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of: Working Party on Cooperation in Criminal Matters

on: 28 May 2012

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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

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**I. INTRODUCTION**

The Working party on Cooperation in Criminal Matters (ECRIS experts) met on 28 March 2012 in order to discuss the issues linked with the question of possible further support required by Member States for the implementation of the Council Decision 2009/316/JHA and the Council Framework Decision 2009/315/JHA . Discussions were carried out on the basis of doc. 7745/12 COPEN 58 EJUSTICE 22 JURINFO 13. Main conclusions of the meeting are set out under II below.

The presentation of the state of play regarding the implementation of ECRIS was also an opportunity for the Presidency to urge the Member States that have not yet sent in their notifications regarding the information in the annexes A and B to provide this information to the General Secretariat of the Council as soon as possible. Moreover, in order to finalize a full version of the Manual for Practitioners Member States were invited to fill gaps in the country specific information set up in the current draft version of the Manual.

## **II. CONCLUSIONS**

### **A. STATE OF PLAY OF IMPLEMENTATION.**

Requested by the Presidency the Commission gave a short state of play review regarding the implementation of the ECRIS.

In its intervention the Commission specified that in March 2012 the technical aspects of the ECRIS implementation have been largely achieved with the following technical instruments adopted: "Business Analysis", "Detailed Technical Specifications". Furthermore, on 13 February 2012, an important milestone was reached in the development of the ECRIS - the interconnection software necessary for using the system, developed under the responsibility of the Directorate General Justice of the European Commission, was validated and provided to the Member States. 23 Member States indicated that they intend to use the developed software.

The Commission stressed that this important goal was the result of a constructive co-operation between the Commission (DG Justice) in charge and the Member States showing a high and continuous level of Member States engagement and buy-in in this development process. This cooperation allowed DG Justice to ensure that the software was developed in time and in line

with end user's expectations. It is now for Member States to ensure that all technical conditions are fulfilled to exchange criminal records under Framework Decision 2009/315 irrespective of the Member State's intention whether or not to use the Commission software to comply.

In 2011 the Commission awarded financial assistance under the criminal justice programme to a UK-led project providing support to Member States for the implementation of ECRIS by means of an information centre, questionnaires, visits and contacts to the Member States. The project aims at assisting the Member States in their roll out activities.

The Commission (DG Justice) invited Member States to inform about their readiness progress in November 2011. A second request of March 2012 invited Member States to inform the Commission about any encountered difficulties to reach the deadline. On the basis of the information received so far, the Commission is able to establish a degree of readiness and way ahead. So far, the degree of readiness in the Member States varies, both with regard to the technical readiness and the legal transposition. Five Member States stated in March 2012 that they will not be ready in due time.

In respect of the introduction provided by the Commission, the ESP (ECRIS Support Programme) representative provided further detailed insight into the specific issues linked with the implementation process as faced by specific Member States.

In relation to the point raised by the Commission and ESP that some Member States will not be able to fully use ECRIS on the expected date of implementation (27 April 2012), a question was raised by some delegations as to the way of addressing this situation. It has been noted that the Council Framework Decision 2009/315/JHA provides in article 11(5) for ways of addressing this issue. Namely, the existing methods of transmission of information extracted from criminal records should remain in place. It was understood that the reference could be made here to both paper based exchange as well as exchange via the NJR network.

However, both the Commission and the Member States underlined the importance of ensuring as quick as possible implementation and operability of the ECRIS after 27 April 2012. Experts confirmed that any derogation from ECRIS should only be seen as temporary.

## **B. NON-BINDING MANUAL FOR PRACTITIONERS AND WEBSITE BASED INFORMATION DEPOSITORY.**

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

In conclusion to the discussion at the Working Party experts underlined the importance of establishing a central on-line platform on which information related to ECRIS could be available. The centralisation of the platform was seen necessary in order to avoid lack of compatibility and coherence between various potential sources of information about ECRIS. It has been agreed that CIRCABC could serve this purpose. At the same time experts agreed that a distinction needs to be made between the information which will be generally available and that which will remain accessible only to registered experts ( i.e. technical specifications). If more than one website is necessary in order to ensure the general availability of some information, a solution needs to be found to ensure that information uploaded on CIRCABC and on the other website(s) is identical.

In addition, the role of the General Secretariat of the Council was reiterated for what concerns the updates requirement related to the regular review of the information contained within the supporting annexes A and B (the lists of national offences and types of sentences etc.) and which shall be submitted by the Member States to the General Secretariat of the Council. The General Secretariat of the Council will promptly make the information available to the on-line platform.

### **C. CENTRAL SUPPORT AND GUIDANCE/ HELPDESK.**

While agreeing on the need for maintaining a support and guidance helpdesk after the date of implementation, experts agreed that further reflection on the management model to follow up to the implementation of ECRIS will be needed. In particular in what concerns the post June 2013 (the date end of the ESP project) status. Specifically it will need to be seen which competences/tasks should that helpdesk have (from technical support, to operational support, to judicial support) and what forms of financing could be established in order to ensure its operability. The Commission was requested to consider the possible options and to put forward at the next meeting of ECRIS experts in the COPEN Working Party some suggestions in that respect.

These conclusions were drawn against the background of the obligation set out under Article 3 of the ECRIS decision by which the Commission shall provide general support and technical assistance, including the collection and drawing up of statistics and the reference implementation and S-Testa General Network.

### **D. THE FUTURE ROLE OF THE ECRIS EXPERT GROUP.**

Experts favored the preservation of the current working method established on the basis of pragmatic relationship between Commission Experts Group and ECRIS COPEN Working Group. Following the confirmation from the Commission it has been endorsed that the Experts group will continue its work beyond April 27, however adjusting the frequency of its meetings to the specific needs expressed by the experts or the Commission. It is understood that in the Experts Group may participate, depending on the subject matter discussed, both technical and legal experts. Nonetheless, the formal relationship between the ECRIS Experts Group and the COPEN Working Party needs to be preserved. Any decision taken at the level of the ECRIS Experts Group needs to be endorsed by the COPEN Working Party, be it during its meeting or in a written procedure.

COPEN will hold meetings whenever necessary to discuss and decide issues of general and of legal nature.

The Commission was requested to inform the experts as early as possible in advance about the envisaged Experts Group meetings and proposed agendas.

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