

Towards a European Criminal Record

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Constantin STEFANOÛ & Helen XANTHAKI (eds.), *Towards a European Criminal Record* (Cambridge, Cambridge University Press 2008) 402 p., ISBN 9780521866699.

One of the most recent ideas of the European Commission is the creation of a European Criminal Record (ECR). Not only is the establishment of connections between national criminal records envisaged, but the birth of a real and centralised European Criminal Record is put forward. This ECR is seen as one of the prerequisites for the execution of the Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, adopted on the 18th of July 2008. This book talks about the different aspects of the ECR and the problems that can be expected when the European member states discuss this matter.

One of the main ideas of the book is that the situation as it is right now is not satisfactory. Every member state has a national database that contains information on criminals, but these databases are not identical. For example: the information held in these databases differs, procedural rules (like the determination of the persons that have the authority to obtain information from these databases) vary, etc. These differences make co-operation between European countries very difficult. The current system of mutual legal assistance in this area is also addressed, but the picture drawn up there is not so nice. Numerous legal instruments to exchange data are available, but not all of them are ratified by the member states and it does not always work in an efficient way. So there is indeed a need for an effective and efficient co-operation system on criminal records in the EU.

The debate between the member states and the European Commission on the proposal for the ECR is still going strong, but a centralised ECR is coming more and more into prominence. The experiences with the different forms of mutual legal assistance resulted in the feeling that a centralised database is needed for the combat against transnational and organised crime in Europe. Consequently, the second main idea of the book is that a centralised European Criminal Record is a measure that will need to be implemented in the future. But in practice a political consensus is still far away.

The different bottlenecks of the European Criminal Record are thoroughly discussed in the book (*see* especially the three first chapters grouped in Part I of the book written by Helen Xanthaki (chapter 2, ‘The European Criminal Record: Analysis’), Constantin Stefanou (chapter 3, ‘The European Criminal Record: Political Parameters Analysis’) and Alexandra

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Xanthaki (chapter 4, 'The European Criminal Record: Human Rights Considerations'). Which legal instrument is most appropriate for the creation of the ECR? Is there a need for a new European agency to host the ECR, or will it be placed at Eurojust or Europol? Will the ECR only mention convictions for organised crime that have cross-border implications, or will it also mention convictions for other crimes, for example serious crimes that have been committed within the borders of one member state? How about administrative sanctions: can they also be included in the ECR? Will the database only contain convictions, or will it also contain information on investigations and accusations made against a person? Will the data be erased from the ECR after a certain period? Who will be allowed to consult the centralised database: only judicial and administrative authorities of a member state, or also private individuals, like employers? Is the ECR compatible with human rights? More specifically: will it be compatible with the right to privacy and the right to data protection? Which guarantees will need to be given to make sure that these human rights are not violated? What will be done with the opinions issued by the European Data Protection Supervisor, stressing the need to compensate the lack of a comprehensive legal framework on data protection in the third pillar in the proposal for the ECR?

A conclusion that can be drawn from the book is that the creation of a European Criminal Record is giving (and will continue to give) rise to serious discussions between the member states. Fundamental differences between their national criminal records make it even more difficult to find a compromise. In this light, the second part of the book (chapter 5-15) gives attention to the existing legal frameworks in some member states of the European Union (Austria, the Czech Republic, Germany, Greece, Hungary, Ireland, the Netherlands, Slovenia, Slovakia, Spain, England & Wales). Every chapter contains a description of the national regulations on criminal records, mutual legal assistance (MLA) instruments used by these member states and their points of view concerning the birth of an ECR; some chapters give a preview of the ECR implementation problems that member states will encounter. Political views do not remain unaddressed.

The third, and last, part of the book contains chapters on different subjects that can be linked to the ECR.

Chapter 16, written by Mitsilegas, discusses tendencies to expand the already existing databases and to establish connections between these different databases. The creation of the ECR confirms these tendencies, although the book stresses that problems will rise when the EU creates a centralised European Criminal Record that is linked to other databases, especially from a human rights point of view. But these connections are necessary to facilitate the collection, exchange and analysis of personal data. The chapter also discusses several of the already existing databases: the Europol database (including some remarks on the possible future changes to the framework establishing Europol), the Schengen Information System (with information on the forthcoming SIS II) and the future Visa Information System (VIS). There is also some attention to the 'principle of availability'. The content of the principle, the implications for human rights, the parallel Treaty that has been drawn up by some of the member states (the so-called 'Prüm Treaty'), etc., are discussed.

A proposal put forward by Ghent University in 2002 is mentioned in chapter 17 (written by Els De Busser) as an example of what the ECR could look like in practice. This

proposal puts forward the system of 'labelling'. These labels correspond to certain main aspects of a crime. In that way a sort of umbrella indicator for offences that have common characteristics could be established. Because of the use of these labels it is possible to create a certificate of non-conviction for crimes with specific characteristics, for example all crimes concerning children. Other aspects of the Ghent proposal are also addressed, for example the content of and access to the ECR, the different solutions for the problem of differing qualifications in the member states (by the labelling technique, harmonisation, ...), etc.

The last chapter (chapter 18) of the book talks about the aspects of the ECR proposal that will guarantee its legitimacy and feasibility. These aspects are very important, considering the fact that the ECR could be considered as a new means of invading the privacy of European citizens. It is thus necessary that the proposal of the ECR is accepted as legitimate by the inhabitants of Europe. In this chapter, written by Helen Xanthaki, the five 'Sutherland criteria' – clarity of scope, respect for human rights, restriction of access to data, judicial control and guarantees for quality and accuracy – are put forward that need to be respected when establishing the ECR.

We can say that the main thread in the book is the idea that the ECR is necessary. Several concrete proposals are put forth, although the writers acknowledge that different points for debate still exist and that a consensus on the proposal is far away. The book stays realistic, but at the same time exudes hope for the birth of a real European Criminal Record.

