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NOTE

From: Presidency
To: Permanent Representatives Committee/Council

Subject: Proposal for a Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA
(First reading)
= Progress report

1. On 19 January 2016, the Commission submitted to the European Parliament and to the Council a proposal for a Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA. The proposal is based on Article 82(1)(d) TFEU.
2. The underlying principle of the existing ECRIS is that Member States receive systematically information on convictions of their nationals from other Member States, to store in their criminal records. This enables Member States to obtain complete information on previous convictions of an EU national from the Member State of nationality of that person.

However, for third country nationals and stateless persons (TCN) this cannot work as there is no Member State of nationality. Therefore, it is only possible to obtain such information on convictions of TCN by sending a request to all Member States. This is highly inefficient and in practice rarely done.

3. The Commission proposal aimed at amending this situation by extending the existing ECRIS to allow also for an efficient exchange of information on previous convictions of TCN, by putting in place a decentralised automated system for TCN.
4. Commissioner Jourová presented the proposal at the informal JHA ministerial meeting of 26 January in Amsterdam. Ministers expressed broad support for the proposal, including the systematic use of fingerprints of TCN for identification purposes as well as a commitment to reach a general approach on the proposal as soon as possible.
5. On 1 February, the Presidency convened the working party on Cooperation in Criminal Matters (COPEN) in order to commence the examination of the legal text.
6. In its meetings of 22 February, 1-2 and 29-30 March, the Working Party held extensive thematic discussions on – amongst others – the exchange of fingerprints, the definition of TCN and the data on convictions of TCN that should be exchanged. Furthermore, the Presidency issued a questionnaire on the collection and storage of fingerprints for the purpose of criminal proceedings in the Member States with a view to using those fingerprints in ECRIS. The Presidency produced compromise texts that were discussed at the subsequent meetings.
7. In parallel the Commission organised a meeting of the technical experts on 11 February with the aim of having a general discussion on the proposed *decentralised automated system*. At the end of February, a feasibility study on such a system which should include the exchange of fingerprints of TCN for the purpose of their identification as well as an estimation of the costs of the proposed decentralised automated system was launched by the Commission.

8. The preliminary results of the feasibility study were presented at a subsequent meeting of the technical experts on 18 April. Delegations, however, considered the proposed models for a decentralised automated system not appropriate as this would lead either to a large-scale exchange of fingerprints between Member States or to a huge amount of requests. Thus, it was concluded that the proposed models were technically and administratively too burdensome.
9. Furthermore, it was concluded that an additional study was needed on the feasibility and costs of a centralised automated system for fingerprints in combination with a decentralised automated system for alphanumeric data of convictions of TCN. The Presidency organised on 29 April a joint meeting of both technical and legal experts at which those models were discussed. The conclusion was that another additional study was necessary on a centralised automated system for both fingerprints and alphanumeric data.
10. On 13 May the results of all the studies were presented and delegations expressed broad support for the approach of a centralised automated system for the storage and exchange of both fingerprints and alphanumeric data. However some delegations announced that they would present additional ideas.
11. The outcome of the meeting of 13 May has important consequences for the text of the proposal. For the setting up of a centralised automated system for the storage and exchange of fingerprints and data of convictions of TCN, which includes data protection rules and obligations for the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), the use of the legal instrument of a Regulation would be the appropriate legal instrument.
12. Based on the discussion at the COPEN working group meeting of 30 May and careful examination by the respective legal services agreement was reached that the present draft Directive cannot serve as a basis for the ECRIS proposal including the centralised automated system. Further reflection is needed on the legal form.

13. Also at the COPEN working group meeting of 30 May finally the discussion on the scenarios was completed and an agreement was reached that the best option is a centralised automated system for the storage and exchange of both fingerprints and alphanumeric data which aims also at a functionality of fully automated comparison of fingerprints, leaving for Member States the possibility for a manual verification at national level where considered necessary.
14. The Presidency considers that important steps have been taken to advance this file as much as possible, although further work on the legal and technical aspects would be needed under SK Presidency.
15. **Therefore, the Council is invited:**
 - **to take stock of the progress of the negotiations on the ECRIS proposal; and**
 - **to endorse the approach for a centralised automated system for the exchange and storage of both fingerprints and data on convictions of TCN which aims also at a functionality of fully automated comparison of fingerprints, leaving for Member States the possibility for a manual verification at national level where considered necessary.**
