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REPORT ON THE EXCHANGE OF CRIMINAL RECORDS FOR PURPOSES OTHER THAN CRIMINAL PROCEEDINGS



Report on the exchange of criminal records for purposes other than criminal proceedings

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2 Executive Summary

2.1 Introduction

The European Criminal Record Information System (ECRIS) was established to ensure the effective exchange of criminal records across the Member States of the European Union. The deadline for achieving ECRIS exchange was 27th April 2012. By this date a number of Member States achieved 'live' status with ECRIS and commenced exchanging criminal records in relation to both criminal proceedings and purposes other than criminal proceedings.

ECRIS provides a list of 'Requesting Authority Types' in the ECRIS Common Reference Tables (as defined at section 7.3.3 of the ECRIS Business Analysis) which will indicate those persons or organisations who are able to make a request. These are defined as:

- ➡ A Judicial Authority
- ➡ A Competent Administrative Authority
- ➡ Person Concerned for Information on Own Criminal Record
- ➡ Employer

The legislation pertaining to exchange for purposes other than criminal proceedings is documented in Council Framework Decision 2009/315/JHA Article 6.1 which states that:

'When information from the criminal record of a Member State is requested for the purposes of criminal proceedings or for any purposes other than that of criminal proceedings, the central authority of that Member State may, in accordance with its own national law, submit a request to the central authority of another Member State for information and related data to be extracted from the criminal record'.

Citizens of the European Union require protection from undesirable individuals who seek employment or access to children and vulnerable adults without a comprehensive criminal records check containing details from all relevant Member States. It is vital, with cross border checks easing, that criminal records checks can be conducted on EU nationals who wish to obtain particular employments, including professions in contact with children and or vulnerable persons. Also, in the case of licensing, to prevent firearms being obtained by individuals who have certain convictions.

The purpose of this report is to document the findings in relation to these points and in relation to the scope of the national law and current procedures in each Member State relating to the exchange of criminal records for purposes other than that of criminal proceedings. It focuses on the third objective of the project (as detailed in section 2.2), recognising the need to assess specific country requirements, identify how the exchange would operate in practice and the capture of as much information as possible relevant to the overall objective. Reference is made to this report in the Non-Binding Manual for Practitioners, additionally a Reference Guide has been included as an Annex within the Manual itself and contains the relevant positions of all the Member States.

2.2 Requirement of the Programme

The ECRIS Support Programme (ESP) undertook three Objectives over two phases which were achieved across the two year span of the programme. Objectives 1 and 2 were carried out in Phase 1 of the programme. Objective 3 was carried out in Phase 2.

1. ECRIS Preparation

To ensure that Member States are prepared for the implementation of ECRIS by working with partner countries and providing the opportunity to identify good practice.

2. Training Needs and Gap Analysis

To carry out a Training Needs Analysis across all Member States in the area of criminal record management, including a review of issues relating to the functioning of their newly updated national information system and make recommendations for implementing training programmes within the business area. As ESP explored the methodology for this objective, it became apparent that it was more

prudent to focus the study as a Gap Analysis, rather than focus particularly on training. Therefore this is now more commonly referred to as ‘the Gap Analysis’.

3. Purposes Other Than Criminal Proceedings

To explore the requirements to exchange information extracted from criminal records for purposes other than criminal proceedings and make recommendations to the Commission and Expert Groups.

This report focuses solely on the third objective.

2.3 Scope of Objective 3

All 27 Member States would be engaged in order that a comprehensive picture would be obtained. The programme would examine procedures, legislation, specific country needs, procedures for individual access, and employment vetting.

In Phase 1 of the project, Member States were requested to respond to a structured Gap Analysis questionnaire conducted in all Member States, designed to capture the information necessary to inform on the Training Needs Analysis (Objective 2). This was followed by Regional Workshops involving all 27 Member States where further detail could be obtained and provide an opportunity for Member States to discuss their own procedures.

Details of procedures and findings would be verified by each Member State prior to being made available to the Commission, the Council and other Member States.

2.4 Methodology

The initial findings captured during Gap Analysis visits of all 27 Member States were examined by the team in relation to the exchange outside of criminal proceedings.

Research was undertaken looking at existing legislation, specific case studies, individual access, licensing and employment vetting procedures.

The ESP team organised four Regional Workshops, which took place between July 2012 and January

2013 enabling all Member States to present their own particular legislation and procedures, to take part in discussions and to examine good practice.

In order to further inform our research, and have a wider understanding of pertinent issues, the ESP team undertook visits to UK Government agencies. The organisations the ESP team met with are:

- ➔ Serious Organised Crime Agency
- ➔ International Liaison (ACPOS) Scotland
- ➔ Police Service of Northern Ireland
- ➔ United Kingdom Border Agency
- ➔ Disclosure and Barring Service

2.5 Key Findings

2.5.1 Legislation



The majority of Member States have legislation that will permit the exchange of records outside of criminal proceedings, in some cases, for example in the Czech Republic and Slovakia, laws were specifically enacted to enable this process. The position with a smaller number of Member States is that, whilst not having dedicated laws, they can nevertheless exchange on the basis that no legislation prevents this, for example in the United Kingdom.

2.5.2 Individual Access



Individual access is legislated by way of Article 6. 2. Council Framework Decision 2009/315/JHA:

“When a person asks for information on his own criminal record, the Central Authority of the Member State in which the request is made may, in accordance with its national law, submit a request to the Central Authority of another Member State for information and related data to be extracted from the Criminal Record, provided the person concerned is or was a resident or a national of the requesting or requested Member State”

Member States take a number of approaches to this. Some procedures include directing non national

applicants to their own Embassies, others have a central unit which deals with all applications, and others have localised units or can attend Police Stations. One Member State (The Netherlands) will only permit individuals to view their own records, and will not supply a copy or extract of the record.

2.5.3 Employment Vetting



Employment vetting can be undertaken by Member States. Member States provide employment vetting checks in accordance with their own national law. The levels of information contained in a disclosure, as well the specific employments for which this is conducted, may vary.

Employment with public authorities, and where applicants wish to work with children and vulnerable persons, are widely considered to be valid reasons for undertaking searches of criminal conviction records.

Professions are listed within the Reference Guide where checks for certain occupations can be undertaken by those Member States. Further details on the Reference Guide can be found in section 5.4.

2.5.4 Licensing



Criminal record exchange in relation to Licensing covers a wide range of issues and is seen as an important function outside of criminal proceedings. Again this can be dependant upon the requested Member State's legislation but in the majority of cases this would appear to sit firmly in terms of being the 'purpose' behind such a request being lawful.

Firearms Licensing has been illustrated by most member States as one of the most important purposes for exchanges of criminal records outside of criminal proceedings.

2.6 Conclusions and Recommendations

In conclusion, it is clear that Member States are prepared to exchange criminal records for purposes other than criminal proceedings, and in fact this is already taking place across most Member States. Whilst many different approaches have been discovered within aspects outside of criminal proceedings, there is overwhelming compliance with Council Framework Decision 2009/315/JHA relating to this

subject. Differing procedures relating to employment, individual access, licensing and indeed how legislation is applied are spread across the 27 Member States. The salient points have been captured in both research and the Regional Workshops, and are reflected in the Reference Guide.

The ESP team provide the following recommendations as a result of the study into exchange outside of criminal proceedings.

- 1** Member States should make themselves aware of the diversity of approach, and any gaps that may arise on a national basis as a result of this, given that the exchange of criminal records for purposes other than Criminal Proceedings is not mandatory. Examples of the varied approaches appear later in the Findings section of this report (Section 5).
- 2** The Reference Guide should be referred to prior to a request to avoid a 'Denial' response by the recipient Member State and when Member States prepare a 'Request' they should ensure that the 'Purpose' is both lawful and comprehensively described.
- 3** The area of licensing and employment vetting is too varied and requires greater standardisation and uniformity across the 27 Member States, with a comprehensive agreed list of purposes. The European Commission should conduct further research into a standardised system. For example, a number of countries require consent of the individual for employment vetting purposes, the full detail of these are recorded within the Reference Guide, additionally the extent of disclosure will be dependant upon the receiving Member State and the nature of the occupation in question. Consideration could be given in relation to the issue of standardising the route of obtaining consent and also an agreed catalogue of professions or occupations which require vetting in a pan-european context.

3 Background



The significance of exchanging criminal record information between Member States has been a large area of interest throughout Europe for many years now. Prior to 2005, the exchange of criminal records was regulated by the European Convention on Mutual Legal Assistance in Criminal Matters of 1959. However, this convention did not identify any provisions for the frequency of exchange or who the ‘contracting parties’ are. This may have led to criminals being able to travel between EU Member States freely, escaping their criminal past.

High profile cases of criminals being able to move across Member States with relative ease and being undetected have raised serious concerns in many law enforcement areas.

In order to close this loophole, the European Commission introduced Council Decision 2005/876/JHA on the exchange of information extracted from the criminal record. This decision foresaw the establishment of a Central Authority in each EU Member State and first defined processes for notifications of convictions and the sending of requests for extracts from the criminal register of an EU Member State. This exchange took place on paper, largely by post and fax.

In 2006 a number of Member States began discussion on the development of an electronic means to transfer such conviction information between states and the Network of Judicial Registers (NJR) pilot project was initiated. Towards 2011 the pilot involved a majority of EU Member States and had developed a number of processes and principles, which illustrated the benefit of electronic and (importantly) codified and standardised information exchange between Member States.

Having drawn lessons from and established the benefits of the work of the NJR pilot project and the experiences collected through the implementation of Council Decision 2005/876/JHA, in 2009, the European Commission proposed a decision to the European Council and the European Parliament. This led to the creation of the ECRIS. The general principles surrounding the exchange of criminal record information via ECRIS are governed by the Council Framework Decision 2009/315/JHA, and Council Decision 2009/316/JHA. The aims of the Decision and Framework Decision are to define the ways in which a conviction is

handed down against a national of another Member State, and how this information is transmitted. It also indicates the storage obligations for the Member State of the convicted person's nationality, and the methods to be applied when replying to a request for information from another Member State.

The ECRIS Support Programme is funded by the European Commission and ACPO in the UK. It is supported by four partner countries (Estonia, France, Latvia and Lithuania) and has run over a two year period. It has been implemented to aid Member States in the implementation of ECRIS.

Phase 1 (months 1-10)

Phase 1 of the project was to ensure that all Member States were prepared for the implementation of ECRIS, and carry out a Training Needs and Gap Analysis across all Member States to gauge their state of readiness.

Phase 2 (months 11-24)

Phase 2 of the project focuses on the requirements to exchange information extracted from criminal records for purposes other than criminal proceedings. ESP has researched the national legislation in place in each Member State surrounding exchange of criminal records outside of criminal proceedings. This has been collated into a Reference Guide that will be sent to all Member States to refer to if they wish when making requests of this nature. This will result in the ESP publishing the findings and making recommendations to the European Commission and expert groups based on these conclusions.

Framework Decision 2009/315/JHA states that Member States must respond within 10 working days to requests for non-criminal proceedings, and 20 days when a person asks for information on his own criminal record.

Other EU initiatives in this area include 'Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA'.

This states that Member States shall exchange information concerning offences regarding sexual abuse and any disqualification from activities involving direct and regular contact with children arising from those convictions. The transmission of this information relates to Article 6 of Framework Decision 2009/315/JHA on the exchange of criminal record information for purposes outside of criminal proceedings.

4 Methodology

4.1 Define the Meaning of ‘Purposes Other Than Criminal Proceeding’

Council Framework Decision 2009/315/JHA allows for this exchange, but does not set mandatory obligations on Member States to exchange criminal records information for purposes other than criminal proceedings (except at Article 6.3 regarding requests from the person concerned). The Framework Decision states at Article 6.1 that a Member State may make or reply to such a request ‘in accordance with its national law’. Article 6.1 is quoted in full at section 2.1 of this report.

The parameter of ECRIS define the areas for requests outside of Criminal Proceedings as the following areas:

- ➡ A Judicial Authority
- ➡ A Competent Administrative Authority
- ➡ The Person Concerned for Information on Own Criminal Record
- ➡ Employer

Therefore, in consultation with Member States through the regional workshops, ESP has devised a working definition of this:

“The exchange of criminal records between Member States within existing legislation or with an agreement provision by both requesting and receiving Member States and where such exchanges do not fall within the meaning of criminal proceedings (Article 6.1 and 7.2, 2009/315/JHA).”

‘Criminal proceedings’ means the pre-trial stage, the trial stage itself and the execution of conviction (Article 2.b, 2009/315/JHA).

4.2 Collate existing knowledge

In order to meet the overall objectives of the ESP project, the project team had already conducted Gap Analysis questionnaires with all Member States. The subject of non criminal proceedings featured in the original questionnaire and was completed during the respective visits by the ESP team covering all 27 Member States.

This enabled the ESP team to have an initial understanding of the differing positions of Member States in relation to their approach to non criminal proceedings.

4.3 Research

Research was undertaken looking at existing legislation, specific case studies, individual access, licensing and employment vetting procedures.

Case studies were researched that highlighted the need to conduct checks for purposes other than criminal proceedings and sharing across Member States, in order to give a tangible and valid reason for the need to exchange outside of criminal proceedings. This was designed to give Member States the motivation and appetite to engage on a pan-European basis and maximise the exchange within ECRIS.

In order to further inform the research, and have a wider understanding of pertinent issues, the ESP team undertook visits to UK Government agencies. The organisations the team met with are:

- ➞ Serious Organised Crime Agency
- ➞ International Liaison (ACPOS) Scotland
- ➞ Police Service of Northern Ireland
- ➞ United Kingdom Border Agency
- ➞ Disclosure and Barring Service

4.4 Reference Guide

A Reference Guide template was prepared prior to the first Regional Workshop and has been completed following subsequent workshops. This has been a living document, and has been updated regularly by the ESP team. It contains an overview sheet giving information on general appetite and ability for exchange, as well as detailed sheets for each Member State, explaining specific country legislation and procedures.



If you require access to CIRCABC
please contact:

ecris-support@intrasoft-intl.com

or the European Commission at:

just-criminal-record@ec.europa.eu

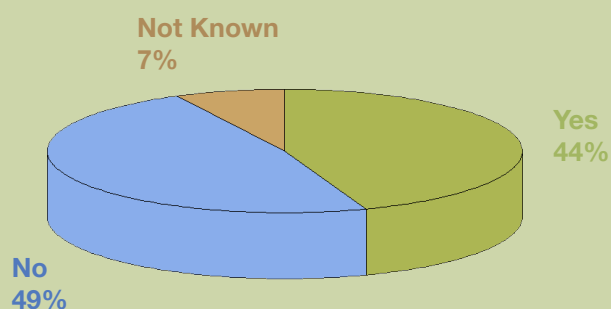
Member States have been given the opportunity to enter details and review these as the document has progressed. The advantage of completing the document is that other Member States can quickly view the procedures of others, and assess the benefits of making a request.

The Reference Guide includes Member State positions regarding legislation, whether consent is required from individuals during the request process by competent authorities or employers, the extent of records provided and other elements specific to Member States that may be of assistance to Central Authorities. Information from the Reference Guide is summarised in the charts on the following page.

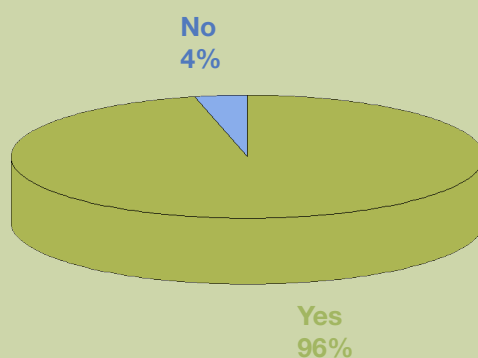
The Reference Guide will be published on CIRCABC and is intended to aid practitioners in relation to matters concerning exchanges outside of criminal proceedings.

	Reference Guide for Request Purposes Other Than Criminal Proceedings				
FOR MEMBER STATE PROCEDURES FOR MAKING REQUESTS AND OTHER RELEVANT DETAILS FOLLOW HYPERLINKS IN HEADER ROWS →	Austria	Belgium	Bulgaria	Cyprus	Czech Republic
Do you carry out checks for purposes other than criminal proceedings on a national level, and if so, which organisation(s) carry out these checks?	Police, Ministries and Public Authorities as defined by law	Judicial authorities, Police, Intelligence Agencies, Cell Processing of Financial Information	YES	YES	YES. The checks are carried out by the authority, by which the request is filed (the Criminal Registry Office, 6,000 CheckPoint terminals or Czech embassies).
Will you accept requests outside criminal proceedings from other EU Member States?	YES	YES	YES	YES	YES
	Request for obtaining a permit to carry weapons; Request for obtaining a VISA; Request for obtaining a				An extract shall be provided to all

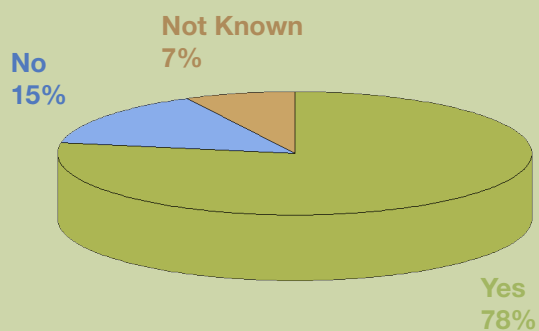
Do member states require consent from the individual if a request is made outside of criminal proceedings?



Is there legislation which enables exchange for purposes other than criminal proceedings?



When responding to requests from EU Member States is the level of disclosure the same as if the disclosure was made nationally?



Regional Workshops Schedule

France (Nantes)

11/07/12



Member States in attendance:

Belgium, France, Italy, Malta, Portugal, Spain and UK.

Romania (Bucharest)

11/09/12



Member States in attendance:

Austria, Germany, Netherlands Poland and Romania.

Cyprus (Larnaca)

20/11/12



Member States in attendance:

Bulgaria, Croatia, Cyprus, Czech Republic, Greece, Hungary, Luxembourg, Slovakia and Slovenia.

UK (Glasgow)

15/01/13



Member states in attendance:

Denmark, Estonia, Finland, Latvia, Lithuania, Sweden and the UK jurisdictions of Northern Ireland and Scotland.

4.5 Launch at ESP Conference

On the 22nd May 2012 at the ESP Conference in Lithuania, a presentation was given to introduce the Phase 2 element of the ECRIS Support Programme. Attendees were able to take part in initial workshops aimed at seeking Member States' views to exchanges outside of criminal proceedings.

This introduction was reinforced at the Partner Country meeting on 23rd May 2012, with Estonia France, Latvia, Lithuania and the ESP team in attendance. There was keen interest for involvement and it was here that France elected to host the first Regional Workshop in Nantes.

4.6 Regional Workshops

Four Regional Workshops were programmed over the course of six months. All Member States were advised of the programme, and given an indication of the time they would be invited to attend.

This approach was chosen for a number of reasons. The high levels of interaction possible in a small group of countries allowed large volumes of information to be collected. Organising the groups geographically served as a way of creating dialogue between Member States who were likely to have high volumes of exchange, and dealt well with the current economic climate by providing several venues which would be easier for delegates to travel to. By targeting a number of countries in one day,

savings of costs and time were achieved, compared to the need to visit each Member State individually.

In order to maximise attendance two delegates from each Member State were funded to attend from the ESP budget. Member States were given advance notice of the agenda, and were asked to bring copies of legislation and other relevant paperwork relating to issues on individual access, employment and licensing.

The agenda for the workshops was designed to allow each Member State adequate time to present their current status for exchange.

The information obtained in the workshops was used to populate the Reference Guide. This is designed for Central Authority staff and other users with an interest in making a request within ECRIS for purposes other than criminal proceedings. This document will ultimately be published on CIRCABC and aims to give an overview of the capabilities and limitations within each Member State, concerning the exchange.

Delegates from all Member States were able to provide details of their legislation and their respective positions in relation to Individual Access and Administrative Purposes.

Presentations were provided by the Member States during the course of the one day workshop and detailed discussions were recorded so that accuracy of each Member State's position and views could be verified following the conclusion of the workshop.

The minutes from all of the Regional Workshops are available to view on CIRCABC.



5 Findings

5.1 Summary

The results of the Gap Analysis questionnaires indicated that some Member States did not have legislation in place to allow for exchange outside of criminal proceedings, and in the case where there was enabling legislation, the purposes for which information could be exchanged, the level of information disclosed, and the procedure for exchange varied greatly.

During the Regional Workshops and also during related research a wide variety of approaches were discovered in Member States. This is particularly true regarding individual access where disparity exists when an individual wishes to gain access from within their own country's organisations or indeed when an individual causes a request to be made to a Central Authority of another Member State.

It is the procedure of some Member States that individuals be directed to an Embassy of their nationality where requests can be directed via Central Authorities in order to gain access to their own records. Other Member States will deal with requests via their Criminal Records Offices and through Central Authorities rather than through Embassy channels.

Most Member States will accept requests for employment vetting. However it may depend upon the particular type of employment concerned and whether it fits within the receiving Member State's own law.

At Regional Workshops it has been widely agreed that Central Authorities will not cross charge another Central Authority. Charges will be made in most Member States to individuals who request access to their own records and the amounts vary from country to country.

In broad terms, the requests that are likely to be made by Member States, will fall into the following categories:

Judicial Authority

This would be used in the case of criminal proceedings.

Competent Administrative Authority (Licensing)

This may be a request from a Child Protection Agency, or a government department / public authority

or local council. This is not an exhaustive list as the broad range of what is considered a Competent Administrative Authority means that examples are too numerous to list in full.

There are various forms of licensing requirements in particular those that relate to the possession of firearms and explosives. However, there are other forms of licensing which may require criminal record checks, for example, gaming licenses, and licenses for those wishing to own or manage licensed premises (for examples restaurants / bars). Licensing may also be relevant for those acting as drivers of Public Service Vehicles.

Person Concerned for Information on Own Criminal Record

An individual (or a third party with appropriate Power of Attorney or consent) may make a request for information from their own criminal record via a Central Authority, in accordance with Articles 6.2 and 6.3

Case Study: British Council Teacher

In July 2007, the UKCA received information from the Joint Border Operations Centre that an individual was due to arrive at London Heathrow Airport.

The subject had previous convictions in France in 2002 for possession of pornographic images of children and was subsequently not allowed to work with children for 5 years. Further research revealed he also had a conviction in 1990 for possession of indecent photographs of children and 1978 for drug offences. Additional searches were carried out and it was found he had also been barred from teaching

by the Department for Education and Skills (DfES) in 2000.

The subject was stopped and he revealed that he was resident in France and employed by the British Council as a teacher.

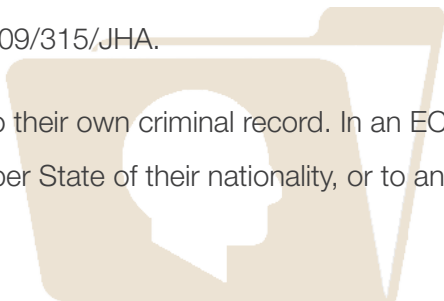
The British Council were contacted. They were unaware of his full conviction history and that he had also worked as a social worker with children in 1978 and 1989.

Recommendations were made to the British Council and processes were subsequently implemented to ensure future employees are vetted prior to taking up teaching jobs.

Source: UKCA-ECR / ACRO

of Council Framework Decision 2009/315/JHA.

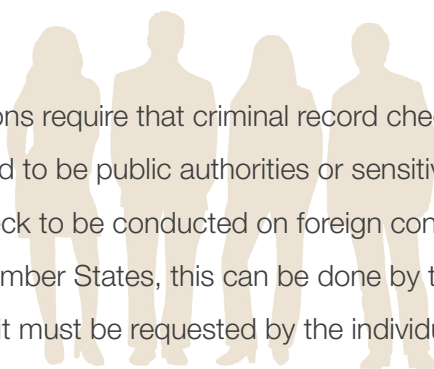
Individuals are entitled to access to their own criminal record. In an ECRIS context, an individual can obtain this by request to the Member State of their nationality, or to any other Member State where they are, or have been resident.



Employer

In certain circumstances, a business, organisation or company may require a criminal records check before offering employment to an individual. This may be from a public organisation, or a company in the private sector.

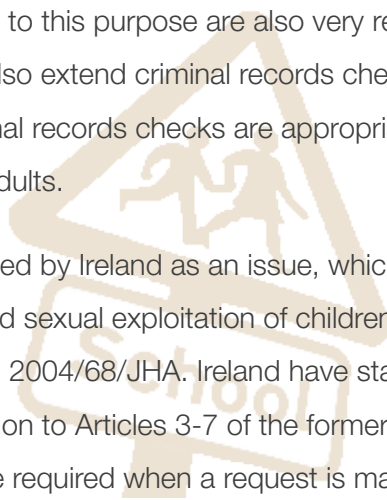
Particular professions and occupations require that criminal record checks be conducted prior to employment. In general these tend to be public authorities or sensitive employments. Where a prospective employer requires a check to be conducted on foreign convictions, this can be achieved by request through ECRIS. In some Member States, this can be done by the appropriate authority offering the employment, however in others it must be requested by the individual concerned.



Both requested and requesting Member States can apply their own national legislation.

The protection of children and vulnerable adults is a large factor when considering checks for regulated employment. However checks relating to this purpose are also very relevant in the areas of fostering and adoption. Many Member States also extend criminal records checks to individuals volunteering or childminding. It is accepted that criminal records checks are appropriate for anyone having unsupervised contact with children and vulnerable adults.

The question of consent has been raised by Ireland as an issue, which is detailed in Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. Ireland have stated that the provisions of 2011/92/EU and 2009/315/JHA conflict in relation to Articles 3-7 of the former. 12 Member States have indicated that consent of the individual would be required when a request is made by a third party. Where no consent exists the request may still be dealt with provided it complies with national legislation.



5.2 Legislation

All Member States can facilitate exchange outside of criminal proceedings, details of which are given in the Reference Guide. The diversity of this legislation means that there are various approaches and procedures for exchange of information.

Many Member States, such as Austria, France and Germany, can produce several types of extract from their records. The extract which is provided will be dependent on the purpose of the request. This ensures that information which is disclosed complies with national law and is proportionate and fair. This also deals with Data Protection considerations surrounding the provision of sensitive and confidential data.

‘Partial extracts’ are a recurring expression in relation to this area of exchange and the majority of Member States have been found to adopt an approach where information is redacted to fit the nature of the request.

This is echoed in **Belgium** where the Code of Criminal Procedure restricts access of organisations and only permits public authorities to have disclosure of sentences of imprisonment of 6 months or less. Examples of public administrations include Human Resource Departments of Ministries, Office of Naturalisations and the Home Office.



In **France** the creation of Article 775-777 of the Code of Criminal Procedure ‘governs the requests of criminal information’ and will provide such information within Extract B2 (Public Authorities for Administrative Purposes). This would contain all information except decisions by the juvenile court or convictions imposed for petty offences.

Germany has established an ‘EU Certificate of Good Conduct’ and employers are required to request applicants to apply for individual access rather than permit employer requests. Only convictions of more than 90 days are provided, except those which involve sexual offences.





In Member States such as **Estonia**, all criminal records information is classed as public record and may be provided to anyone who requests it (aside from that which has been archived). Due to the differences between this, and an approach applying filters, the need for careful bi-lateral communication is required to ensure only that transmittable information which has been sent to other Member States, is provided to third parties for purposes other than criminal proceedings.

The following case study details a scenario where an exchange of criminal records information for the purposes of employment vetting may have prevented a sex offender from taking up a position working with children.

Case Study: Language Teacher

An individual was working as a teacher and living in a port area and was encouraging boys to go away with him on his boat. This was first reported in the media following a charge for a 'sexual assault – intentionally touching a male' and 'grooming' in England.

The media reported that he had been convicted of sexual offences against children in his home nation, but as no work visa was required this was not reported to the relevant local Police Force in

England. This meant no entry was made on the Sex Offenders Register.

The Crown Prosecution Service (CPS) was unable to prosecute the case as the victims did not want to participate, and as the offence did not appear on PNC he had a clean disclosure with no convictions from the UK.

The legislation that now exists regarding exchange for purposes other than criminal proceedings would ensure that the previous convictions were found on application, and the individual would never have been able to take up employment as a teacher.

Source: Disclosure and Barring Service (formerly the ISA) - UK

5.3 Person Concerned for Information on own Criminal Record

The ESP Team conducted research regarding procedures adopted by Member States where an individual requests access to their own record(s). This can fall into two basic methods, where an individual may approach their own Central Authority within the country of nationality or alternatively may approach the Member State where the individual is resident.

Twenty Two Member States corroborated the research, from this it is clear that a number of different procedures exist. For example, in Bulgaria both residents and non-residents will need to apply to the Central Bureau of Conviction whereas in Austria residents can apply locally (Police Station or Local Government office), non-residents will need to apply to an Embassy or Consulate. Full details collated appear within the Reference Guide.

Article 6.3 of Council Framework Decision 2009/315/JHA states that:

Once the time limit set out in Article 11(7) has elapsed, whenever a person asks the central authority of a Member State other than the Member State of the person's nationality for information on his own criminal record, the central authority of the Member State in which the request is made shall submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.

In accordance with this, Member States must provide a copy of the criminal record to the person concerned on request in accordance with their national law. The process will vary, in some cases considerably, from one Member State to another.

Charges to the individual for this access vary too, with supplementary charges being added for European access, as with the United Kingdom for example, who for example charge £10 for individual access on a national basis. If however the UK Central Authority are asked to obtain details from another Member State, there is a fee of £60.

Currently, Central Authorities have agreed not to charge other Central Authorities who are making a

request for purposes other than criminal proceedings.

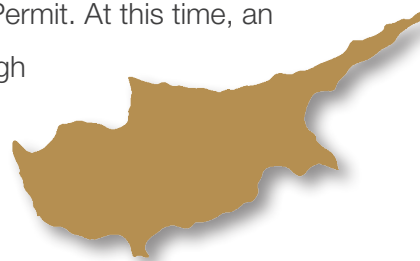
For example, when an individual of Latvian nationality living in Spain applies to the Spanish authorities, normally there would be a charge for disclosure however in this instance Latvia would not charge Spain. However Spain may charge the individual making the request if they wish.

In order to ensure compliance with Data Protection, each Member State is concerned with ensuring the criminal record is provided to the correct person. The responsibility for determining the identity of the person applying for access to their own criminal record should fall with the requesting Member State, as it possesses all the information requested. Similarly, if a third party is applying on behalf of the individual, it is the requesting Member State who should have responsibility for determining whether the appropriate consent or Power of Attorney has been obtained. It is important to note that this conclusion is based on Member State agreement and is not foreseen in Framework Decision 2009/315/JHA.

The variance in approach to individual authorities by Member States can be seen in the following examples, which are not exhaustive but are representative of different approaches by Member States.



Cyprus require that where residents require individual access applications must accompanied by an ID card, foreign applicants can apply following a period of 6 months residence and similarly, must produce an ID Card together with an Residence Permit. At this time, an individual cannot apply through the Central Authority for obtaining a record from another Member State.



In the **Czech Republic** there are two types of criminal records. One type is a “copy”. This includes all of the information on criminal convictions even after their deletion (records are stored for 100 years) and is for the purpose of criminal proceedings. The second type is an “extract”. This includes only the information on convictions, which have not yet been deleted and is issued for purposes other than those

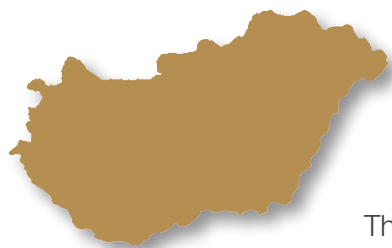
of criminal proceedings, such as requests by the individual and administrative authorities and civil courts.

Individuals can make requests through 6000 checkpoint terminals, which are computer terminals throughout the Czech Republic in post offices and municipalities. Requests can also be made by electronic signature cards. If the request is made in another Member State, the request can be made via the Central Authority of the respective Member State or via a Czech Republic Embassy.

In **Greece** individuals can make requests online and if an organisation requests a criminal record as a prerequisite for an administrative purpose in the public sector. If it is for a private organisation, then the person has to visit an authorised office for the check to be conducted.



If a non-national living in Greece obtains their criminal record via the Greek Central Authority, only the Greek convictions and notifications from other MS would be included. Whereas if the individual goes through their national embassy, all convictions would be included.



Hungary has developed a Certificate of Good Conduct, there are two forms of documents which can prove the individual's record: the Certificate of Good Conduct and the Official Certificate.

The Certificate of Good Conduct states whether a person has a clean record or not, whether they are under the effect of a measure or a professional restraint or under the effect of a driving suspension.

The Official Certificate is based on four criminal records. It states whether the applicant fits the requirements of a special legal regulation, shows that the applicant has a clean record or not and gives information about the ongoing criminal procedures as well.

Persons may apply for certificates by mail, in person or electronically. From abroad this can be done via the Hungarian Embassies or Consulates, and from the 1st January 2013 the embassies and consulates will be able to forward these applications electronically.

If the requested person is not a Hungarian national then the law allows Hungary to provide the data, if it

is available. The law in Hungary strictly defines which authorities are entitled to receive data for purposes other than criminal proceedings. Individuals can apply for a Certificate of Good Conduct to verify a clean record and individuals can use the certificate when applying for employment abroad.



In **Slovakia**, a natural person can apply in any registry and the Slovakian Embassies if they are residing abroad. An application is completed and a reply is sent by email or by post, or via the embassies. Slovakia are trying to develop an integrated service point, for example, each post office would contain a contact point where people can apply for their criminal record.

5.4 Employer

There are areas of difference in relation to employment and vetting, emphasis regarding professions and occupations varies across the EU Member States. Member States only respond to requests for purposes outside of criminal proceedings in accordance with their national law. This means that there may be inconsistencies in the level of checks undertaken across EU Member States, and certain professions may benefit from more comprehensive checks in certain Member States than in others. For example, if a profession is not routinely checked under one Member State's national law, another Member State that may choose to conduct checks on this profession cannot expect to receive convictions from the requested Member State. In cases such as this, it is important that Member States remain aware of the diversity of approach, and any gaps that may arise on a national basis as a result of this, given that the exchange of criminal records for purposes other than Criminal Proceedings is not mandatory.

The following examples are not exhaustive, but are representative of the differing procedures across EU Member States.

The majority of requests outside of criminal proceedings in **Estonia** concern employment vetting. Certain private sector employers have an obligation to apply for data from the Punishment Register and examples of these include professions such as security guards, explosive handlers, organisers and supervisors of gambling activities and members of the Estonian Bar Association.



Case Study: German Doctor

A doctor from Germany travelled to England and registered with the General Medical Council (GMC) in order to carry out work.

After his initial registration with the GMC, the doctor returned to Germany, but on notification by the authorities that he was wanted in relation to a sex offence he quickly returned to England. He was then able to take up locum work in England for a number of years without the GMC having knowledge of his previous convictions.

The doctor became the subject of a European Arrest Warrant, and he was subsequently caught and the GMC removed him from their register.

Information revealed that the doctor had been convicted in Germany for rape of an adult female after administering a substance to a drink consumed by the victim.

The offence, if shared at the time of registration with the GMC would have stopped this individual practising as a doctor.

Source: Disclosure and Barring Service (formerly the ISA) - UK

Additionally each public institution is required to verify the background of applicants before appointment to public service including the Armed Forces, where if an individual does have a criminal record they will be barred from mandatory service.

In **Lithuania** the phrase 'impeccable character' is used to describe an individual of good background.

When an individual wishes to enter into employment there is a legal obligation to submit a certificate detailing their criminal history. In particular, anyone applying for employment where confidential information is concerned must not have committed a serious crime, this also relates to civil servants who cannot have convictions contrary to public service / interests or misdemeanors within the past 3 years. Persons may not be employed as teachers if they have convictions for a premeditated act.





Spanish public and administrative authorities can submit requests for an individual's record but only with the consent of the individual unless legal exceptions apply.

A limited extract will be provided by authorities in **Sweden** for employment for those persons wishing to work with children. There are 24 types of extracts dependant upon the authority making the application and the purpose.



5.5 Competent Administrative Authority (Licensing)

Competent Administrative Authorities are those organisations which have access to criminal records information. This may be for various purposes, however it is commonly used for licensing.

In order to conduct certain activities, it may be necessary to obtain a licence to do so. Most commonly, Member States may require a person to obtain a Firearms Licence in order to possess a firearm. However the term licensing can relate to different activities, such as driving public vehicles, possessing explosives, managing / owning licensed premises.

Members States have provided some examples of where licensing can be considered in terms of purposes other than criminal proceedings The examples are by no means universal and provided the administrative purpose applied for is within the national law of the requested Member State then in the majority of cases requests will be dealt with.



The Police Service in **Cyprus** is able to check convictions for applications regarding Firearms Licensing, this is a lawful purpose.

Finnish authorities are able to undertake checks for firearms licensing, transport of dangerous goods, private security services and operating permits, all of these are considered to be valid purposes within the legislation existing in Finland.



Case Study: Polish National

A Polish national was working in a care home in Norfolk, United Kingdom, when he stole substantial savings from an elderly resident. He was arrested in the UK, where a request was sent to Poland and Germany to check for any previous convictions.

The response revealed that his name was an alias

surname and identified the individual's real name. Sochacki later failed to appear in court when charged with the theft offence.

The following year the individual was the subject of a requested CRB check, and was subsequently arrested when he was found to be working in another care home.

Source: UKCA-ECR / ACRO

France will supply a B2 Extract and apply to a strict list of purposes which include the issue of firearms licences. This procedure is confined to public authorities for administrative purposes only as defined by Article 775-777 of the Code of Criminal Procedure. **Hungary** quote firearms licensing as being one of up to 60 purpose for disclosure/ checking for criminal convictions.



Driving Instructor licences are provided by **Greece** as an example of administrative purposes and extracts would be supplied to the authority making the application.



In order to hold a Firearms License in **Slovakia** a special copy of convictions is provided which includes live convictions, and those from Member States which are recognized by the Slovakian Courts.



6 Conclusions



The Regional Workshops provided an opportunity for groups of Member States to present their own national legislation, discuss approaches and respective views on the subject of exchanges outside of criminal proceedings.

A smaller concentration of Member States at these workshops allowed for a more focused exercise in order that as much detail as possible could be captured.

Given the Council Framework Decision there was unanimous agreement that exchanges of criminal records were achievable provided Member States adhered to national law and that valid purposes existed for such requests.

This second phase of the ECRIS Support Programme enabled the recording the responses from Member States and to prepare a Reference Guide which would be of future use to Central Authorities thus providing wider understanding of procedures.

It is clear that there are many different approaches around the exchange process. For example, whilst consent from an individual is required by some Member States, in other Member States consent is not needed in order to respond to a request.

Where Member States have achieved 'live' ECRIS status, exchanges for purposes other criminal proceedings requests, are now being undertaken.

7 Recommendations



Member States should make themselves aware of the diversity of approach, and any gaps that may arise on a national basis as a result of this, given that the exchange of criminal records for purposes other than Criminal Proceedings is not mandatory. Examples of the varied approaches appear later in the Findings section of this report (Section 5).



The Reference Guide should be referred to prior to a request to avoid a 'Denial' response by the recipient Member State and when Member States prepare a 'Request' they should ensure that the 'Purpose' is both lawful and comprehensively described.



The area of licensing and employment vetting is varied and requires greater standardisation and uniformity across the 27 Member States, with a comprehensive agreed list of purposes. The European Commission may consider further research into a standardised system. For example, a number of countries require consent of the individual for employment vetting purposes, the full details of these are recorded within the Reference Guide, additionally the extent of disclosure will be dependant upon the receiving Member State and the nature of the occupation in question. Consideration could be given in relation to standardising the issue of consent and also an agreed catalogue of professions or occupations which require vetting in a pan-european context.



8 Acronyms and Abbreviations

ACPO

Association of Chief Police Officers

ACPOS

Association of Chief Police Officers in Scotland

ACRO

Association of Chief Police Officers' Criminal Records Office

CIRCABC

Communication and Information Resource Centre Administration for Businesses and Citizens (European Commission led website which creates shared workspaces).

CPS

Crown Prosecution Service

CRB

Criminal Records Bureau

DBS

Disclosure and Barring Service

DfES

Department for Education and Skills

ECRIS

European Criminal Record Information System

ESP

ECRIS Support Programme

EU

European Union

GMC

General Medical Council

ISA

Independent Safeguarding Authority

JHA

Judicial and Home Affairs

MS

Member State(s)

NJR

Network of Judicial Registers

PNC

Police National Computer

UKCA

UK Central Authority

UKCA-ECR

UK Central Authority for the Exchange of Criminal Records

