

## SHORT PRESENTATION OF THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM

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***ABSTRACT:** IN ORDER TO PREVENT AND COMBAT ACTS THAT ARE PROVIDED AND PUNISHABLE UNDER CRIMINAL LAW, IN EACH STATE THERE IS ORGANIZED A CRIMINAL RECORD AS A MEANS OF KNOWLEDGE AND OPERATIVE IDENTIFICATION OF PERSONS WHO COMMITTED CRIMES AGAINST THE PERSON AND INDIVIDUAL FREEDOM, ITS PATRIMONY AND, IN GENERAL, AGAINST LAW ORDER. THE FACT THAT INFORMATION ON CONVICTIONS HANDED DOWN AGAINST MEMBER STATES' NATIONALS BY OTHER MEMBER STATES DID NOT CIRCULATE EFFICIENTLY ON THE CURRENT BASIS OF THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS OF 20 APRIL 1959 IMPOSED MORE EFFICIENT AND ACCESSIBLE PROCEDURES OF EXCHANGE OF SUCH INFORMATION AT EUROPEAN UNION LEVEL THROUGH COUNCIL FRAMEWORK DECISION 2009/315/JHA OF 26 FEBRUARY 2009 ON THE ORGANIZATION AND CONTENT OF THE EXCHANGE OF INFORMATION EXTRACTED FROM CRIMINAL RECORDS[1] BETWEEN MEMBER STATES AND COUNCIL DECISION 2009/316/JAI OF 6 APRIL 2009 ON THE ESTABLISHMENT OF THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM (ECRIS) IN APPLICATION OF ARTICLE 11 OF FRAMEWORK DECISION 2009/315/JHA. THE AIMS OF THIS PAPER IS TO MAKE A SHORT PRESENTATION OF THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM IN THE LIGHT OF THE TWO MENTIONED COUNCIL DECISIONS.*

***KEY WORDS:** EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM, CRIMINAL RECORD, EUROPEAN UNION, CRIMINAL LAW, EUROPEAN JUSTICE, CONVICTION*

**General considerations.** In order to prevent and combat acts that are provided and punishable under criminal law, in each state there is organized a criminal record as a means of knowledge and operative identification of persons who committed crimes against the person and individual freedom, its patrimony and, in general, against law order[2]. The main purpose of the establishment of criminal records is to inform the competent authorities of the criminal justice system on the background of a person subject of some judicial proceedings, for adapting the decisions which are going to be taken at different individual situations[3], given the fact that the criminal record keeps records of convicted persons or against whom other criminal or administrative measures were taken[4]. The fact that information on convictions handed down against Member States' nationals by other Member States did not circulate efficiently on the current basis of the European

Convention on Mutual Assistance in Criminal Matters of 20 April 1959 imposed more efficient and accessible procedures of exchange of such information at European Union level[5]. However, stories such as the Fourniret case of 2004 and many subsequent studies have shown that national courts frequently pronounced sentences based solely on previous convictions featuring in their national registers, without any knowledge of convictions in other Member States. Consequently criminals were often able to escape their past simply by moving between European Union Member States[6]. Thus, in order to improve the security of citizens within the European Area of Freedom, Security and Justice[7] concrete steps enabling an efficient exchange of information on criminal convictions between the Member States have been taken at European level. Thus was established the necessary legal framework for the exchange of data between Member States through the adoption of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records[8] between Member States and Council Decision 2009/316/JAI of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA[9]. This way, a computerised system called ECRIS (European Criminal Records Information System) has been established and it was implemented by European Union Member States from 27 April 2012. The main purpose of this system is to improve the exchange of information on convictions and disqualifications arising from convictions on European Union citizens when they were imposed and entered in the national criminal records[10].

**European Criminal Records Information System in light of Council Framework Decision 2009/315/JHA of 26 February 2009.** The objectives set out in the Council Framework Decision 2009/315/JHA of 26 February 2009[11] are to define the ways in which a Member State where a conviction is handed down against a national of another Member State transmits the information on such a conviction to the Member State of the convicted person's nationality, to define the storage obligations for the Member State of the person's nationality and to setting the framework for a computerised system of exchange of information on convictions between Member States to be built and developed[12]. In order to implement properly the European measures taken by the Council Framework Decision 2009/315/JHA of 26 February 2009, each Member State shall designate one or more central authorities to manage the transmission of information relating to criminal convictions, authorities that will be notified to the General Secretariat of the Council and to the Commission, in accordance with art. 3, para. 2 of Council Framework Decision 2009/315/JHA of 26 February 2009. Also, the Council Framework Decision 2009/315/JHA of 26 February 2009, through art. 4 and 5, establishes a number of obligations on both European Union convicting Member State and the Member State of the person's nationality concerning the storage and transmission of information related on convictions. Thereby, the convicting Member State of the European Union shall take the necessary measures to ensure that all convictions handed down within its territory are accompanied, when provided to its criminal record, by information on nationality or nationalities of the convicted person, if he is a national of another Member State. Likewise, the central authority of the convicting State has the obligation to inform the central authorities of the other Member States of any convictions handed down against the nationals of the last ones within the territory of the convicting State, as entered in the criminal record, but also on any amendment or removal of criminal information records in question. According to art. 5, para. 1 of Council Framework Decision 2009/315/JHA of 26

February 2009, the central authority of the Member State of the person's nationality shall store all information received, including any modification or deletion of information. Information from the criminal record may be requested in the official language of the requested State[13], not only by the central authorities of a Member State, but also by an individual, but only if he requests information on his criminal record and only under certain conditions expressly set in the Council Framework Decision 2009/315/JHA of 26 February 2009[14]. However, these requests for information are made both for the purpose of criminal proceedings against a person and for any purpose other than that of criminal proceedings and the competent authorities will respond in one of its official languages or any other language accepted by both Member States[15], within a period not exceeding ten working days from the date the request was received[16], respectively within twenty working days from the date the request was received[17], in accordance with its national law regarding convictions handed down in the Member State of the person's nationality, convictions handed down in other Member States transmitted to it after 27 April 2012 and convictions handed down in third countries which have subsequently transmitted and entered in the criminal record[18]. Council Decision 2009/316/JAI of 6 April 2009 contains provisions on the protection of personal data exchanged between Member States, designed to give expression to protect and guarantee the right to protection of personal data, as entered, also, in the Charter of Fundamental Rights of the European Union[19].

**European Criminal Records Information System in light of Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.** The Council Decision 2009/316/JHA of 6 April 2009 established, in accordance with art. 1, the European Criminal Records Information System (ECRIS), a system which was created in response to this obvious need to improve the exchange of information on criminal records at European level[20]. The ECRIS system means an electronic interconnection of criminal records databases of all Member States of European Union, so that the exchange of information on convictions between them to be done quickly, in an uniform and easily computer-transferable way. Thanks to this system, judges, prosecutors and relevant administrative authorities have easy access to comprehensive information on record of any European Union citizen, no matter in which European Union countries that person has been convicted in the past. In this way, criminals will not be able to escape their criminal past simply by moving among Member States, and it will be properly taken into account the crimes already committed. Also, the system also serves to prevent crimes. For the celerity of the information transmission, Council Decision 2009/316/JHA of 6 April 2009, in Annex A, set a corresponding code for each offense subject to transmission. By way of exception, if the offense does not correspond to any specific sub-category code, it is used the "open category" code of the closest or the most relevant offenses category or, in absence of such a category, it is used the "other crimes" code[21]. Member states may also provide information relating to the level of completion and the level of participation to the offence and, where applicable, to the existence of total or partial exemption from criminal responsibility or to recidivism. When transmitting information relating to the contents of the conviction, notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence, Member States shall refer to the corresponding code for each of the penalties and measures referred to in the transmission, as provided in the table of penalties and measures in Annex B of Council Decision 2009/316/JHA of 6 April 2009.

By way of exception, where the penalty or measure does not correspond to any specific subcategory code, the "open category" code of the relevant or closest category of penalties or measures or, in the absence of such a category, an "other penalties and measures" code shall be used[22]. In accordance with art. 5 of Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA, European Union Member States have the obligation to provide to the General Secretariat of the Council the list of national offenses in each categories referred to in the table of offences in Annex A of the Council Decision 2009/316/JHA of 6 April 2009, 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, in each of the categories referred to in the table of penalties and measures in Annex B of Council Decision 2009/316/JHA of 6 April 2009. Council Decision 2009/316/JHA of 6 April 2009 provides the obligation for the Commission to publish periodically a report on information exchange through ECRIS. Member States should have implemented the system by April 2012. In the European Union, a number of technical and financial measures have been taken in order to help the Member States to prepare the technical infrastructure to connect their criminal records systems[23]. Since ECRIS concerns only European Union nationals, it is currently not possible to determine whether people originating from outside the European Union Member States (third country nationals) were previously convicted in other Member States without consulting all of those states. Consequently, it is still considering the opportunity to complete later ECRIS with the European index of third-country nationals convicted, which would allow their detection in all Member States of the European Union[24].

## REFERENCES

- [1]. In accordance with art. 2 lit. c of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records, criminal record means the national registry or registries in which are recorded convictions in accordance with national legislation.
- [2]. Article 1 of Law no. 290/2004 on the criminal record, with subsequent amendments.
- [3]. The statement of reasons for the amendment and completion of Law no. 290/2004 on the criminal record. ([http://www.senat.ro/Legis% 5C2013% 5C13L658EM.pdf](http://www.senat.ro/Legis%5C2013%5C13L658EM.pdf) 5CPDF%).
- [4]. Article 2 of Law no. 290/2004 on the criminal record, with subsequent amendments.
- [5]. Paragraph 2 of the Preamble of Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA. Thus was created a computerized system called ECRIS.
- [6]. [https://e-justice.europa.eu/content\\_criminal\\_records-95-ro.do](https://e-justice.europa.eu/content_criminal_records-95-ro.do)
- [7]. Ina Raluca Tomescu, *Uniunea Europeană – spațiu de libertate, securitate și justiție*, în volumul "Securitate și apărare", Ed. Universității Naționale de Apărare "Carol I" București, 2010, pp. 818-823.
- [8]. In accordance with art. 2 lit. c of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records, criminal record means the national registry or registries in which are recorded convictions in accordance with national legislation.
- [9]. The statement of reasons for the amendment and completion of Law no. 290/2004 on the criminal record. (<http://www.senat.ro/Legis%5CPDF%5C2013%5C13L658EM.pdf>)

- [10]. The statement of reasons for the amendment and completion of Law no. 290/2004 on the criminal record. ([http://www.senat.ro/Legis% 5C2013% 5C13L658EM.pdf](http://www.senat.ro/Legis%5C2013%5C13L658EM.pdf) 5CPDF%).
- [11]. This Framework Decision supplements the provisions of Article 13 of the European Convention on Mutual Assistance in Criminal Matters, its additional Protocols of 17 March 1978 and 8 November 2001, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Protocol of 16 October 2001. (Article 12 of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records).
- [12]. Article 1 of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records.
- [13]. Or in one of the official languages of the requested State.
- [14]. Article 6 of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records.
- [15]. Article 10, para. 2 of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organization and content of the exchange of information extracted from criminal records.
- [16]. If the request for information is for a criminal trial.
- [17]. If the request for information is for other purposes than criminal proceedings.
- [18]. Articles 7 and 8 of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from criminal records. The convicting Member State shall, obligatorily, transmit information on the convicted person [full name, date of birth, place of birth (town and State), gender, nationality and - if applicable - the previous name/previous names], information on the nature of the conviction (date of conviction, name of the court, the date on which the judgment became final) information on the offence giving rise to the conviction (date of the offense underlying the conviction and name or legal classification of the offense as well as reference to the applicable legal provisions), information on contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence). Also, optionally, there can also be transmitted information on the convicted person's parents' name; the reference number of the conviction, the place of the offense and disqualifications arising from the convictions. However, as additional information that shall be transmitted, there are the convicted person's identity number, or type and number of the person's identification document; fingerprints, which have been taken from that person, and if applicable, pseudonym and/or alias name(s). (Article 11 of the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from criminal records).
- [19]. Ina Raluca Tomescu, *Strategia Uniunii Europene pentru punerea în aplicare efectivă a Cartei drepturilor fundamentale*, Analele Universității ”Constantin Brâncuși” din Târgu-Jiu, seria Litere și Științe Sociale, nr. 2/2012, pp. 80-92.
- [20]. Already prior to ECRIS entry into force, several Members States (BE, CZ, FR, DE, ES, IT, LU, NL, PL, SK, UK) were exchanging information on criminal records electronically, within the framework of the pilot project 'Network of Judicial Registers'. The development and achievements reached by this project, in particular the IT architecture and the reference tables, were the basic inspiration for the ECRIS system. ([https://e-justice.europa.eu/content\\_criminal\\_records-95-ro.do](https://e-justice.europa.eu/content_criminal_records-95-ro.do)).
- [21]. Article 4, para. 1 of Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.
- [22]. Article 4, para. 2 of Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.
- [23]. [https://e-justice.europa.eu/content\\_criminal\\_records-95-ro.do](https://e-justice.europa.eu/content_criminal_records-95-ro.do)
- [24]. [https://e-justice.europa.eu/content\\_criminal\\_records-95-ro.do](https://e-justice.europa.eu/content_criminal_records-95-ro.do)