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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (**first reading**)
- Adoption of the legislative act
- Statements

Statement by the Commission

The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke point b) of the second subparagraph of Article 5(4) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle, which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5(4), recourse to point b) of the second subparagraph of that Article cannot be simply seen as a discretionary power of the legislator, but must be interpreted in a restrictive manner and thus must be justified.

Joint statement by the Commission, Austria, Belgium, Bulgaria, Cyprus, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom

1. The Member States bound by the Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards ECRIS, and replacing Council Decision 2009/316/JHA, will in the future use ECRIS on the sole basis of Council Framework Decision 2009/315/JHA, while Denmark will continue using ECRIS also on the basis of Council Decision 2009/316/JHA.
2. However, the Directive does not amend the obligations of the convicting Member State and of the Member State of the person's nationality with regard to the exchange of information between central authorities and to the storage of information. Furthermore, the Directive does not change the architecture of the ECRIS system that remains a decentralised information technology system based on the criminal record databases in each Member State. For those reasons, the core obligations of ECRIS remain essentially the same as before the adoption of the Directive and can thus continue to serve as a basis for the exchange of information between Denmark and the other Member States.
3. In view of the declaration of Denmark on ECRIS, taking into account the fact that the obligations with regard to ECRIS are essentially the same as before the adoption of the Directive and that Denmark commits to ensuring that it will continue to be able to exchange criminal records information with the other Member States using appropriate software tools, Austria, Belgium, Bulgaria, Cyprus, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom commit themselves to continue exchanging criminal records information through ECRIS with Denmark. The Commission will monitor this exchange of information.

Statement by Denmark

1. Denmark is bound by and applies Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States and by Council Decision 2009/316/JHA on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA, and exchanges criminal record information using the European Criminal Records Information System established by Council Decision 2009/316/JHA.
2. In accordance with Articles 1 and 2 of Protocol 22 on the position of Denmark, annexed to the Treaties, Denmark has not taken part in the adoption of the Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards ECRIS, and replacing Council Decision 2009/316/JHA.
3. As that Directive replaces Council Decision 2009/316/JHA and includes the elements of that Decision in Council Framework Decision 2009/315/JHA, the Member States bound by the Directive will in the future use ECRIS on the sole basis of Council Framework Decision 2009/315/JHA, while Denmark will continue using ECRIS also on the basis of Council Decision 2009/316/JHA. However, the Directive does not amend the obligations of the convicting Member State and of the Member State of the person's nationality with regard to the exchange of information between central authorities and to the storage of information, and Denmark should be able to continue to exchange information with the other Member States.
4. In order to facilitate continued cooperation through ECRIS, and in view of the declaration on ECRIS of the other Member States, Denmark commits itself to continuing to comply with the technical obligations and standards regarding the exchange of criminal records information as set forth in and on the basis of the Framework Decision as amended by the Directive. Denmark commits itself, in particular, to ensuring that it will continue to be able to exchange criminal records information with the other Member States using appropriate software tools. Denmark will inform the Commission accordingly.