

European Criminal Records Information System (ECRIS)

2008/0101(CNS) - 15/09/2008

The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Luca **ROMAGNOLI** (NI, IT) and amended the proposal for a Council decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA.

The main amendments are as follows :

Commission's role: in order to ensure efficient operation of ECRIS, the Commission shall provide general support and monitoring services and verify that the measures set out in Article 6 (Implementing measures) are correctly implemented. Members stated that the Commission has both an overview of the situation and the relevant technical expertise, and must therefore play a coordinating and supervisory role in the implementation of the interconnection system.

Information: the committee made the inclusion of a short description of the constitutive elements of the offence mandatory (rather than optional) in the information on national convictions, sanctions and measures. It felt that this would make the exchange of information between the respective Member States more effective. The criminal law systems of the Member States can differ greatly. Often Member States do not even have the same criminal offences, i.e. what may be regarded as an offence in one Member State can be deemed not punishable under the laws of another. Thus, such a short description will help the authorities of the requesting Member State to better understand the nature of the offence in question.

Translation: the translation of a description of a national offence from the original language of submission shall be the task and responsibility solely of each individual Member State requesting a translation and shall not be done by ECRIS. Once a translation has been completed, ECRIS shall offer the option of adding it to the database.

Comitology: the Committee deleted the provisions on comitology and inserted a clause stating that where necessary, and in accordance with Article 34(2)(c) and Article 39 of the EU Treaty, the Commission shall propose that the Council adopt all the measures needed to ensure an optimum functioning of ECRIS and its interoperability with national systems,

Members stated that the procedure proposed by the Commission, which would operate via a committee chaired by the Commission itself, is wholly outside the scope of Title VI of the Treaty on European Union, and would give rise to the creation of secondary legal bases not provided for in the Treaty itself. The Court of Justice (Case C-133/06) has recently confirmed the principle that the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves. The system established in Title VI, and in particular the combined provisions of Articles 34 and 39, in fact provides that any measures implementing decisions must be adopted in accordance with the procedure indicated in Article 39.

Lastly, a recital states that the reference tables contained in Annexes A and B do not in any way aim to harmonise the types of offence or the sanctions set out therein, which will continue to be governed by national law.