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NOTE

From: Presidency
To: Delegations

No. prev. doc.: 8999/16 REV 1

Subject: Proposal for a Directive of the European Parliament and of the Council of 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
- Revised text submitted by the Presidency

Delegations will find in the Annex a revised version of the Commission proposal for a Directive amending Council Framework Decision 2009/315/JHA on ECRIS and replacing Council Decision 2009/316/JHA (see doc. 5438/16). This revised version, which has been drawn up by the Presidency with the help of the Commission, is based on the document that was last presented during the meetings of the COPEN Working Party in 2016 (see doc. 8999/1/16 REV 1).

The revised version takes into account the proposal for a new Regulation as presented by the Commission on 29 June 2017 (see doc. 10940/17), and reflects the approach that the Directive should only deal with the regular (decentralized) ECRIS information exchange, while the Regulation shall regulate all aspects regarding the ECRIS-TCN central database.

Please note that ADD 1 to this text contains the following explanatory texts:

- a text showing the changes that have been made in comparison to the previous text (as set out in doc ST 8999/16 REV 1), with explanatory footnotes;
 - a text showing how Framework Decision 2009/315/JHA will look like if it is modified in accordance with this proposal for a Directive, as revised by the Presidency.
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Revised proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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

[...]¹

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Framework Decision 2009/315/JHA is amended as follows:

(1) Article 1 is replaced by the following:

"Article 1

Subject Matter

This Framework Decision

- (a) defines the ways in which a convicting Member State shares information with other Member States on convictions.
- (b) defines obligations under this Framework Decision for the convicting Member State and for the Member State of nationality, and specifies the methods to be followed when replying to a request for information extracted from criminal records;

¹ The recitals still have to be inserted.

(c) establishes a decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Record Information System (ECRIS).";

(2) in Article 2, the following points are added:

"(d) 'convicting Member State' means the Member State where a conviction is handed down;

(e) 'third country national' means a national of a country other than a Member State, or a stateless person as defined by the UN Convention relating to the Status of Stateless Persons, or a person whose nationality is unknown to the convicting Member State;

(f) 'fingerprint data' means the data relating to fingerprints of plain and rolled impressions of all ten fingers;

(g) 'ECRIS reference implementation' means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS.";

(3) in Article 4, paragraph 1 is replaced by the following:

"1. Each convicting Member State shall take the necessary measures to ensure that convictions are accompanied by information on the nationality or nationalities of the convicted person if the person is a national of another Member State or a third country national. In case the citizenship information is unknown or where the convicted person is a stateless person the criminal record shall reflect this.";

(4) Article 6 is amended as follows:

(a) paragraph 3 is replaced by the following:

"3. Whenever a national of a Member State asks the central authority of a Member State other than the Member State of the person's nationality for information on his own criminal record, that central authority shall submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record in order to include such information and related data in the extract to be provided to the person concerned.

3a. Where a third country national asks the central authority of a Member State for information on his own criminal record, that central authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of this person for information and related data to be extracted from the criminal record in order to be able to include it in the extract to be provided to the person concerned.";

(5) in Article 7, paragraph 4 is replaced by the following:

"4. When information extracted from the criminal record on convictions handed down against a national of a Member State 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 such information to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

4a. When information extracted from the criminal record on convictions handed down against third country nationals is requested under Article 6 for the purposes of criminal proceedings, the requested Member State shall transmit information on any conviction handed down in the requested Member State and on any conviction handed down in third countries and subsequently transmitted to it and entered into the criminal record.

If such information is requested for any purpose other than that of criminal proceedings, paragraph 2 of this Article shall apply accordingly.";

(6) Article 9 is amended as follows:

- (a) in paragraph 1, the phrase "Article 7(1) and (4)" is replaced by "Article 7(1), (4) and (4a)";
- (b) in paragraph 2, the phrase "Article 7(2) and (4)" is replaced by "Article 7(2), (4) and (4a)";
- (c) in paragraph 3, the phrase "Article 7(1), (2) and (4)" is replaced by "Article 7(1), (2), (4) and (4a)";

(7) Article 11 is amended as follows:

(a) in point c of paragraph 1, point (iv) is added:

"(iv) facial image."

(b) paragraphs 3 to 7 are replaced by the following:

"3. Central authorities of Member States shall transmit the information referred to in Article 4, requests referred to in Article 6, replies referred to in Article 7 and other relevant information electronically using ECRIS and a standardised format in accordance with the standards laid down in implementing acts.

4. If the mode of transmission referred to in paragraph 3 is not available and for as long as it is not available, central authorities of Member States shall transmit all information referred to in paragraph 3, by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof.
5. Each Member State shall carry out the necessary technical alterations to be able to use the standardised format, referred to in paragraph 3, to electronically transmit all information referred to in paragraph 3 to other Member States via ECRIS. It shall notify the Commission of the date from which it will be able to carry out such transmissions.";

(8) the following article is inserted:

"Article 11a

European Criminal Records Information System (ECRIS)

1. In order to exchange information extracted from criminal records in accordance with this Framework Decision electronically, a decentralised information technology system based on the criminal records databases in each Member State, the European Criminal Records Information System (ECRIS), is established. It is composed of the following elements:
 - (a) ECRIS reference implementation;
 - (b) a common communication infrastructure between central authorities that provides an encrypted network.

The best available techniques shall be used to ensure the confidentiality and integrity of criminal record information transmitted to other Member States.

2. All criminal records data shall be stored solely in databases operated by the Member States.

3. Central authorities of the Member States shall not have direct online access to criminal records databases of other Member States.
4. The ECRIS reference implementation and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned. eu-LISA shall support the Member States in accordance with its tasks as laid down in [Regulation XX/XXX]²
5. The common communication infrastructure shall be operated under the responsibility of the Commission. It shall fulfil the necessary security requirements and fully meet the needs of ECRIS.
6. eu-LISA shall provide, further develop and maintain the ECRIS reference implementation referred to in paragraph 1.
7. Each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the installation and use of the software referred to in paragraph 1.

The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future development of the common communication infrastructure of ECRIS.";

² Reference to the ECRIS-TCN Regulation to be inserted.

(9) the following article is inserted:

"Article 11b

Implementing Acts

1. The Commission shall lay down the following in implementing acts:
 - (a) the standardised format referred to in Article 11(3), including as regards information on the offence giving rise to the conviction and information on the content of the conviction;
 - (b) the rules concerning the technical implementation of ECRIS and the exchange of fingerprints;
 - (c) any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:
 - (i) the means of facilitating the understanding and automatic translation of transmitted information;
 - (ii) the means by which information may be exchanged electronically, particularly as regards the technical specifications to be used and, if need be, any applicable exchange procedures.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 12a(2).";

(10) the following article is inserted:

"Article 12a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council.
2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.";

(11) the following article is inserted:

"Article 13a

Reporting by the Commission and review

1. By [... months after implementation], the Commission shall submit a report on the application of this Framework Decision to the European Parliament and the Council and make the report available to the national parliaments. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision, including the technical implementation.
2. The report shall be accompanied, where appropriate, by relevant legislative proposals.
3. 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 on ECRIS requests. This report shall be published for the first time one year after the report referred to in paragraph 1 is submitted."

Article 2

Replacement of Decision 2009/316/JHA

Decision 2009/316/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for implementation of that Decision into national law.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [... months after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
3. Member States shall carry out the technical alterations referred to in Article 11(5) by [... months after adoption].

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 2 shall apply from [*date for transposition of this Directive*]

Article 5

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President