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NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	ECRIS Non-Binding Manual for Practitioners

In view of the "Friends of the Presidency" Group meeting (ECRIS) in September 2013 delegations will find attached a draft of the Manual for Practitioners drawn up by the Presidency taking into account comments from the delegations.

The attached document is not fully complete. A full version of the document has been made available to delegations through the CIRCABC network.

European Criminal Records Information System

ECRIS Non-Binding Manual for Practitioners

DOCUMENT HISTORY

This document is a revised version of the Non-Binding Manual for Practitioners, hereinafter referred to as the Manual. The first version was agreed at a COPEN meeting on 9th March 2011. Further COPEN meetings considered the content and purpose of this Manual as it developed. This revised version has been expanded further, designed to address the frequent practical occurrences of ECRIS and country specific themes which may arise during the use of ECRIS.

ECRIS NON-BINDING MANUAL FOR PRACTITIONERS

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ECRIS NON-BINDING MANUAL FOR PRACTITIONERS

1. DOCUMENT

1.1. Purpose

The purpose of this document is to provide the ECRIS user community with practical operational support and guidance for the use of the criminal record exchange mechanism. As outlined in the Council Decision 2009/316/JHA, this Manual includes information concerning the identification of offenders and the lists of offences and sanctions provided by Member States. As the title suggests, this Manual is not legally binding, but does reference other binding documents. The ECRIS Technical Specifications Business Analysis, which provides more detailed technical information on ECRIS, is referenced in this Manual and has been made available to the Central Authorities of all Member States.

This Manual is intended for ECRIS end users from the Central Authorities of all Member States of the European Union, hereafter referred to as the EU, legal practitioners, judicial staff and administrative authorities. It is envisaged that such practitioners will benefit from understanding the processes of obtaining previous criminal convictions from other Member States in which an individual has been convicted. This information is detailed in Chapter 3. In addition, this Manual includes Member State responses to common queries and practical experiences in the form of country specific information in Chapter 4, which may be of particular assistance to Central Authority staff.

1.2. Procedure for Providing Updated Information

The procedure for providing updated information to the Manual for Practitioners can be found on CIRCABC at <https://circabc.europa.eu>

The Manual is available in electronic format at the following location:
CIRCABC at <https://circabc.europa.eu>

A central document store allows for the efficient updating of the Manual in one central location. The document can then be downloaded and each Member State can take action to make it available to relevant practitioners.

1.3. CIRCABC

CIRCABC is a European Commission led website that creates shared workspaces to which users can register and access the content of specific interest groups. ESP has an interest group on this site, which is restricted and registration must be requested and authorised.

Chapter 4 of this Manual references the following documents which are held on the ESP interest group on CIRCABC:

- Contact Details of Central Authorities
- Accepted Languages Matrix
- Process for Confirming Identity
- Requests for Further Information
- Retention of Criminal Record Information
- Reference Guide for Request Purposes other than Criminal Proceedings
- Public Holidays in EU Member States
- ECRIS Management of Common Reference Tables (CRT)
- Folder: Tables of Offences.
- Folder: Tables of Sanction.

Registration to CIRCABC is required to access these documents and is strongly advised. Registration is done by navigating to the CIRCABC website, selecting “not yet registered” on the login page and following the on screen prompts.

For registration to CIRCABC, please contact the European Commission.

Access only: access to all spaces within the interest group with the exception of the environment parameters and statistics folders. The restricted spaces require separate permission from ESP in order to access the information and this can be requested from the European Commission. Access only allows you to download and view documents in the group, no editing rights are granted.

Country page editor the same access rights as “access only” are provided, in addition to admin permissions to the spaces where there are specific country pages that are updated by countries directly. These spaces include the areas holding the Non-Binding Manual for Practitioners, the Common Reference Tables and the National Reference Tables.

Permission can also be given to access certain restricted folders on CIRCABC, for the management of technical and statistical information.

2. INTRODUCTION

2.1. Background

The exchange of criminal records between EU Member States was first regulated by the 1959 European Convention on Mutual Assistance in Criminal Matters, specifically in Articles 13 and 22. Prior to this, Member States did exchange information, but this was mostly undertaken on a bilateral basis. Whilst the Convention placed some structure around the exchange of this information, including an annual exchange of convictions, it did not clarify response times to requests for mutual assistance and there was no automation with information sent on paper.

The proposal of interconnecting the European criminal registers and using automated exchanges of information arose in January 2003 as a result of the Franco German summit. At this summit, both the French and German Ministers of Justice were asked to examine ways and means of facilitating access by the national judges to information on criminal records of natural persons. Shortly after this, France and Germany were joined by Spain and Belgium and the Network of Judicial Registers was set up. The interconnection and the automated exchange of notices of conviction and criminal record extracts became effective on 31 March 2006 between the four States.¹

In 2005, a Commission White Paper was published followed by Framework Decision 2005/876/JHA. This new Framework Decision required every country to set up a Central Authority, which would be the designated contact point for criminal record exchange, in addition to introducing turnaround times for responses to requests.

Following Council recommendations and Member State consultation, the European Commission published the Council Framework Decision 2008/675/JHA, which stipulated that foreign convictions should be taken into account to the same effect that national convictions would be considered. In addition to this, Council Framework Decision 2009/316/JHA was introduced and focussed on the introduction of ECRIS, which is an electronic system for the exchange of criminal records, replacing the NJR pilot system and involving all Member States.

¹ The following States later joined the project: Luxembourg, Poland and the Czech Republic in 2008; Slovakia and Bulgaria in 2009; Italy in 2010; United Kingdom in 2011, followed by Portugal, the Netherlands, Lithuania, Sweden and Slovenia.

ECRIS is based on a decentralised IT architecture. Criminal record data is stored solely in national databases and exchanged electronically between the Central Authorities of EU countries through a standardised European template. General principles governing the exchange of information and the functioning of the system are regulated in the Council Framework Decision 2009/315/JHA on exchange of information on criminal records and in the Council Decision 2009/316/JHA on the establishment of ECRIS.

The exchange of conviction information using ECRIS as a common mechanism provides several benefits for those connected Member States. The speed, efficiency and automation of transmitting information will lead to improved public safety and societal benefits for an estimated 500 million EU Citizens. The system will also give judges and prosecutors easier access to comprehensive information on the offending history of any convicted EU citizen, no matter where in the EU they have previously been convicted. Through removing the possibility for offenders to escape their criminal past by moving from one EU country to another, the system could also serve to prevent crime.

The security of the data is also increased as sTESTA is a secure backbone network. All messages from the Central Authority of a Member State are sent through the sTESTA channel and according to the technical specifications of ECRIS.

2.2. Legal Provisions and Obligations

The Council Framework Decision 2009/315/JHA foresees the following obligations of the convicting Member State:

- Each Member State shall take the necessary measures to ensure that the nationality of an individual is recorded if he is a national of another Member State(s),
- The convicting Member State shall, as soon as possible, transmit any convictions as entered in their criminal register to the Member State(s) of that person's nationality,
- If a person convicted in a Member State is a national of several other Member States, each shall be informed of the conviction(s),
- Subsequent alterations or deletions by the convicting Member State shall be immediately transmitted to the Member State(s) of nationality,
- A copy of the conviction, subsequent measures and any other relevant information shall be sent to the requested Member State in individual cases in order to enable it to consider whether they necessitate any measure at national level.

The Council Framework Decision 2009/315/JHA foresees the following obligations of the Member State of the person's nationality:

- All information transmitted on criminal convictions shall be stored for the purpose of retransmission,
- Any alteration or deletion made in the convicting Member State shall entail an identical alteration or deletion in the criminal register of that person's nationality,
- For the purposes of retransmission, only updated information (where applicable) shall be sent.

The Council Framework Decision 2009/315/JHA also enables a Member State to:

- Make a request for information from the criminal record for the purposes of criminal proceedings,
- Make a request for purposes other than that of criminal proceedings in accordance with its national law,
- Reply to a request for purposes other than that of criminal proceedings in accordance with its national law.

2.3. Helpdesk

Article 3 of the Council Decision 2009/316/JHA requires the European Commission to provide general support and technical assistance for ECRIS. The European Commission may decide on the organisation of expert meetings devoted to ECRIS matters, which should be convened as often as important matters arise in order to ensure the continued performance of the system. Any issues proposed for discussion at an ECRIS expert meeting should be submitted to the European Commission.

3. ECRIS INFORMATION EXCHANGE PROCESSES

The information in this section of the Manual concerns the practicalities of information exchange and the general use of ECRIS.

The content of the specific messages that can be sent in ECRIS are defined in the ECRIS Technical Specifications Business Analysis and the Annex to Council Framework Decision 2009/315/JHA. The information is to be transmitted by Member States in accordance with the structures, rules and standardised formats and must be as complete as possible so as to allow the receiving Member State to properly process the information.

3.1. Requests

Article 6 of the Council Framework Decision 2009/315/JHA sets out the procedure for making requests for conviction information. The Annex attached to this decision presents a template for the purpose of sending and responding to requests.

Requests for information on past convictions can be submitted both for the purposes of criminal proceedings and for purposes other than that of criminal proceedings. In the case of criminal proceedings a Member State is legally bound to reply to the request. In cases where requests are made for any other purposes than criminal proceedings, the requested Central Authority replies in accordance with its own national law. Requests are identified by competent authorities, and are directed to and processed by Central Authorities.

Requests that are not for the purpose of criminal proceedings can for example relate to the following:

- Request for non-criminal proceedings from a competent administrative authority,
- Request for employment vetting,
- Request for non criminal proceedings from the person concerned for information on own criminal record,
- Request for obtaining a permit to stand for elections.

Requests can also be received from the following authority types:

- Judicial authority,
- Competent administrative authority,
- Person concerned for information on own criminal record,
- Employer.

The request message consists of the following elements:

- Information on the requesting authority,
- Identification information of the person concerned,
- The purpose of the request,
- Additional information such as the case number, the consent of the person referred to in the request (if necessary), the urgency of the request, miscellaneous remarks.

The information provided should be as complete as possible so as to allow the requested Member State to properly process the request. Before submitting the request, it may be advisable to check whether the requested Member State requires specific details and to consider which procedures are used for the verification of an identity.²

3.1.1. Request Deadline

In accordance with Article 8 of the Framework Decision 2009/315/JHA, responses to requests for any purpose by a judicial or administrative authority shall be transmitted to the Central Authority of the requesting Member State immediately and in any case no later than 10 working days from the date the request is received. If the request originates from an individual wishing to receive information contained in their criminal record, the deadline is set to 20 working days from the date the request is received. The above deadlines apply to requests for both the purposes of criminal proceedings and purposes other than that of criminal proceedings. The deadlines are based on the requested Member States' own calendar, taking into account public holidays and office closing days. A table of the public holidays in each Member State can be found on CIRCABC.

The "Request Deadline" message allows the requested Member State to transmit the legal deadline for response to the requesting Member State. The same type of message is used for sending the initial legal deadline as well as a new deadline by the requested Member State if applicable.

Further information on managing deadlines within ECRIS can be found in the ECRIS Technical Specifications Business Analysis at sections 6.1 and 6.1.2.

² See Chapter 4.3.

3.1.2. Request Denial

The “Request Denial” message can only be used to respond to requests made for purposes other than that of criminal proceedings. It is sent when the requested Member State cannot provide a response based on their national legislation or guidelines.³

- Example: based on the national legislation or guidelines of the requested Member State, they cannot respond to the request for purposes other than that of criminal proceedings because they require the consent of the person concerned.

3.1.3. Request Problem

When a request can be processed, Member States should carry out a search of their systems in order to identify the requested individual. The “Request Problem” message is used by the requested Member State in order to inform the requesting Member State that the request cannot be answered. A “Request Problem” message can be sent when the following circumstances apply:

- If the person is not a national of the Member State (the requested Member State has the absolute certainty that the person is not one of its nationals or that the person does not exist),
- If the personal data transmitted in the request does not allow the Member State to identify unambiguously a person (multiple persons have been found on the basis of personal data),
- If the person is deceased,
- If the fingerprints sent (where available) do not match the nominal identity information.

When sending a “Request Problem” message, one of the above reasons must be transmitted to the requesting Member State. These are mandatory fields that have pre-defined values, of which one must be selected.

³ There are a number of Member States who apply their own internal guidelines when responding to requests for purposes other than criminal proceedings.

3.1.4. Requests for Additional Information

When receiving notifications or requests it is important to identify, univocally and unambiguously, one single person matching the identification data provided in the notification or request message. In cases where a person cannot be identified, the notified or requested Member State may request additional identification data from the convicting or requesting Member State by sending a “Request Additional ID Info” message.

The request for additional information may be submitted on receipt of either a notification or a request. A request message asking for further information will require a reply from the convicting / requesting Member State, either providing additional information or indicating that additional information is unavailable. Additional dialogue between the two concerned Member States should be encouraged so as to increase the probability of finding the person.

- Example: The most common request for additional information is for identification data. In order to identify, univocally and unambiguously, one single person in the requested / notified Member State’s database, the Central Authority shall indicate, in the request for further information, the list of identification elements that would be useful for uniquely and unambiguously identifying the person.
- The originating Member State can then reply with either:
 - “Additional ID Info Message”. This is sent when additional information is available, and allows the Member State that requested the information to continue performing a search of the person,
 - Or “Additional ID Info Unavailable Message”. This is sent when there is no additional information available, and the Member State that requested the information will have to make a decision on how to proceed based on the original message received.

If the requesting Member State receives an “Additional ID Info Unavailable” message in response to their request for additional information and the notification or request can therefore not be processed, a “Notification Problem” message should be used to respond. It is not advised to send a functional error in place of the notification problem message.⁴

⁴ See Chapter 3.2.6

If additional data can be provided, the search process needs to be performed again. The user will then reply to the request with one of the following:

- Request response, whether or not there are no convictions to be sent,
- The person is not a national of the Member States, in which case the request shall be rejected and a request problem issued,
- The person is deceased, in which case the request shall be rejected and a request problem issued,
- The fingerprints provided (where available) do not match the nominal identity information, in which case the request shall be rejected and a request problem issued,
- Multiple persons have been found matching the identity information that was provided, in which case the request shall be rejected and a request problem issued.

The ECRIS legal basis and the technical specifications state that a new deadline will be provided only if additional information is provided. In the case where no additional information is available, a new deadline message will be sent by the system but with the same initial deadline date.

The end user(s) in the Central Authorities should not send multiple requests for the same type of additional information. However sending multiple requests for different types of additional information is supported and can be used.

- Example: a request for additional information regarding a possible alias or pseudonym could be sent, which could then be followed by a second request to ask for additional information on the purpose of the request.

3.1.5. Request Response

A “Request Response” message is sent by the requested Member State to the requesting Member State to provide the information on convictions extracted from the national criminal records register. A “Request Response” message should only be sent if the request can be processed and a single person matching the identification data has been found.

A response to a request made for the purposes of criminal proceedings should contain:

- The personal identification information as found in the criminal records register of the requested Member State (if available),
- 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, in application of Article 4, and stored in accordance with Article 5 (1) and (2),
- Any convictions handed down in other Member States which were transmitted to it by 27 April 2012, and entered in the criminal record,
- Any convictions handed down in third countries and subsequently transmitted to it and entered in the criminal record.

3.2. Notifications

Articles 4, 5 and 11 of the Council Framework Decision 2009/315/JHA stipulate the procedure for the transmission of notifications. It provides an obligation for the convicting Member State to inform the Central Authority of the Member State(s) of the person's nationality of any convictions that have been handed down within its territory against this person, as well as any subsequent alterations or removal of information affecting the information on these convictions. If the conviction relates to a person having multiple nationalities, the notification process should be made to each Member State of which the person is a national.

Council Framework Decision 2009/315/JHA also provides an obligation for the Member State(s) of nationality to store the notification details for retransmission, however it does not specify where this information should be recorded. The convictions do not necessarily need to be stored within a Member State's criminal register if the conviction would not normally be stored in the criminal register on a national basis.

All messages will be entered and transmitted in accordance with a Member State's national ECRIS software. The information must be as complete and accurate as possible so as to allow the receiving Member State to properly process the information.

Although there is no legal basis for deadlines when transmitting notifications, a rule within the ECRIS software sets a limit of 30 calendar days by which point the dialogue for the notification message can be considered finished by the convicting Member State. This avoids dialogues remaining without responses indefinitely and allows monitoring of ECRIS exchanges and collecting statistics in the case of notifications.

Detailed workflows for the notification process can be found in the ECRIS Technical Specifications Business Analysis at sections 5.2.1 and 5.2.8.

3.2.1. Notification Message

The “Notification Message” is the first message in the notifications process. It carries information on convictions as well as information on subsequent alterations and deletions. It is sent by the convicting Member State to the Member State(s) of nationality. It relates to a single person being convicted and contains information on one single conviction. The obligatory information required for the transmission of notifications can be found in Article 11 of the Council Framework Decision 2009/315/JHA and is detailed in section 3.3 of this Manual. Other information may also be useful to aid Member States identifying an individual univocally and unambiguously. This can be found at Section 4.3 of this Manual.

3.2.2. Notifying Subsequent Changes

Whenever information contained in the criminal records register of the convicting Member State is subject to subsequent modifications such as amnesty, conversion, revocation of a suspension or remission and this conviction information concerns a person being a national of one or more other Member States, the Member State(s) of nationality should be notified, without exception. This is outlined in Article 5(2) of the Council Framework Decision 2009/315/JHA.

The notification must state that it is an update of a conviction previously notified, either manually, through NJR or through ECRIS. Such subsequent modifications of a conviction must be notified using the appropriate ECRIS decision and “change type” parameter. It is advised to avoid the use of unstructured remarks.

Updates may be done in:

- Snapshot Mode: Where only the most recent update to the conviction information is shown,
- History Mode: Where the full history of the conviction to which the update applies, including the most current update, is transmitted to the Member State(s) of nationality.

3.2.3. End of Retention Period Message

The end date of the retention period can be indicated in the first notification message informing of a conviction using the property “Retention Period End Date”. When the retention period has expired, the convicting Member State may inform the Member State(s) of nationality of this fact using the parameter “ERP – End of Retention Period”. Further details on this can be found in the ECRIS Technical Specifications Business Analysis at section 8.10.

Most Member States have indicated that they will send this notification on the first day that the conviction no longer appears in the criminal record.

- Example: if the conviction is retained until 10th July 2025, the “End of Retention Period” message will be sent on 11th July 2025.

3.2.4. Notifying the Formation Overall Sanction

The formation of an overall sanction is a change that groups multiple sanctions and replaces them with a single sanction which may relate to several convictions. Multiple convictions are not to be grouped into a single notification message and the following process should be observed:

- A notification message on this new conviction is sent (with or without offences) indicating the formation of the overall sanction, linking to previous convictions using the relevant unique technical identifier,
- Each conviction being referred to by the formation of the overall sanction is then notified by sending one separate notification message for each such conviction.

For example: Nominal X had one conviction, covering 2 offences for which he received 5 sanctions. A subsequent 6 decisions were then made which were related to the 5 sanctions as follows:

1. i- Subsequent formation of an overall penalty
2. h- Revocation of suspended penalty/measure
3. j- Interruption of enforcement/postponement of the penalty/measure
4. q- Release on parole (liberation of a person before end of the sentence under certain conditions)
5. n- End of penalty
6. r- Rehabilitation (with or without the deletion of penalty from criminal records)

When sending a notification through ECRIS which contains a conviction, the following applies:

- The DECISION must link to the CONVICTION if one exists (dummy decisions can be sent for a first notification),
- The OFFENCE(S) must link to the DECISION,
- The SANCTION(S) must link to the OFFENCE(S).

Note: this is a fictional example based on a possible overall sanction scenario and does not relate to a real person.

If the overall sanction was sent without containing any offence details, it would have to be sent as an update notification linking to the ECRIS ID for the previous notification. However, there are occasions where a country may wait (perhaps knowing a person will go to court within a month) and send all the information at once. In this case, the notification would be sent containing all the original conviction, decision, offence and sanctions details, but also include a further decision date with a final sanction that replaces the sanctions given before it.

3.2.5. Notification Receipt

The “Notification Receipt” message is used by the Member State of the person’s nationality to inform the convicting Member State that the information notified has been successfully received. If applicable, the “Notification Receipt” will also inform the convicting Member State that an individual has been univocally and unambiguously identified by matching the identification details provided. In these circumstances the Member State(s) of nationality will store the notification details for the purposes of retransmission and inform the convicting Member State that the information has been successfully received.

When sending a “Notification Receipt” the personal identification data relating to the individual with whom a Member State has associated a conviction notification may be included. This allows the convicting Member State to be informed of the nominal identification being used in the Member State(s) of nationality, and may be useful where incorrect or incomplete details were provided in the original notification message.

3.2.6. Notification Problem

The “Notification Problem” message is used by the Member State of the person’s nationality in order to inform the convicting Member State that the information notified previously cannot be processed, and in particular that it cannot be stored for the purpose of retransmission due to a problem. When a “Notification Problem” message is sent, a cause should be selected from one of four pre-defined values:

- The person is not a national of the Member State,
- The person is deceased,
- The fingerprints provided (where available) do not match the nominal identity provided,
- Multiple persons are identified.

The “Notification Problem” message should only be sent when a Member State intends not to store the notification details for the purposes of retransmission. A notification problem message is an end message and therefore no notification receipt should be expected. Sending information detailing why a notification cannot be stored allows the convicting Member State to consider this for future occurrences. This may decrease the number of notifications that get rejected. If no reason is sent, whilst it is still possible to send a modification, a problem is caused if the original notification was not stored by the receiving Member State.

Using the function error message and code « MAN-1 » to reject a notification means that the data received is unusable. These cases are problematic as they do not provide sufficient information on the cause of the rejection. If a notification cannot be processed, this should be advised with a structured “Notification Problem” message, choosing one of the pre-defined causes.

A Functional Error with « MAN-1 » code should only be used in extremely rare cases where the data in the notification message does not make sense, with the remarks field used to explain the problem further.

3.2.7. Cancellation Message

A “Cancellation Message” is the annulment of an ECRIS message that has been sent in error. The reasons for sending a “Cancellation Message” include:

- A message was sent by mistake to the wrong Member State,
- A user has created and sent a request response with conviction information of another person than the one requested for,
- A user has created and sent a message with the incorrect personal data,
- A user has sent a notification problem message indicating that the person is deceased and realises later that this is incorrect.

The timeframes for sending a “Cancellation Message” are dependant on the message type that needs to be cancelled. A request can be cancelled within the defined deadline of 10 or 20 working days dependant on the reason for the request. A request response can be cancelled up to 7 days after the deadline has elapsed. Notifications and notification responses can be cancelled within 30 days⁵

⁵ See Chapter 3.1.1.

3.3. Obligatory Information Required and Optional Data for Exchange, Storage and Retransmission

Article 11 of the Council Framework Decision 2009/315/JHA requires the Central Authority of the convicting Member State to transmit the obligatory information outlined below unless, in individual cases, such information is not known to the Central Authority. In addition, the Council Framework Decision 2009/315/JHA also lists the additional and optional information that can also be transmitted if available.

Obligatory information on the convicted person -

- Full name,
- Date of birth,
- Place of birth (town and State),
- Gender,
- Nationality,
- Previous name(s) (if applicable).

Obligatory information on the nature of the conviction -

- Date of conviction,
- Name of the court,
- Date on which the decision became final.

Obligatory information on the offence giving rise to the conviction -

- Date of the offence underlying the conviction,
- Name or legal classification of the offence as well as reference to the applicable legal provisions.

Obligatory information on the contents of the conviction -

- Sentence,
- Any supplementary penalties,
- Security measures,
- Subsequent decisions modifying the enforcement of the sentence.

Optional information that may be transmitted if it is entered in the criminal record is as follows:

- Convicted person's parents' names,
- Reference number of the conviction,
- Place of the offence,
- Disqualifications arising from the conviction.

Additional information that may be transmitted if it is available to the Central Authority is as follows:

- Convicted person's identity number, or the type and number of the person's identification document,
- Fingerprints, which have been taken from that person,
- Pseudonym and / or alias details (if applicable).

In accordance with Council Framework Decision 2009/315/JHA Member States may also indicate when transmitting data whether the information may be retransmitted by the receiving Member State to other Member States for purposes other than criminal proceedings.

Other information that may be useful to the requested Member State can be found on CIRCABC which details the country requirements for identification. Further details on searching national registers based on identity information provided can be found in paragraphs 5.4 to 5.4.8 of the ECRIS Technical Specifications Business Analysis.

3.4. Use of Parameters

Parameters are used to facilitate a fully automated exchange, and should be used wherever it is necessary and applicable. This will avoid the need to include additional information in the remarks field which in turn avoids the need for manual intervention. Parameters are, for example, used to express certain "conditions" applying to offences and sanctions, either when initially given, or as a "change type" when using the notification process to advise of subsequent alterations to a decision.

In the case of subsequent changes, the change should be added to the previous conviction information which is identified using the unique identifier in ECRIS, adding a new "decision" entity, and adding the appropriate relations to the offences and sanctions. This is preferable rather than submitting a new notification message which could give the false impression that it is an entirely new conviction. Full examples on this process are given in the ECRIS Technical Specifications Business Analysis at sections 8.1.2.

- Example: Where an individual has aided and abetted in an offence of Robbery, the corresponding offence of Robbery should be entered in ECRIS, with parameter "H" (aider and abettor or instigator / organiser, conspirator) linked to it.

- This individual receives a prison sentence of 2 years for the robbery, suspended for a term of 6 months. At this point parameter “a” (suspended penalty / measure) should be linked to the sentence. The sentence would then be read in 2 parts as:
 - Sentence - 2 years imprisonment
 - Parameter - Suspended for 6 months

At a later date, the individual receives a pardon for this offence. This should be notified using parameter “o”, linked to the initial conviction.

It is important to understand the difference between sanctions and parameters, and ensure that parameters are not incorrectly transmitted as sentences. A further example of this is the definition of whether a sanction is a penalty or a measure. As detailed in the table below, parameter “ø” should be used to define a penalty, and “m” to define a measure. These parameters are used to qualify the type of sanction.

Annex B of the Council Decision 2009/316/JHA provides a list of parameters which can be applied to properties within ECRIS where it is necessary to give further information on certain details. The table below outlines these parameters. Paragraphs 3.7 to 3.13 and 7.3.10 to 7.3.14 of the ECRIS Technical Specifications Business Analysis describe examples of where parameters are applied to sanctions, and apply these to specific scenarios. A table listing these parameters is included below.

Table 1. Parameters.

Offences Parameters	
M	Perpetrator
H	Aider and abettor or instigator / organiser, conspirator
C	Completed Act
A	Attempt or preparation
Ø	Non-transmitted element
S	Exemption from criminal responsibility / Insanity or diminished responsibility
R	Recidivism
Sanctions Parameters	
ø	Penalty
m	Measure
a	Suspended penalty / measure
b	Partially suspended penalty / measure
c	Suspended penalty / measure with probation / supervision
d	Partially suspended penalty / measure with probation / supervision
e	Conversion of penalty / measure
f	Alternative penalty/measure imposed as principal penalty
g	Alternative penalty/measure imposed initially in case of non-respect of the principal penalty
h	Revocation of suspended penalty/measure
i	Subsequent formation of an overall penalty
j	Interruption of enforcement/postponement of the penalty/measure (1)
k	Remission of the penalty
l	Remission of the suspended penalty
n	End of penalty
o	Pardon
p	Amnesty
q	Release on parole (liberation of a person before end of the sentence under certain conditions)
r	Rehabilitation (with or without the deletion of penalty from criminal records)
s	Penalty or measure specific to minors
t	Non-criminal ruling (2)
erp	End of Retention Period

Note:

(1) Does not lead to avoidance of enforcement of penalty.

(2) This parameter will be indicated only when such information is provided in reply to the request received by the Member State(s) of nationality of the person concerned.

3.4.1. Use of “UNKNOWN” Values

The “UNKNOWN” value, also referred to as a “dummy” value can be used in all mandatory fields, however, should be avoided as much as possible. ECRIS has been designed to include significant amounts of codified and standard information, based on common factors required by each Member State to ensure successful exchange.

Although there may be occasional and unusual circumstances where the “UNKNOWN” value must be used, Member States should endeavour to provide the information required in each ECRIS field where they are able to do so.

3.5. Use of the Remarks Field

The remarks fields available in ECRIS are a simple free text element that allows carrying any additional miscellaneous information that the sending Central Authority wishes to transmit to the receiving Central Authority about the message or entity and that could not be entered in any of the other information elements.

It is important that remarks are not misused. Member States must use the structured data elements and use remarks only for information that does not have an appropriate foreseen placeholder. Remarks should only be used for further refining or clarifying the specific subsequent decision if the Member State feels that the “change type” parameter is not sufficiently precise.

- Example: for a subsequent decision to pardon an individual the most appropriate “change type” parameter “o” defined for ECRIS should be used.
- Example: when applying the sanction “2001- Prohibition from frequenting some places” the remarks field should be used to provide details of the places the from which the individual has been prohibited.

3.6. Fingerprint Exchange

In accordance with Article 11 of Council Framework Decision 2009/315/JHA, fingerprints shall be transmitted if available to the central authority (additional information). Fingerprints are optional information and thus not all Member States will be actively sending fingerprints. Through ECRIS, fingerprints are exchanged using NIST (National Institute of Standards and Technology) files.

If a Member State indicates that they are exchanging fingerprints using the “push” approach, then this means that the target Member State’s end-point fully supports the exchange of fingerprints. Therefore NIST files are included directly in all outgoing ECRIS messages sent to that Member State.

If a Member State indicates that they are exchanging fingerprints using the “pull” approach, this means the target Member State’s end-point supports the exchange of fingerprints, but can only accept NIST files after an explicit request for this. In this case, the NIST files are not directly included in all outgoing ECRIS messages sent to that Member State. NIST files will be transmitted to the receiving Member State only after it has explicitly requested the electronic fingerprints using the “Request for Additional Information” message.

- Example 1: Member State 1 sends a notification with the fingerprints attached to the message to Member State 2. Member State 2 has fingerprints set to “pull”, so when the notification is received, they receive the indication of available fingerprints. Later in a reply to a request for additional information, Member State 2 can receive the attached fingerprints.
- Example 2: Member State 2 sends a notification to Member State 1 who has fingerprints set to “push” so when the notification is received, they then automatically receive the file.

3.7. Third Country Nationals

The term Third Country National (TCN) relates to any person who is not a national of any one of the EU Member States or, by extension, a citizen of the EU. The use of this terminology may also refer to an individual who is deemed to be “stateless”, whereby the relevant country of nationality cannot be identified.

Article 7 of the Council Framework Decision 2009/315/JHA on replying to requests for information on convictions implies that requests are not restricted to EU nationals and can be made for TCNs or nationals of another EU Member State. Requests and replies to requests of this nature should be made in accordance with the national law of the requesting and the requested Member State. The requirement for a Member State to make such a request may arise in some circumstances. A Member State may deem it appropriate to make a request for a TCN when the subject of the request is known to have either resided in or have substantial links to that country. Importantly, it is assumed that the requesting authorities of Member States will only submit requests for TCNs in cases that they reasonably expect that the requested Member State may have information on the given person.

- Example: A non-EU national is convicted in EU Member State 1 and informs the police that they lived in another EU Member State 2 for 5 years. Member State 1 can use this information to make a request to Member State 2 on the basis that during the substantial time they lived there, they may have been convicted.

The Common Reference Tables listing the pre-defined values for countries includes all known countries and a special value that can be used for stateless persons. This will allow the correct nationality to be entered when dealing with TCNs.

3.8. Making a Request for a National of another EU Member State

The ECRIS Technical Specifications Business Analysis section 5.3.2 explains that a request can be made to the Central Authority of a Member State not of the person's nationality. This could occur when, following a request for purposes other than criminal proceedings, the Member State of the person's nationality responds informing the requesting country that there are convictions in another Member State.

Prior to the implementation of ECRIS, there was no obligation to send foreign convictions to the Member State of the person's nationality. It is therefore possible that some notifications would not have been sent to the Member State of the person's nationality, including the updates that would be associated with them.

- Example: a national from Member State 1 is convicted in Member State 2. They are now the subject of criminal proceedings in Member State 3, who believe there are convictions from Member State 2. When a request is made to Member State 1, the country of nationality, they return a "no convictions" response.

This highlights a scenario where a Member State may wish to make a request for convictions from a Member State where a person was convicted, when the Member State of the person's nationality has not been sent the information. This type of request is not foreseen in the ECRIS Technical Specifications Business Analysis, the Council Decision 2009/316/JHA or Council Framework Decision 2009/315/JHA.

This is a difficult area and two possible solutions were discussed at the ECRIS Expert meeting in February 2013:

- Option 1- in the case that the requesting Member State reasonably expects the convicting country to have information on the given person, a request can be made to that convicting country. The convicting country then replies with the conviction and sends a new notification to the Member State of nationality.
- Option 2- the requesting Member State informs the country of nationality that they reasonably expect another country to have convictions on their national that they are missing. The Member State of nationality then makes a request to the convicting country, and subsequently sends the information to the initial requesting country.

Bilateral communication is encouraged in order to ascertain the most appropriate way to receive the conviction information.

3.9. Conditions for the Use of Personal Data

Article 9 of the Council Framework Decision 2009/315/JHA includes a number of principles regarding the further use of personal data acquired through the exchange of conviction information. These principles relate to three main areas:

- 1) The use of personal data acquired for the purposes of criminal proceedings and for purposes other than criminal proceedings,
- 2) The use of personal data in preventing an immediate and serious threat to public security,
- 3) The transmission of personal data to third countries.

The primary stipulations of Article 9 are as follows:

- Personal data provided 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,
- Personal data provided for any purpose other than that of criminal proceedings may be used by the requesting Member State in accordance with its national law and only for the purpose for which it was requested,
- Data acquired by Member States for purposes other than that of criminal proceedings must be used within the limits specified by the requested Member State,
- Notwithstanding the above mentioned points, personal 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 (“Obligations of the convicting Member State”), if transmitted to a third country in accordance with Article 7 (“Reply to a request for information on convictions”), 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.

The conditions for the use of personal data as set out in Article 9 do not apply to personal data obtained by a Member State under the Framework if the information originated from that Member State.

3.10. Translation

The inclusion of Reference Tables and Standardised Information Elements within ECRIS provides capacity for the automatic translation of some details.

Where the ECRIS system does not accommodate automatic translation, notifications may be received from the convicting Member State in a language that is not one of the official languages of the Member State(s) of nationality. The notification may need to be translated by the receiving Member State before its Central Authority can use it, for example before registering the information in the national criminal register.

Notifications are to be made in the official language or one of the official languages of the convicting Member State.

Requests are to be sent in one of the official languages of the requested Member State. The requested Member State shall reply either in one of its official languages or in any other language accepted by both Member States. Where criminal convictions from a third Member State are stored in the Member State(s) of nationality, these may need to be translated into an official language of the requested Member State, or any other language accepted by both the requested and requesting Member States, before they are retransmitted.

A matrix showing the languages that will be accepted by each Member State can be found on CIRCABC. English has become an increasingly accepted language used across EU Member States, which is reflected in the matrix.⁶

⁶ See Chapter 4.2.

4. COUNTRY SPECIFIC INFORMATION

The information in this section of the Manual has been provided by Member States and is intended for information purposes only. Each document outlined in this Chapter has been included as an embedded document and all are living documents for which each Member State is responsible for updating their individual sections.

The documents described in this Chapter can also be found on the ESP interest group on CIRCABC.

The procedure detailing how to make updates or amendments to your respective country section can be found on CIRCABC.

4.1. Contact Details of Central Authorities

In accordance with Article 3 of the Council Framework Decision 2009/315/JHA, Member States are obliged to designate a Central Authority. The Central Authority of each Member State ensures the exchange of information on convictions in accordance with the rules set out in the Council Framework Decision 2009/315/JHA. Each Member State shall inform the General Secretariat of the Council and the Commission of the Central Authority or Authorities designated. Subsequently, the General Secretariat of the Council shall notify the Member States of this information.

Contact details for each Member State can be used for example, in the case of specific enquiries or bi-lateral communication.

4.2. Use of Languages

As described in Chapter 3.9, requests and responses to requests should be sent in one of the official languages of the requesting or the requested Member State.

A table is available on CIRCABC outlining Member States positions regarding the use of languages when receiving requests. This details the languages countries will accept when receiving requests, and use when responding to requests.

4.3. Identification of Offenders

Each Member State uses a variety of personal data in order to identify persons in their national and criminal registers. Council Decision 2009/316/JHA foresees that the Manual sets out the procedure for the exchange of information through ECRIS, addressing in particular the different methods used to identify offenders.

4.3.1. Country Requirements for Identification

The ECRIS Technical Specifications Business Analysis, section 3.15 defines the obligatory and mandatory identification requirements for use in ECRIS, which relate to the identification fields used to send notifications and requests:

- **Obligatory:** Member States have a legal obligation to provide this information unless not available in individual cases.
- **Mandatory:** an operational necessity to provide the information and that a value must be provided from a technical stand-point, but this does not imply a legal obligation or duty. Dummy values are available if mandatory information is not known.

The following enumerative list of data, taken from the ECRIS Technical Specifications Business Analysis can be used to identify an offender in each Member State's criminal register. The following obligatory information is contained in mandatory ECRIS fields:

- Forename,
- Surname,
- Sex,
- Birth date,
- Birth place (town and state),
- Nationality.

The following non-mandatory fields are additional identification that can be transmitted:

- Second surname,
- Full name in an unstructured format,
- Former forename,
- Former surname,
- Former second surname,
- Mother forename,
- Mother surname
- Mother second surname,
- Father forename,
- Father surname,
- Father second surname,
- Identity number,
- Identification document,
- Address,
- Pseudonym or Alias details (name and date of birth),
- Fingerprints.

In the case where an individual has more than one last name, it is important that a Member State records all of these last names. The information should be presented in the order that it appears on the individual's relevant identity documents, if available, or the correct order ascertained from the individual themselves.

Member States are advised to familiarise themselves with the specific identification procedure of other Member States to ensure that criminal record exchange is as efficient as possible.

In the unusual circumstance where not all the identification data is available when sending a request or notification, it is advisable to approach the receiving country as it may still be possible to process the information without all the identification information.

4.3.2. Process for Confirming Identity

Information on the registers that are used to identify a person, for instance the criminal register or a national record of citizens can be found using the link below.

4.4. Obtaining Copies of Convictions

Article 4(4) of Council Framework Decision 2009/315/JHA states that:

“Any Member State which has provided information under paragraphs 2 and 3 shall communicate to the Central Authority of the Member State of the person’s nationality, on the latter’s request in individual cases, a copy of convictions and subsequent measures as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measure at national level.”

In practice, it is not always the Central Authority who are able to obtain a copy of the original conviction of requested by another Member State. A guidance document provides information on the procedures in each country, in regards to a Central Authority making a request for further information on the convictions of an individual. This document includes details of the processes that Central Authorities follow when this information is requested, and the steps that Member States should follow when requesting further information on convictions.

4.5. Retention and Deletion Rules

Article 4(3) of the Council Framework Decision 2009/315/JHA foresees that:

“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”

Article 5(2) states that:

“any alteration or deletion of information transmitted in accordance with Article 4(3) shall entail identical alteration or deletion by the Member State of the person’s nationality.”

Although the term “immediate” has not been defined in this context, it is recommended that Member States consider the risks of not sending expired convictions soon after the alteration has been applied. It is therefore advisable that the convicting Member State informs the Member State(s) of nationality as quickly as is practically possible that a conviction has been altered.

It is the obligation of the convicting Member State to inform the Member State(s) of nationality when a conviction is to be deleted. Once the Member State(s) of nationality has been notified of the deletion, the relevant conviction information must not be retransmitted to other Member States. A guidance document has been produced describing the retention and deletion rules and guidelines across Europe.

4.6. Exchange for Purposes Other Than Criminal Proceedings

Article 6(2) of the Council Framework Decision 2009/315/JHA allows for a request to be made for conviction information for any purpose other than that of criminal proceedings. Requests of this nature should be made in accordance with the national law of the requesting Member State and responses should be issued in line with the national law of the requested Member State, as detailed in Article 7(2).

When responding, Member States may wish to send a list of Member States that can be contacted for receiving additional convictions as described in the ECRIS Technical Specifications Business Analysis at section 5.3.13 and 5.3.14.

The following information has been captured in a Reference Guide for Request Purposes Other Than Criminal Proceedings:

- Member States who can accept requests,
- Legislation that enables conviction information to be shared,
- Bi-lateral arrangements with other Member States,

- Charges applied to providing responses to requests,
- Requirement for the consent of the individual,
- Legislation that allows an individual to obtain a copy of their criminal record,
- Organisations which carry out domestic checks,
- Level of disclosure provided to requesting Member States,
- Requirement for the reason a request has been made and if this affects the level of disclosure,
- Specific purposes for which a response to a request can be sent.

A report entitled “Report on the Exchange of Criminal Records for Purposes Other Than Criminal Proceedings” is available on CIRCABC. This contains findings regarding the procedural diversity across Member States when exchanging criminal records for purposes other than criminal proceedings. For example, details are given regarding whether consent is required from the individual concerned, and whether Member States provide a full or redacted extract of the criminal record.

Neither the Council Decision 2009/316/JHA nor Council Framework Decision 2009/315/JHA establish any obligation to exchange information about non-criminal rulings, nor do they mandate a charging regime for exchange.

The Reference Guide for Request Purposes Other Than Criminal Proceedings is available on CIRCABC.

4.7. Public Holidays

As detailed in chapter 3.1.3 responses to requests are based on the requested Member State’s own calendar, taking into account public holidays and office closures. A table detailing the public holidays in each Member State can be found using the link below.

4.8. Common Reference Tables

The ECRIS software includes built in Common Reference Tables. These are a list of pre-determined values which are common to all Member States. The information provided by each Member State has been translated by some Member States into their official language(s).

From a technical point of view, the information for such standardised elements is transmitted by the sending Member State using a technical code so that the receiving Member State's ECRIS software can automatically handle the information, reducing the need for translation or transliteration.

The Common Reference Tables are maintained by the European Commission. The procedure for updating Common Reference Tables can be found on CIRCABC and in the ECRIS Technical Specifications Business Analysis at section 7.1.4.

4.9. Lists of National Offences and Sanctions

In line with Article 5 of the Council Decision 2009/316/JHA, Member States are required to transmit lists of national offences and sanctions assigned to particular codes from Annexes A and B of the Council Decision.

The information referenced in Annex A shall include the name or legal classification of the offence and reference to the applicable legal provisions. The information referenced to Annex B shall include the list of types of sentences, possible supplementary penalties and security measures and possible subsequent decisions modifying the enforcement of the sentence as defined in national law.

Member States can include a short description of the consecutive elements of offences and sanctions. The lists of national offences and sanctions can be found using the link below, and should be updated by Member States on a regular basis in consultation with technical staff and the European Commission.

5. ACRONYMS AND ABBREVIATIONS

CIRCABC- Communication and Information Resource Centre Administration for Businesses and Citizens

COPEN- Working Party on Co-operation in Criminal Matters

CRT- Common Reference Tables

ECRIS- European Criminal Records Information System

ECRIS RI- ECRIS Reference Implementation

EJN- European Judicial Network

ESP- ECRIS Support Programme

EU- European Union

NIST- National Institute of Standards and Technology

NJR- Network of Judicial Registers

sTESTA- Secure Trans European Services for Telematics between Administrations

TCN- Third Country Nationals