup>1</sup>.

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<sup>1</sup> FD 2009/315/JHA, Article 7(1)((a) - (d)).

This reply should contain the following:

- convictions handed down in the Member State of the person's nationality and entered in the criminal records;
- any convictions handed down in other Member States which were transmitted to it after 27 April 2012 (and stored by the Member State of the person's nationality for the purpose of retransmission<sup>1</sup>);
- any convictions handed down in other Member States which were transmitted to it by 27 April 2012, and entered in the criminal records register;
- any convictions handed down in third countries and subsequently transmitted to it and entered in the national criminal records' register.

A requested Member State must provide an answer when the request was issued for purposes of criminal proceedings<sup>2</sup>. However, following the Business Analysis, 3.13, depending on the Member States, the rehabilitation 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 rehabilitation 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.

When replying to a request issued by the central authority of the requesting Member State **for purposes other than criminal proceedings**, "that central authority shall in respect of convictions handed down in the Member State of the person's nationality and of convictions handed down in third countries, which have been subsequently transmitted to it and entered in its criminal record, reply in accordance with its national law"<sup>3</sup>. In particular, in the case of non-criminal proceedings, the requested Member State verifies if its own national legal provisions allow disclosing information on convictions extracted from the national criminal record to an authority of a different Member State for the specific purpose that has been indicated in the request.

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<sup>1</sup> FD 2009/315/JHA, Article 5(1) and (2).

<sup>2</sup> FD 2009/315/JHA, Article 7(1).

<sup>3</sup> FD 2009/315/JHA, Article 7(2).

The requested Member State ~~{country-specific part: a list of reasons/purposes admitted should be provided for each Member State}~~ may either transmit information on convictions previously received from other Member States and stored for the purpose of the retransmission or transmit a list of Member States to which the request can be redirected when the information is not re-transmittable<sup>1</sup>. A list of purposes admitted should be provided for each Member State in the country-specific part, including, for instance, national legislation on vetting, so that Member States making requests for purposes other than criminal proceedings can easily establish whether another Member State would accept such requests.

### 3.5. CONTENTS of replies to requests for information .....

Article 11 of the FD 2009/315/JHA defines a set of information elements that must always be transmitted in notifications, unless, in individual cases, such information is not known to the central authority of the convicting Member State. This could provide a guide about the contents of the replies. The level of detail and scope of the responses will vary according to provisions of national legislations. It would be useful that the Member States indicate in particular the types of convictions/sanctions that are included in the response, depending on who is requesting and the purpose of the request.

*{to be filled in}*

### 3.6. DEADLINES FOR REPLIES.....

Deadlines for replies are specified in Article 8 of FD 2009/315/JHA.

Requests *from a central authority* (cf. Article 6(1)) 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.

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<sup>1</sup> FD 2009/315/JHA, Article 7(2), paragraphs 2 and 3.

Replies to a request *from a person concerned* should be given within a deadline of 20 working days from the date the request was received (Article 6(2)).

Deadlines should be based on the requested Member State's own calendar (taking into account public holidays, office closing days, etc.) In the country-specific part, Member States could provide a list of such days.

**3.7. ADDITIONAL INFORMATION**.....

- ~~connection of request~~.....
- ~~request for additional information~~.....
- ~~communication between Member States~~.....

*[to be filled in]*

**3.8. LANGUAGES** .....

**Translation?** .....

23 different languages are used within EU's 27 Member States. Article 10 of the FD 2009/315/JHA sets out the language regime, that implies the following:

**Requests:**

When submitting a request, the requesting Member State should use (one of) the official language(s) of the Member State to which the request is directed. The technical protocol of ECRIS also allows the requester to send the information in his own language (in addition to the language of the requested Member State).

**Notifications:**

Notifications received from the convicting Member State in a language that is not (one of) the official language(s) of the Member State of nationality may have to be translated by the latter before its central authority can actually use it.

**Replies/responses to requests:**

The requested Member State shall reply either in (one of) its official language(s) or in another language accepted by both Member States. It should be indicated in the country-specific pages which languages a particular Member State would accept.

A response to a request can be constituted of convictions extracted from the national criminal records register (thus available in one of the official languages of the requested Member State), but also of convictions that have been received through notifications by other Member States (thus in different languages). When answering a request including such convictions, the requested Member State may need to translate the information contained in foreign notifications first to one of its official languages before actually sending the response to the requesting Member State.

*[In order to fulfil however the obligation defined by article 10 of the Council Framework Decision 2009/315/JHA, for requests, these information elements are to be sent in two versions: in the alphabet and character set of the requesting Member State and additionally transliterated into the alphabet and character set of the requested Member State. It is recommended to fully automate this transliteration if possible so as to diminish the manual workload of the Member States' central authorities.]*

**Language of communication in case of request for additional information**

#### 4. ADDITIONAL PERTINENT ASPECTS TO CONSIDER

##### 4.1. CONDITIONS FOR THE USE OF PERSONAL DATA.....

Data may be used for the purposes of criminal proceedings. Use for other purposes is governed both by the limits specified by the requested Member State and by national rules governing access to the information contained in the criminal record in the requesting Member State. Where information was transmitted for other purposes, the requested Member State may ask the requesting Member State to inform it of the use made of it. In accordance with the usual rules on data protection, the limitations on use do not apply to data obtained by a Member State and coming from that Member State.

Conditions for the use of personal data are regulated in Article 9 of FD 2009/315/JHA. Personal data provided under Article 7(1) and (4) *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, as specified in the form set out in the Annex.

Personal data provided under Article 7(2) and (4) *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 in the form set out in the Annex.

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 a criminal proceeding, may be further used by that third country only for the purposes of criminal proceedings.

*[to be elaborated]...*

## 4.2. DATA PROTECTION

- ~~EU/non-EU cooperation~~
- ~~Obligations under this Framework Decision~~
- ~~Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.....~~
- ~~Restrictions on use/transmission of data~~
- ~~data subjects rights (access, rectification, deletion/blocking, redress mechanisms)~~

Everyone has the right to the protection of personal data concerning them, according to Article 16 of the Treaty on the Functioning of the European Union (TFEU). In addition, the right to privacy and the right to the protection of personal data are set out in the Charter of Fundamental Rights, Article 8, stating in addition in its paragraph (2) that "everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified". Member States are also bound by the provisions of Council of Europe's Convention, ETS 108, from 1981.

The main instrument regulating the exchange of information between criminal records is Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>1</sup>. This Framework Decision applies in the context of computerised exchange of information extracted from criminal records of Member States, providing for an adequate level of data protection when information is exchanged between Member States. It establishes minimum rules, and Member States can chose to require higher standards of protection to national data processing<sup>2</sup>.

To ensure an effective protection, information on subsequent alteration or deletion of information contained in the criminal record shall be immediately transmitted by the central authority of the convicting Member State to the central authority of the Member State of the person's nationality<sup>3</sup>.

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<sup>1</sup> OJ L 350, 30.12.2008, p.60.

<sup>2</sup> Recital (18) of Council Decision 2009/316/JHA.

<sup>3</sup> FD 2009/315/JHA, Article 4(3).

When adopting the legal basis for ECRIS, the European Data Protection Supervisor emphasised the need for effective coordination in the data protection supervision of the system, which involves authorities of the Member States and the Commission as provider of the common communication infrastructure.

Basic principles such as purpose limitation, proportionality, legitimacy of processing, limits on storage time, security and confidentiality as well as respect for the rights of the individual, control by national independent supervisory authorities, and access to effective judicial redress should be ensured.

*[The Commission will propose/proposed legislation in 2011 on the basis of Article 16 TFEU, aimed at revising the legal framework for data protection with the objective of strengthening the EU's stance in protecting the personal data of the individual in the context of all EU policies, including law enforcement and crime prevention, taking into account the specificities of these areas .... Possible amendments to the current legislation will be integrated into this manual.]<sup>1</sup>*

### **Cooperation with third countries**

*[to be filled in]*

**FORMAT** of information to be exchanged.....

~~Article 11 of FD 2009/315/JHA~~

~~In order to improve the understanding of information transmitted, a "standardised European format" allowing information to be exchanged in a uniform, electronic and easily computer-translatable way.~~

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<sup>1</sup> Some have suggested that this paragraph should be deleted awaiting the outcome of the proposal. If it is not deleted, a cross-reference to the Data Protection Framework Decision 2008/977/JHA has been proposed.

~~Other ways of organising and facilitating exchanges of information on convictions.....~~

~~(Article 11 of FD 2009/315/JHA)~~

~~Other such means include:~~

~~(a) defining all means by which understanding and automatically translating transmitted information may be facilitated;~~

~~(b) defining the means by which information may be exchanged electronically, particularly as regards the technical specification to be used and, if need be, any applicable exchange procedures;~~

~~(c) possible alterations to the form set out in the Annex~~

### ~~4.3. IMPLEMENTING MEASURES.....~~

~~Implementation of ECRIS in the EU Member States:.....~~

~~Other ways of organising and facilitating exchanges of information on convictions.....~~

### **4.4. REPORTING about the functioning .....**

The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics referred to in Article 6(2)(b)(i)<sup>1</sup>. This report shall be published for the first time at the end of April 2015<sup>2</sup>.

### **4.5. STATISTICS AND LOGGING.....**

- collecting.....

- processing.....

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<sup>1</sup> Decision 2009/316/JHA, Article 7.

<sup>2</sup> FD 2009/315/JHA, Article 13(3).

~~As defined in the Council Decision 2009/316/JHA — Article 6(2 b), in order to coordinate the actions for the development and operation of ECRIS, the relevant departments of the Member States and the European Commission shall inform and consult together with a view to establish non-personal statistics relating to the ECRIS exchange of information extracted from criminal records.~~

~~These statistics represent the end result/output of the logging process, and provide an accurate and exhaustive set of objective indicators reflecting the effectiveness, performance and legal compliance of the message exchanges supported by ECRIS.~~

~~In order to ensure the efficient operation of ECRIS, the Commission shall provide general support and technical assistance, including the collection and drawing up of statistics referred to in Article 6(2)(b)(i) and the reference implementation software<sup>1</sup>.~~

The representatives of the relevant departments of the administrations of the Member States and the Commission shall inform and consult one another within the Council with a view to coordinating their action for the development and operation of ECRIS, concerning in particular:

- (i) the establishment of logging systems and procedures making it possible to monitor the functioning of ECRIS and the establishment of non-personal statistics relating to the exchange through ECRIS of information extracted from criminal records;
- (ii) the adoption of technical specifications of the exchange, including security requirements, in particular the common set of protocols;
- (iii) the establishment of procedures verifying the conformity of the national software applications with the technical specifications

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<sup>1</sup> Decision 2009/316/JHA, Article 3(7).

In order to ensure the efficient operation of ECRIS, the Commission shall provide general support and technical assistance, including the collection and drawing up of statistics referred to in Article 6(2)(b)(i) and the reference implementation software<sup>1</sup>.

The collection process of statistical data focuses on identifying and collecting the types of information that are most relevant for monitoring ECRIS while insuring that the protection of personal data rules are fully respected. Thus, in particular, the statistical information should not provide information that could be used in such a manner that would allow the tracing of the identity of individual persons.

These statistics represent the end result/output of the logging process, and provide an accurate and exhaustive set of objective indicators reflecting the effectiveness, performance and legal compliance of the message exchanges supported by ECRIS.

## **LOGGING**

~~—— information to be stored~~

The concept of logging in this context refers specifically to the recording of information during the execution of the specific ECRIS data exchanges. Logging is defined as the activity that records accurate and objective factual information, among other things to be able to provide the statistics.

~~The central authority of the Member State of the person's nationality must store, for later retransmission, the obligatory and optional information on convictions handed down against its nationals on the territory of other Member States and that has been notified to it<sup>2</sup>.~~

~~*Obligatory* and *optional* information data must be stored by the receiving Member State for retransmission. *Additional* information may be stored for retransmission, in accordance with article 11(2) of the Council Framework Decision 2009/315/JHA. How and where this information is actually stored is to be decided individually by each Member State's central authority.~~

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<sup>1</sup> Decision 2009/316/JHA, Article 3(7).

<sup>2</sup> FD 2009/315/JHA, Article 5(1).

A clear distinction needs to be made between (1) storage of the indicators to be collected for establishing statistics and (2) storage of conviction information for the purpose of retransmission.<sup>1</sup> These are separate information packages. The statistical indicators could very well be computed by the ECRIS software while the conviction information is stored in the national register and maybe also in a separate set of files/database. This distinction is also important for the period of storage which differs between the two information packages. Typically storage of statistics is limited in time (the time needed to transmit and share the statistical information) while the storage of the conviction information is not limited in time.

~~[Add PL case on multiple persons, no person found – once solved]~~

- storing period

FD 2009/315/JHA defines in detail<sup>2</sup> Member States' obligation to store information notified by the convicting Member States on convictions, as well as on subsequent alterations and deletions, for the purpose of retransmitting this same information when responding to requests.

In addition to the obligations of a convicting Member State to transmit information to the Member States of the person's nationality concerning convictions handed down against their nationals which this Framework Decision incorporates and further defines, an obligation on the Member States of the person's nationality to store information so transmitted is also introduced, in order to ensure that they are able to reply fully to requests for information from other Member States.

It should be noted that the aim of the provisions of this Framework Decision concerning the transmission of information to the Member State of the person's nationality for the purpose of its storage and retransmission is not to harmonise national systems of criminal records of the Member States.

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<sup>1</sup> *Obligatory* and *optional* information data must be stored by the receiving Member State for retransmission. *Additional* information may be stored for retransmission, in accordance with article 11(2) of the Council Framework Decision 2009/315/JHA. How and where this information is actually stored is to be decided individually by each Member State's central authority.

<sup>2</sup> FD 2009/315/JHA, Articles 5, 7(1)b and 11(1) and (2).

#### 4.6. RELATIONSHIP TO OTHER LEGAL INSTRUMENTS.....

The ECRIS system should be the principle instrument of transmission of information of criminal records between the EU Member States.

ECRIS (~~FD 2009/315/JHA~~) supplements existing conventions containing provisions on exchange of information from criminal records<sup>1</sup>, in particular the 1959 Council of Europe Convention (CoE) on Mutual Assistance in Criminal Matter (in particular Articles 13 on judicial records and Article 22 on exchange of information from judicial records ~~{to be cited in full?}~~) and its protocols. However, Article 22 of the CoE-convention is replaced by the ECRIS rules.

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000<sup>2</sup> also contains relevant provisions, in particular its Article 6 on transmission of requests for mutual assistance, paragraph 8(b) on notices of information from judicial records, and Article 23 on personal data protection.

FD 2009/315/JHA does not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States

However, it is still possible for Member States' judicial authorities to transmit information concerning criminal records directly to each other under Article 6(1) of the Convention of 29 May 2000<sup>3</sup>. The judicial authorities may therefore still obtain information needed either by approaching their counterparts in the relevant Member State direct or by applying to the designated central authority.

[Proposal currently under discussion with EP (current wording of Council "general approach"):  
Proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA.

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<sup>1</sup> FD 2009/315/JHA, Article 12(1).

<sup>2</sup> OJ C 197, 12.7.2000, p.1.

<sup>3</sup> Decision 2009/315/JHA, Article 4.

*Article 10: Disqualification arising from convictions:*

*1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising at least professional activities involving regular contacts with children.*

*1a. Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional activities involving regular contacts with children, are entitled to be informed, in accordance with national law, by any appropriate way, such as direct access, access upon request or via the person concerned, of the existence of convictions for an offence referred to in Articles 3 to 7 entered in the criminal record, or of any disqualification to exercise activities involving regular contacts with children arising from a conviction for an offence referred to in Article 3 to 7. ). + corresponding recital (12).]*

#### **4.7. RELATION TO THIRD STATES.....**

FD 2009/315/JHA does not modify obligations and practices established in relation to Third States under the European Convention on Mutual Assistance in Criminal Matters, in so far as that instrument remains applicable.

When information extracted from the criminal record is requested under Article 6 from the central authority of the *Member State of the person's nationality* for the purposes of criminal proceedings, that central authority shall transmit to the central authority of the requesting Member State information on any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record<sup>1</sup>.

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<sup>1</sup> FD 2009/315/JHA, Article 7(1)(d).

When information extracted from the criminal record is requested under Article 6 from the central authority of a Member State *other* than the Member State of the person's nationality, the requested Member State shall transmit information on convictions handed down in the requested Member State and on convictions handed down against third country nationals and against stateless persons contained in its criminal record to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters<sup>1</sup>.

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 in accordance with Article 7(3), is subject to the same usage limitations as those applicable in a requesting Member State in accordance with paragraph 2 of this Article. Member States shall specify that personal data, if transmitted to a third country for the purposes of a criminal proceeding, may be further used by that third country only for the purposes of criminal proceedings

#### **4.8. LINKS TO MORE INFORMATION ON ECRIS .....**

ECRIS Technical Specifications – "Inception Report"

ECRIS Technical Specifications – "Technical Architecture"

ECRIS Technical Specifications – "Security Analysis"

ECRIS Technical Specifications – "Business Analysis"

ECRIS Technical Specifications – "Detailed Technical Specifications"

ECRIS Technical Specifications – "Logging, Monitoring and Statistics Analysis"

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<sup>1</sup> FD 2009/315/JHA, Article 7(4).