

Protecting children from sexual abuse in Europe: Safer recruitment of workers in a border-free Europe

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This report presents the case for improving cooperation across the European Union (EU) to protect children from sexual abuse. It identifies the main barriers that currently prevent the effective pre-employment vetting of migrant workers across Europe, and examines initiatives that have been or are being pursued at EU level, aimed at improving the exchange of cross border criminal information exchange. It makes recommendations on how the European Union and member states can improve cross-border cooperation for vetting and barring purposes, focusing particularly on the need to improve and share information.

The research and writing of this report was carried out between January and August 2007. It includes material gathered from a variety of sources such as other research studies and academic literature; recent media reports; parliamentary questions and government publications; interviews with representatives of EU institutions and member state governments; case studies collated through visits to relevant agencies in Poland and Sweden; telephone interviews with practitioners in Northern Ireland, Wales, England, Scotland and the Republic of Ireland; and web searches.

The report builds on previous NSPCC research into “The Collection and Use of Personal Information on Child Sex Offenders” (CUPICSO) (2000) in the then 15 EU member states, which was funded by the EU’s Daphne Programme. This included detailed information on Ireland, Sweden and the United Kingdom, and also looked at existing mechanisms for exchanging information between countries. Many of the recommendations for local, national and international levels are still valid and have been reproduced in Appendix 2.

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Foreword

Realising children's right to protection from abuse is the responsibility of everyone in society, including government at local, national and European levels. NSPCC UK based research shows one in six children will experience some form of sexual abuse by the age of 16.

Sometimes abusers are people who work with children, such as school staff, sports coaches or carers. Through the work of our Independent Enquiry and Assessment Service, the NSPCC has developed a specialist understanding of abuse perpetrated by professionals. We have also learned about ways to protect children from this type of abuse.

The new Council of Europe Convention on the Protection of Children against Sexual Abuse and Sexual Exploitation recognises the importance of ensuring that people who have committed past offences against children are not hired to work with children.

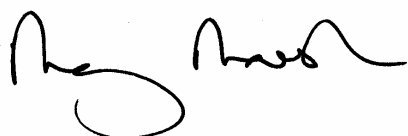
Today's world is full of opportunities to live and work in other countries. Child protection systems have to take this into account by cooperating with each other to keep children safe.

In this report we show why the European Union has a particular responsibility to help make this happen.

The NSPCC considers the recommendations in this report to be fully achievable. The issues can be sensitive, but the need for change is clear. European Union countries must work to forge a common understanding and take practical steps to protect children from harm.

This means placing children's needs and rights at the centre of policy objectives.

We hope this report will contribute to achieving the goal shared across Europe and beyond – ensuring that every child can grow up free from abuse.



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Abbreviations

ACPO	Association of Chief Police Officers (UK)
CEOP	Child Exploitation and Online Protection Centre (UK)
CRB	Criminal Records Bureau (UK)
CTA	Common Travel Area
CUPICSO	Collection & Use of Personal Information on Child Sex Offenders
EU	European Union
JHA	Justice and Home Affairs (EU)
MAPPA	Multi Agency Public Protection Arrangements (UK)
MASRAM	Multi Agency Risk Assessment Meeting (N. Ireland)
NCRO	National Criminal Record Office (Poland)
NIO	Northern Ireland Office
NSPCC	National Society for the Prevention of Cruelty to Children (UK)
PNC	Police National Computer (UK)
PSNI	Police Service of Northern Ireland
SIS	Schengen Information System (EU)
SOCA	Serious Organised Crime Agency (UK)
TEU	Treaty of the European Union
UKCA	United Kingdom Central Authority
UNCRC	United Nations Convention on the Rights of the Child
VISOR	Violent and Sex Offender Register (UK)
WRS	Worker Registration Scheme (UK)

Glossary of Key Terms

This glossary provides brief descriptions of the key terms used in this report and, where relevant, includes web links for more detailed definitions and background information.

A more comprehensive glossary of EU institutions and terminology can be found on the official website of the European Union:

http://europa.eu/scadplus/glossary/index_en.htm

http://europa.eu/abc/eurojargon/index_en.htm

Council Decision

Council decisions are binding agreements adopted in the field of Justice and Home Affairs, as well as in other policy areas. In most cases, the Council's decisions, based on proposals from the Commission, are taken jointly with the European Parliament under the co-decision procedure. Depending on the subject, the Council takes decisions by simple majority, qualified majority or unanimity, although the qualified majority is more widely used.

http://europa.eu/institutions/decision-making/index_en.htm

Council of Europe

The Council of Europe is an inter-governmental organisation established in 1949 to promote democracy and protect human rights. One of its early achievements was to draw up the European Convention on Human Rights. It has 47 member states. It is not an EU institution.

http://www.coe.int/T/e/Com/about_coe/

Council of the European Union

The Council of the European Union ('Council of Ministers' or 'Council') is the Union's main decision-making body. Its meetings are attended by member state ministers, and it is thus the institution which represents the member states. The Council's headquarters are in Brussels, but some of its meetings are held in Luxembourg. Sessions of the Council are convened by the Presidency, which sets the agenda.

http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=242&lang=EN&mode=g

Criminal Record

A criminal record is a list of past crimes for which an individual has been convicted. Criminal records are used for several purposes including the identification of criminal suspects, sentencing and employment vetting.

Disqualification

The term disqualification refers to the practice of banning an individual from seeking and taking up employment which gives them access to children. Some people who are disqualified are also banned from working with vulnerable adults. The term employment ban is also used in the report.

European Commission

The European Commission is a politically independent collegial institution which embodies and defends the general interests of the European Union. Its virtually exclusive right of initiative in the field of legislation makes it the driving force of European integration. It prepares and then implements the legislative instruments adopted by the Council and the European Parliament in connection with Community policies.

http://europa.eu/scadplus/glossary/european_commission_en.htm

European Council

The European Council is the term used to describe the regular meetings of the Heads of State or Government of the European Union member states. Its role is to provide the European Union with the necessary impetus for its development and to define the general political guidelines (Article 4 of the Treaty on European Union). It does not enact legislation and is not an institution.

http://europa.eu/scadplus/glossary/european_council_en.htm

European Parliament

The European Parliament is the assembly of the representatives of the 492 million Union citizens. Since 1979 they have been elected by direct universal suffrage and today total 785, distributed between member states by reference to their population.

http://europa.eu/scadplus/glossary/european_parliament_en.htm

Framework decision

Framework decisions are used in the field of Justice and Home Affairs policies to approximate and align the laws and regulations of member states. Proposals are made on the initiative of the Commission or a member state and they have to be adopted unanimously. They are binding on the member states as to the result to be achieved but leave the choice of form and methods to the national authorities.

http://europa.eu/scadplus/glossary/framework_decisions_en.htm

Green Paper

Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers.

http://europa.eu/scadplus/glossary/green_paper_en.htm

Justice and Home Affairs (JHA)

At EU level, proposals relating to Justice and Home Affairs are subject to first-pillar decision making, where the subject matter covers asylum, illegal migration, borders and economic migration. Decisions can be taken by majority vote (except economic migration matters, where unanimity is required). Police and Judicial Co-operation in Criminal Matters (PJCC) forms the third pillar of decision making, where agreement must be unanimous: proposed policy can be blocked by the veto of any one country.

http://europa.eu/pol/justice/index_en.htm

Member states

Countries that belong to an international organisation are its 'member states', a term often used also to refer to the governments of those countries. A full list of EU member states and dates of accession is given in Appendix 3.

http://europa.eu/abc/european_countries/index_en.htm

Pillars of the EU

The concept of 'pillars' is generally used in connection with the Treaty on European Union. Three pillars form the basic structure of the European Union, namely:

- the Community pillar, corresponding to the three Communities: the European Community, the European Atomic Energy Community (Euratom) and the former European Coal and Steel Community (ECSC) (first pillar);

- the pillar devoted to the common foreign and security policy, which comes under Title V of the EU Treaty (second pillar);
- the pillar devoted to police and judicial cooperation in criminal matters, which comes under Title VI of the EU Treaty (third pillar).

http://europa.eu/scadplus/glossary/eu_pillars_en.htm

Vetting

This term refers to the practice of performing a background check on a prospective employee, to find out if the individual has any previous criminal convictions which may be taken into consideration before an offer of employment is made. Vetting is also termed ‘pre-employment checking’ throughout the report.

Summary

Children across the globe have a right to be protected from sexual abuse. It is the responsibility of each and every individual to respect this right and of each government at local, national and international level to ensure it is enshrined in law and practice, and enforced accordingly:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures.”

(Article 34, United Nations Convention on the Rights of the Child)¹

Within the European Union, citizens are free to move across borders to apply for work and start a new life elsewhere. This brings many benefits to children and adults, but in the absence of systematic means to carry out pre-employment checking across borders this presents a potentially serious danger to children. There is evidence to suggest that people who have been convicted of sexual offences against children are increasingly travelling to other countries, also to avoid detection.² In some EU member states it is easier to get a job which provides access to children than in others; if an offender evades detection, it poses a very real risk.

For children to be protected from abuse, pre-employment checks must form part of a comprehensive vetting procedure.³ These checks should reveal whether prospective employees have previous convictions for sexual, violent or drug-related crimes that may render them unsuitable to work with children, or whether they have ever been banned from working with children.

¹ United Nations (1989) The Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, 20 November 1989, Geneva.

² CEOP Strategic Overview 2006-07.

³ It should be noted that other measures are also needed to ensure that children are protected. For example, in addition to employee background checks, employers should conduct suitable interviews, take up references and provide appropriate training and supervision after appointments have been made.

The need for a common approach

The 2003 Council Framework Decision ‘on combating the sexual exploitation of children and child pornography’⁴ requires member states to ensure that individuals convicted of certain offences are prevented from working with children.⁵ However, it is not clear to what extent this Decision has been implemented by member states.

The fact that there may be 27 legal definitions relating to the same crime only adds to the difficulties in addressing the problem, as does the general lack of agreement on what the consequences of certain crimes should be: some countries ban individuals from working with children on the basis of a criminal conviction, others rely instead on employers to take decisions on a case-by-case basis, based on their interpretation and assessment of the prospective employee’s criminal record extract. The quality of criminal record information and storage and retention protocols vary between countries.

Where information from other countries is available to employers, it may be difficult for an employer to obtain and interpret it, further limiting its usefulness.

The need for improved quality and exchange of information

Currently, there are no dedicated mechanisms in place between EU countries to exchange criminal records information for use in pre-employment checking. Although moves are underway to improve this situation,⁶ efforts are largely focused on ensuring that countries hold all the conviction information about their own nationals - wherever the conviction was obtained - rather than centralising information in one common EU database. In 2005, the European Commission proposed the establishment of a ‘European index of offenders’⁷, but the idea was rejected, as member states were not prepared to centralise information about their citizens on such a database.

⁴ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

⁵ ‘Offences concerning sexual exploitation of children’ (Article 2), ‘Offences concerning child pornography’ (Article 3) and ‘Instigation, aiding, abetting and attempt’ (Article 4).

⁶ These include a 2005 proposal for a ‘Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States’ [COM (2005) 690] on which a general approach was agreed in June 2007.

⁷ White Paper of 25.1.2005 on exchanges of information on convictions and the effect of such convictions in the European Union, COM (2005) 10 final.

Work towards standardising the format of information across Europe, which would greatly facilitate the exchange in a uniform, electronic and easy machine-translatable way, is still in the early stages. But even if and when this is achieved, it will not actually oblige member states to share information for the purpose of pre-employment checking, and neither will it automatically make the information more accessible and comprehensible to employers who need to use it.

It is crucial that if an individual is banned from working with children in one country, this decision is recognised in all other EU countries. In 2004, Belgium proposed an initiative to enable the ‘mutual recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children’ across the EU, with exactly that purpose in mind.⁸ But despite the need for such an agreement, the proposal has faced political and practical obstacles, and negotiations have stalled.

This report also identifies a need generally for greater European Union cooperation to protect children and the public in Europe from convicted sex offenders, regardless of whether they seek employment with children. It suggests that more needs to be done to monitor the movement of sex offenders across borders, in order to significantly reduce the risk they pose to children. This includes each member state implementing effective means of monitoring persons convicted of certain sexual offences.

⁸ Initiative of the Kingdom of Belgium with a view to the adoption by the Council of a Framework Decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences against children.

1. The need for increased EU cooperation to ensure unsuitable people cannot gain employment with children

1.1 Introduction

The right to live and work in other European Union (EU) member states is one of the fundamental freedoms guaranteed by the EU, and an essential element of EU citizenship. In recent years significant numbers of people have chosen to move within the EU, notwithstanding some restrictions for nationals of newer member states.

Some individuals seek employment with children. For example, figures from May 2004 show that 17,013 nationals came to the UK from newer EU member states to apply for work with children and vulnerable adults⁹ as care assistants or home carers. This figure included 11,525 individuals from Poland and 2,212 individuals from Slovakia. Other countries included in these figures are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, and Slovenia.

The vast majority of these migrant workers are likely to be law-abiding citizens, but a small proportion may be convicted sex offenders. Evidence suggests that people who have been convicted of sexual offences against children are increasingly travelling to other countries. A recent publication from CEOP, the UK's Child Exploitation and Online Protection Centre, highlights that a "trend in relation to offenders is that they are travelling abroad far more, not just to abuse but to avoid detection and prosecution" (CEOP Strategic Overview 2006-07).

Some sex offenders who travel to gain access to and abuse children will do so by seeking jobs that involve working with children. As this report highlights, there are significant variations in national approaches to checking prospective employees' criminal records in order to assess their suitability to work with children. In some countries it is easier to gain jobs which provide access to children than in others. As Thomas states, "if different countries have different laws and different degrees of law enforcement, when it comes to child sexual exploitation, then the sex offender may well calculate which country is best to visit because the risk of identification and detection is lowest" (Thomas et al, 2000).

⁹ Figures from the UK Border and Immigration Agency showing numbers of workers from countries accessioned in 2004 who applied to the UK Worker Registration Scheme (WRS). Figures do not include individuals who are self employed or who have failed to register with the Home Office WRS scheme (written communication with UK Border and Immigration Agency). For full figures see Appendix 4.

The Fourniret Case

The shocking case in 2004 of Michel Fourniret, a French national, demonstrated the potential consequences of countries failing to exchange information for the purpose of conducting background checks on foreign nationals seeking to work with children. Fourniret had previously been convicted of a series of murders and sexual assaults against children, but then relocated to Belgium where he was able to gain employment working in a school. In this position of trust he went on to commit a series of murders and sexual assaults against children. Neither the Belgian authorities nor the school had been aware of his previous convictions.

Criminal records information is not being used as well as it should be across borders to prevent further offences against children by convicted sex offenders and child murderers. Employers who recruit foreign workers or nationals who have spent time abroad, are often unable to check satisfactorily whether they have a criminal history which would make them unsuitable to work with children. Furthermore, measures taken in one member state to protect children from known offenders, such as disqualifications from working with children, are not generally recognised or implemented in others.

To prevent individuals like Fourniret from exploiting discrepancies in vetting procedures between different countries, the EU and its member states must demonstrate a commitment to overcome their differences so that real progress can be made in this area. The role of the EU, particularly in relation to Justice and Home Affairs matters, is central in this debate due to the potential for joint policy making on combating crime. This is important to reduce the risks to children of abuse.

United Nations Convention on the Rights of the Child

Under Articles 19 and 34 of the 1989 United Nations Convention on the Rights of the Child (UNCRC), States parties are bound to take all appropriate measures to protect children from all forms of violence and abuse, including physical, mental and sexual abuse and exploitation. This includes implementing appropriate national, bilateral and multilateral measures. All EU Member States have ratified the UNCRC and thus have a responsibility to cooperate where necessary to prevent the abuse and exploitation of children.

1.2 Preventing child abuse by persons working with children

1.2.1 What we know about sex offenders and contact with children

Children are vulnerable to abuse from persons in positions of trust such as teachers and other school workers, sports coaches, carers in children's homes or medical professionals. Colton and Vanstone conducted a series of interviews with men serving prison sentences for sexually abusing children in their trust. The study describes how sexual abusers can purposefully target vulnerable children through employment (Colton and Vanstone, 1996).

In the UK, cases of sexual abuse perpetrated through an abuse of trust are also often the subject of calls to the ChildLine service (ChildLine case notes April 2005 to March 2006). In 2005-2006, the service counselled 298 children who talked about being abused by someone in a position of trust. Of these calls, 136 were cases of sexual abuse perpetrated by teachers. There have also been a number of high-profile public enquiries into cases of institutional abuse which illustrate well how sex offenders have exploited positions of trust (Kirkwood, 1993; Utting, 1997; Nolan, 2001; Waterhouse, 2000). In the 1990s for example, a total of 150 separate police authorities became involved in criminal investigations into sexual abuse in local authority care. As Ritchie argues, "It was clear that predatory men were choosing this sector of work because of the access to children provided by it" (Ritchie, 2001).

Much is now known about the difficulties involved in challenging those in a position of power and trust in relation to children and how hard it can be for children to speak out. One child recently helped by the NSPCC after being abused by a senior professional stated, "He said nobody would believe us because he was the boss. He told us that nobody was allowed to, or would dare to, investigate him. It took ages for people to believe us. I know I can do something about it if it ever happens again." Experiences such as this strongly imply that this form of crime is under-reported.¹⁰ Cases such as that of Fourniret are therefore likely to be the tip of an iceberg of other, unreported and unpublicised cases.

1.2.2 The value of pre-employment checking in preventing abuse

All EU member states hold criminal records information on individuals who have been convicted of sexual offences against children. A key purpose for this information is ensuring

¹⁰ A prevalence study conducted by the NSPCC in 2000 claimed that three-quarters of the children who had suffered from sexual abuse has not told anyone of the experience at the time. Of these children, a third claimed never to have spoken of their experiences subsequently (Cawson et al, 2000).

that the public, in particular children, are protected from risks that these offenders might pose. Crucially, it can be used by employers to conduct pre-employment checks¹¹ for vetting prospective employees. These checks provide evidence of relevant criminal convictions and police warnings, or evidence that applicants have previously been disqualified (banned, or barred) from working with children. It is important to recognise that employers also need information about individuals' history of violence or drug use, as this can make them equally unsuitable to work with children. Individuals with relevant previous convictions can thus be prevented from taking up roles which put them in a position of trust in relation to children.

In the UK the Criminal Records Bureau (CRB) was established in 2002 to conduct pre-employment checks on individuals applying to work in regulated positions. Recent research illustrates the effectiveness of this approach, concluding that in the last three years, pre-employment checks have prevented over 60,000 unsuitable adults from working with children and vulnerable adults (Ipsos MORI, 2007).

Despite the benefits of pre-employment checking, it is not fail-safe. Due to the nature of sexual abuse, crimes of this nature are rarely reported and recorded and conviction rates are low. This means that many perpetrators of sexual abuse will not have had any formal contact with the criminal justice system so will not be identified through pre-employment checking. It is vital that employers therefore also use a wider range of methods to ensure that unsuitable people are not employed to work with children, and to create environments where the risk of abuse is minimised. For example, in addition to employee background checks, prospective employers should conduct appropriate interviews to ensure the suitability of the prospective employee, take up all references and have in place appropriate supervision and training after an appointment has been made.¹²

¹¹ This is also sometimes referred to as 'vetting' or 'vetting and barring.'

¹² The NSPCC has a number of publications which provide support for organisations developing a child protection policy on NSPCC inform, see:
http://www.nspcc.org.uk/Inform/resourcesforprofessionals/ReadingLists/writingachildprotectionpolicy_wda48907.html.

Case Study: Northern Ireland

How is criminal information stored?

- The Police Service of Northern Ireland (PSNI) is responsible for the storage and management of criminal record information.
- Criminal records information is stored on a central database known as the Integrated Criminal Intelligence System (ICIS).
- The Disqualified from Working with Children List (DWC NI) and the List of Unsuitable People (UP) contain the names of barred individuals.

Who must be vetted in Northern Ireland?

- Individuals working in ‘regulated positions with children and vulnerable adults’.
- These positions include those involved regularly in training, advising, counselling, supervising or being in sole charge of children.

Who conducts pre-employment vetting?

- Employers must apply to the Police Service of Northern Ireland (PSNI) Criminal Records Office (CRO).
- The CRO then conducts a background check with reference to the DWC NI and UP, ICIS, Police National Computer and the barred lists of England and Wales.
- Northern Ireland will soon introduce a dedicated vetting body which will be known as ‘Access NI.’

Arrangements for vetting overseas workers:

- The PSNI can apply for criminal records information on the individual through the Serious Organised Crime Office (SOCA).
- Employees are referred to the CRB’s overseas service.

Rules around data storage:

- Criminal records information is stored for an indefinite period.
- The Rehabilitation of Offenders (NI) Order 1978 means that ‘spent’ offences are still taken into account for during pre-employment checks.

2. The information gap: Sharing information in the EU for use in employment vetting

2.1 Obtaining and using information from abroad for use in recruitment decisions: current situation

Employers recruiting staff to positions involving contact with children need to be confident that they are not recruiting someone who is known to pose a risk. When recruiting an individual from another country, or someone who has spent a significant amount of time abroad, the employer needs to be able to access relevant criminal records information from that country quickly, and in a format they can understand. However, there are currently significant difficulties in obtaining and using such information, where it is sought – it is not always the case that employers routinely attempt to acquire such background information about prospective employees.

2.1.1 Obtaining sound information about prospective employees

A report by the Bichard Inquiry¹³ identified the difficulties in the UK context of checking whether foreign nationals applying to work with children are suitable to work with children, describing this as “an area of potential weakness in the protection of young people.” He recommended that “Proposals should be brought forward as soon as possible to improve the checking of people from overseas who want to work with children and vulnerable adults” (Bichard, 2004).

The UK’s dedicated vetting body, the Criminal Records Bureau (CRB), provides criminal records information to help employers recruit safely. However, this service cannot provide conviction information from outside the UK, as many countries only provide conviction data directly to the individual concerned rather than to potential employers or vetting bodies (Bichard, 2004). This means that in the UK and elsewhere, employers wishing to conduct pre-employment checks must rely on prospective employees providing a copy of their personal criminal record extract. They may also attempt to carry out a background check of

¹³ The Bichard Inquiry (2004) was established to examine the failings of child protection procedures in Humberside Police and Cambridgeshire Constabulary following the conviction of Ian Huntley, a school caretaker, for the murders of schoolgirls Jessica Chapman and Holly Wells.

sorts by piecing together any information from the employee's country of origin which is available to them.

The UK Joint Chief Inspector's Review of Children's Safeguards (2002) examines evidence relating to how well all children are protected. Particular attention is paid to the safety of disabled children, children living away from home, children who spend time in health settings, children in secure or custodial settings, children who have contact with the criminal justice system and children seeking asylum. The report claimed that "Recruitment procedures and arrangements for checking that staff are suitable to work with children also continue to give rise to considerable concern. Checking of recruitment agency staff, contractors and staff from outside the United Kingdom (UK) and re-checking of existing staff with the Criminal Records Bureau are particularly inconsistent" (JCI Review, 2002).

Individuals may thus be asked to apply for a copy of their criminal record extract from their country of origin and/or from countries where they have lived previously, and present this to the new employer. The appropriate authority in that country (for example in Poland this is the central criminal records office, in Sweden the National Police Board) may provide the individual with information in the form of a criminal record extract, or a 'letter of good conduct.' Applicants from the UK applying for work overseas can apply for a police clearance certificate by contacting the Data Protection section at the nearest police headquarters.¹⁴

An example of how criminal records information may be obtained by individuals:

A Polish national decides to move to the United Kingdom to live and work. On arrival, s/he applies for employment in a school. The school makes an offer of employment, subject to the receipt of satisfactory references. The prospective employee then applies to the Polish National Criminal Records Office for a copy of his/her criminal record extract. This request is processed and the extract is returned to the individual. As the extract is written in Polish, s/he arranges that this be translated into English. The individual gives the translated extract to the prospective employer who will assess his/her suitability according to the school's recruitment policy. The employer must seek to gain a sense of any crimes included on the extract, which will be described with reference to the relevant sections of Polish penal code. The employer then chooses whether or not to confirm the offer of employment.

¹⁴ "The Metropolitan Police receive many requests for 'certificates of good conduct' or 'Police clearance certificates' in relation to visa or work applications in countries outside of the UK. Although the UK police do not issue actual certificates, we are advised that foreign embassies will generally accept a police reply to a Subject Access Request" (CRB website, July 2007).

As applicants may not know how to obtain this information from their country, the UK Criminal Records Bureau has introduced an ‘overseas information service.’ This service provides guidance for employers who recruit foreign nationals and wish to check criminal records from the prospective employee’s country of origin.¹⁵ It also recognises the difficulties prospective employers face in understanding and using the information received, and provides guidance for employers, which highlights the potential limitations of the data. For example, guidance on criminal record extracts from Sweden explains that, “Minor crimes (the penalty is [a] fine) will not appear on an extract after five years has passed since the date of conviction. Major crimes will remain on an extract for ten years after an individual is released from prison (including a period of parole). This only applies if no further offences are committed within the periods specified above” (CRB Website, July 2007). In addition to the need to understand national rules on data storage and applicability in order to make full use of extracts provided, the Bichard inquiry (2004) raised concerns about the inherent weaknesses of this method and the safety of this approach, stating, “The obvious risk is that information passed to the data subject may not be passed on to the employer or may be amended before being passed on.” It arguably benefits greatly those individuals who have something to hide.

The UK Criminal Records Bureau has recently approached other EU member states to ask if they may be willing to share criminal conviction information for vetting purposes on a more formal and standardised basis.¹⁶

In cases where the prospective employee is a national, if they have been convicted for crimes in other member states, that information should have been sent to the country of nationality and stored there. For example, France should hold all conviction information about French nationals, whether the convictions were in France or in another European country. Employers should therefore not need to apply to other countries to obtain this information. However, problems have surfaced, which were highlighted in the UK in January 2007, when it was revealed that notifications about 27,529 British nationals convicted of crimes abroad had not been recorded on the Police National Computer (PNC).

¹⁵ Guidance is provided for Australia, Canada, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Republic of Ireland, Italy (excluding Vatican City), Jamaica, Latvia, Malaysia, Malta, Netherlands, New Zealand, Philippines, Poland, South Africa, Spain and Sweden.

¹⁶ The CRB Business Plan states, “The CRB hopes to be heavily involved in the future exchange of information within the EU and, in particular, promoting the exchange of criminal record information for employment vetting and related purposes” (CRB, 2006).

Of the individuals involved, 2,198 had overseas convictions for serious sexual or violent offences.¹⁷ As the notifications of offences gained overseas were not available for use in Criminal Records Bureau (CRB) pre-employment checks, 89 serious offenders had been given clearance to work with children and vulnerable adults. The Home Office inquiry into the problems found that there had been a collective failure over ten years to deal appropriately with criminal records information sent to the UK from other countries (Amroliwala, 2007).

These difficulties relate partly to problems with recording data when the identifying information required by the receiving member state for storing it, is not supplied. For example, the UK does not record overseas conviction data on the central police database, unless it is also provided with copies of offender fingerprints.¹⁸ (Amroliwala, 2007). Polish authorities have expressed concerns that individuals could not be identified accurately based on the information sent from abroad. Concerns about accuracy have also lead Swedish authorities not to store information from abroad on their central criminal information database, but to keep it separately.

In the absence of criminal records information, employers may be able to obtain other types of information to help them ensure that the prospective employee is suitable for the job. For example, employers can check the background of the individual at least in part from the electoral roll in the applicant's country of origin, through the respective embassy. They can also take up professional references from previous employers to verify professional experience and previous conduct at work.

These checks are important but cannot replace criminal records checks as they constitute only a "soft data safeguard" (Ritchie, 2001). Performing a background check of this kind can also present other problems. Some employers have found that it can take a very long time to obtain information from abroad, which is a significant challenge in sectors in which employment of overseas workers is common, such as the childcare industry in the UK. Labour shortages mean that employers may feel under pressure to recruit staff quickly and this may mean they are tempted to forego the requisite checks or allow individuals to commence employment before background checks are fully completed. There may also be difficulties understanding the reference if it is written in the language from the country of origin. It can also be more challenging to verify the authenticity of references from overseas.

¹⁷ The records had been handed to the ACPO central authority by the Home Office when they took over the role of UK Central authority (UKCA) in May 2006.

¹⁸ The ACPO submission to the 'House of Commons Committee inquiry into current issues relating to justice and home affairs (JHA) at European Union level' requested that conviction information sent to the UK should contain at least fingerprints and a photograph.

Case Study: Republic of Ireland

How is criminal information stored?

- The Irish Police (Garda Síochána) are responsible for the storage of criminal records information.
- Criminal information is stored on a single database known as PULSE.
- The ROI maintains a sex offender register.
- The ROI does not issue employment disqualifications.

Who must be vetted in the Republic of Ireland?

- individuals working in the roles funded by the Health Service Executive (HSE), such as in healthcare and social services;
- childcare places funded by the Equal Opportunities Childcare Programme of the Department of Justice, Equality and Law Reform;
- individuals working in special education facilities, special needs assistants in the general education section and school transport workers;
- prospective adoptive parents and fosterers;
- primary and post-primary education;
- third-level education institutes providing places to students on courses involving placements working with vulnerable client groups;
- youth work organisations, such as the scouts, girl guides and community-based projects;
- selected sports organisations; and care homes for the elderly.

Expansion will continue until vetting is provided for all personnel working in a full time, part-time and/or voluntary capacity with children and/or vulnerable adults.

Who conducts pre-employment vetting?

- The Garda Central Vetting Unit (GCVU) conducts pre-employment checks with reference to the PULSE database and the sex offender register.

Arrangements for vetting overseas workers:

- There are no formal arrangements in place for vetting workers from overseas.
- Information can sometimes be gained through informal relationships formed with police forces in other countries.
- When checking individuals from the United Kingdom, this information is sought through Interpol.

Rules on data storage:

- There are currently no rules which allow for some convictions to be declared 'spent' or stepped down.
- The only exception to this rule is outlined in section 258 of the Children Act 2001, section 258 which allows the non disclosure of offences where minor convictions were gained by a person under the age of 18.

2.1.2 Challenges to using the information obtained

Language differences can form a significant barrier to understanding and making effective use of information shared between national authorities. In most cases, the information transferred will be in the language of the country where the conviction was gained. This must then be translated into the required language. In such cases, it may not always be possible to gain an accurate sense of the information included.

Problems also arise when one or both of the countries involved use different characters than are usually found in other European countries.¹⁹ This is because these may not be recognised correctly by the databases used, or not reflected appropriately by the country receiving the information. This is likely to be the case in other European countries such as Bulgaria where the Cyrillic alphabet is used, and in Greece, where characters from the Greek alphabet are used.

Further confusion may be caused if convictions are described with reference to national legislation, legal definitions or sections of penal code from the country in question. For example, criminal record extracts issued by the Polish authority will describe crimes with reference to sections of the Polish penal code rather than a description of the crime itself. This means that countries receiving the information must be able to identify what kind of crime has been committed if they are to apply this to recruitment decisions.

Another challenge to understanding what the information implies about the individual in question is the considerable variation across the EU in rules about the storage period of criminal records information, reflecting varying approaches to offenders' rights to rehabilitation. However, it directly affects the period of time a conviction is held on an individual's crime record, which is used to inform pre-employment vetting decisions.

In Sweden, for example, the record of an offence (including sexual offences) must be deleted after ten years, provided that there have been no subsequent crimes, and therefore they will not appear in a criminal record extract. This contrasts with Northern Ireland where records are stored for an indefinite period of time. In England, Scotland and Wales the Rehabilitation of Offenders Act 1974 allows an old conviction to be considered 'spent' if a certain time period has elapsed with no further recorded offences. However, the information continues to be stored in some form until the individual reaches 100 years of age, so that it can still be

¹⁹ Outlined in an interview with a representative from the Polish National Criminal Records Office.

uncovered in more thorough criminal records checking procedures, used when an individual applies to work with children or vulnerable adults.

The Republic of Ireland currently has no rules about the stepping down or deletion of crimes from national criminal databases. Germany and Poland have specific rules for young people, whose criminal records are deleted once they reach the ages of 24 (Germany) and 23 (Poland). The situation can be even more complex in the case of federal countries such as Germany where the various districts can have different rules about data storage mechanisms and deletion.²⁰

Differences in data storage and applicability can also mean that countries receiving data have to decide whether to adhere to the data applicability rules in their own country or those from the other country involved. For example, if Sweden were to receive criminal record information about a prospective teacher from the UK, and the data returned was more than 10 years old, Swedish authorities would have to decide whether to ignore or apply this information. For employers to understand and make the best use of the information they receive about foreign workers, they must be aware of these differences in what information is included, or not included.

These problems illustrate the need for a standard template for either a letter of good conduct or a criminal records transfer. This has been acknowledged at European level, and work has started to develop a more standardised format for recording and exchanging criminal information between national authorities. It does not however deal with the challenge of countries having different approaches to data storage and whether and when convictions may be declared 'spent.'

²⁰ Outlined in an interview with a representative of the UK Home Office.

Case Study: Sweden

How is criminal information stored?

- The Swedish Police Service is responsible for the storage and management of criminal records information.
- The 'Belastningsregistret' database contains criminal convictions and includes details of sentences, imprisonment, suspended sentences, community sentences and those hospitalised for forensic psychiatric care.
- The 'Misstankeregister' contains a record of any allegations made and suspicions expressed.

Who must be vetted in Sweden?

- foster parents, adoptive parents and volunteers working with children and families
- people applying to work with children and workers in schools, public and private pre-schools and after-school groups
- workers in social services and children's homes
- Workers in the health sector are not currently subject to pre-employment vetting.

Who conducts pre-employment vetting?

- Following an offer of employment in the sectors covered by vetting schemes prospective employees apply personally for a copy of their criminal record extract.
- Every citizen in Sweden is assigned a Unique National Registration Number and this is used to help locate the correct individual.
- When the extract is obtained, the individual sends this to the prospective employer who then decides whether the individual should be employed.

Arrangements for vetting overseas workers:

- Sweden does not routinely undertake checking on workers from overseas.
- A common view is that due to the need to speak fluent Swedish to work in regulated sectors, there will not be many applicants from overseas.

Rules on data storage:

- For minor offences which are punishable by a fine, the record of the conviction will remain on an individual's record for five years before it is deleted.
- More serious offences, where a custodial sentence has been handed down, will remain on an individual's criminal record and show on extracts obtained for ten years after an individual is released from prison before being deleted.
- If subsequent offences of any kind occur, the period the offences will be stored on a record will be extended.

2.2 The usefulness of recent efforts to improve information-sharing in the EU

Over recent years, the EU has prioritised better exchange of criminal records information between member states. This section outlines some of the new and existing initiatives in this regard. They are potentially relevant for the sharing of information for use in pre-employment vetting, although none have been designed with this purpose in mind. However, it is important to identify to what extent they provide a better basis for the exchange of information for vetting. It is likely that further measures will be required, building on these existing mechanisms.

There have been discussions at EU level about the usefulness of a centralised list of sex offenders to address concerns about the difficulty in obtaining information quickly and easily from other member states' national databases. In 2005 the European Commission suggested the establishment of a 'European index of offenders'.²¹ This would have consisted of information identifying individuals with criminal convictions, and the member state in which the person had been convicted. Investigating authorities would then apply to the central authority in the offender's country of origin for more details about the offence.²² However, member states rejected the idea of centralising information about their citizens on such a database.²³

A shared database identifying persons convicted of offences against children would greatly facilitate efforts to protect children by making this information more easily available for vetting procedures. If it took the form of a 'sex offenders register' it would also enable the monitoring of sex offenders as they move within Europe.

²¹ White Paper of 25.1.2005 on exchanges of information on convictions and the effect of such convictions in the European Union, COM (2005) 10 final.

²² The Commission White Paper responded to the request of the Hague Programme which called on the European Commission to put forward proposals with a view to stepping up exchanges of information on the content of national registers of convictions and disqualification, particularly on sex offenders.

²³ Member states did not object to the use of such a mechanism to store information about third country nationals or individuals whose nationality could not be established.

2.2.1 Ensuring each country receives and stores criminal records information about its own citizens

The 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters aimed to ensure that each state has a complete criminal record of its citizens, including any crimes committed abroad, by requiring countries to supply information on convictions of foreign nationals to the offender's country of origin.²⁴

However, this was not enough to ensure that information was effectively transferred, and in November 2005 the EU adopted a Framework Decision²⁵ 'on the exchange of information extracted from the criminal records', to improve the effectiveness of these arrangements within the EU - for example by requiring each country to designate a central authority to exchange information on criminal convictions within a set timescale. Now, when an offender is convicted in any member state, the national authority in the offender's country of origin must be informed as quickly as possible.²⁶

A proposal for a 'Council Framework Decision on the organisation and content of the exchange of information extracted from the criminal records between member states' of December 2005²⁷ was aimed at taking information exchange one step further. As well as further strengthening provisions to ensure that the member state of nationality holds all relevant information, it also addressed difficulties in understanding other countries' criminal records information (referred to in section 2.1.2). It proposed to set up a committee to work towards a 'standardised European format' for information, to allow information to be exchanged in a uniform, electronic and easy machine-translatable way.²⁸

A general approach to this Framework Decision was agreed at the Justice and Home Affairs (JHA) Council meeting of June 2007. This is a positive step forward for information sharing, though it is not entirely clear to what extent it will help in cases where information is requested for vetting purposes.

²⁴ This information could then be used in pre-employment vetting of non-nationals who apply for work in a country other than their country (or countries) of nationality, and those who apply for work in their country or nationality, but who have spent time living or working overseas.

²⁵ Council Framework Decision 2005/876/JHA of 21 November 2005.

²⁶ Each time a person from abroad is convicted of an offence in a foreign country an 'article 22' notification is sent to their country of origin.

²⁷ COM (2005) 690. A general approach was agreed in the Justice and Home Affairs Council of June 2007.

²⁸ This proposal will include and supplement the 2005 framework decision (2005/816/JHA) which will be revoked once the new decision comes into force.

2.2.2 Improving information sharing through practical measures

The European Union has taken a number of practical initiatives to cooperate in fighting crime, including the exchange of information between national authorities. A large amount of crime information is exchanged every day between EU member states' police forces and judicial authorities, including criminal records information and intelligence. However, the majority of information is exchanged for use in criminal investigations or judicial procedures. Even trans-national policing organisations set up specifically for the purpose of cooperating to prevent crime do not have a mandate to share information on individuals for the purpose of pre-employment checks, and it appears that informal police relationships are also not normally used to obtain information for vetting.

In 1995 the European Police Office (Europol) was established with the aim of facilitating bilateral and multilateral links between police forces. It is an operational body largely concerned with the combating of terrorism, unlawful drug trafficking and other forms of serious organised crime. Although Europol may be willing to exchange information on a child sex offender, this will usually only be the case if there is a cross-border component to the crime or if the crime was related to an organised criminal structure.²⁹

Information is also exchanged in the EU via the Schengen Information System (SIS).³⁰ The SIS was developed in order to extend cooperation on the prevention of and investigation of illegal activities as well as curbing illegal immigration, by increasing cooperation among the Schengen area states' judicial, police and customs agencies (DiPaolo, 2005). The SIS also contains information about persons, vehicles or objects that are missing, in order to assist customs and border police. A second version of this system (known as SIS II) is currently under development to allow for the inclusion of more member states. The SIS is an example of how states can improve cooperation in exchanging information, but it was never designed to enable better pre-employment vetting (Thomas, 1999).

In May 2005 seven countries signed the Prüm Treaty. Since then, nine other states have notified their wish to accede as of June 2007.³¹ This agreement is designed to intensify cross-

²⁹ Outlined from written correspondence with a Europol representative.

³⁰ The SIS II database is currently under construction to include data from accession member states and will allow for more storage of biometric data and quicker processing of European Arrest Warrants (EAW). EAWs were developed as part of the Hague programme (2005-2010) designed to promote closer cooperation between states in Justice and Home Affairs on issues such as asylum and immigration.

³¹ The seven countries were Germany, Spain, France, Luxembourg, Netherlands, Austria and Belgium. This treaty is referred to by some as the Schengen III agreement.

border police cooperation, including in the fight against cross-border crime. It aims to ensure that information needed to fight crime, including DNA and fingerprint data, can cross between countries without obstacles. The conclusions of the June 2007 Justice and Home Affairs Council state that “The special value of the Treaty lies in the substantially improved and efficiently organised procedures for the exchange of information. The States involved may now give one another automatic access to specific national databases. This amounts to a quantum leap in the cross-border sharing of information.”³²

It is worth noting that member states also cooperate to some extent through their membership of Interpol, established in 1923 to assist nation states with investigations about organised crime worldwide.³³ Interpol is not an operational police force but exists as a mechanism for the exchange and analysis of information between national law enforcement agencies. Interpol was established to help exchange information to prevent and investigate large-scale international organised crime. In relation to child sexual abuse, Interpol focuses mainly on combating internet-facilitated sexual abuse and child trafficking.

A further project was launched in April 2006 by a number of EU member states to accelerate and facilitate the exchange of information between national criminal record databases, via a secure electronic system.³⁴ This initiative runs in tandem with EU-wide agreements on the exchange of information. This pilot project will be used to help develop a standard form for use across the EU for relaying core data.

Under this system, if a German criminal authority needs information about a French citizen, the request is addressed to the German central criminal records bureau, who send an electronic request using an agreed common format to the French central criminal records bureau, using a European data network. The French bureau should have all information concerning convictions of French citizens anywhere in the EU, and sends the relevant information to the German central bureau using the electronic network. This information is then relayed to the authority that needs the information. Since the system was launched it has reduced the time between sending the request and receiving the information to just a few hours. It also supports the automatic relay of information about criminal records convictions to the member state of which the convicted person is a national.

³² Press release, 2807th Council meeting, JHA, Luxembourg, 12-13 June 2007.

³³ In the United Kingdom, the Interpol Office is now known as the Serious Organised Crime Agency (SOCA). SOCA coordinates the liaison between the UK Police and EU counterparts in regard to serious organised crime. To avoid the duplication of work where there are several police organisations SOCA manages all links between the UK and Schengen, Interpol and Europol (House of Commons, 2007).

³⁴ Participating countries are Germany, France, Belgium, Spain, Luxemburg and the Czech Republic. The United Kingdom has formally applied to take part in the project and hopes to receive confirmation in the summer of 2007.

It would be useful to undertake a full assessment of the extent to which these different mechanisms for exchanging information between member states are relevant for the provision of information for vetting purposes and the monitoring of sex offenders.

Case Study: Poland

How is criminal information stored?

- The National Criminal Record Office (NCRO) is responsible for the storage and management of criminal record information.
- A central database is used to store conviction information which is transferred directly from the courts.
- Individual police forces may also store records of crimes committed locally and 'soft' intelligence but this information will only be used for local operational policing.

Who must be vetted in Poland?

- Employers in the education sector have the right to check the criminal backgrounds of staff working in the public and private education sector including non-teaching staff. It is not clear how often this is carried out.
- Trainee teachers are not subject to pre-employment vetting.
- Most staff working in children's homes are not subject to vetting. The principals of institutions and local inspectors are checked
- There is no compulsory vetting of potential foster families.

Who conducts pre-employment vetting?

- Individuals can apply for a copy of their criminal records from the NCRO to be submitted to an employer within Poland or for employment overseas.
- Employers from regulated sectors can also apply for criminal record extracts for prospective employees, but will incur a small charge.

Arrangements for vetting overseas workers:

- There is a requirement that teachers in Poland must be Polish nationals so there are few overseas workers in this sector.
- Where teaching staff are from overseas, checks carried out are usually more concerned with verifying that the educational qualifications of the prospective employee are genuine.

Rules on data storage:

- Information about criminal convictions is stored for five years where the offence is not punishable with a custodial sentence.
- Where individuals are required to serve a prison term for their crime, the information will be stored for ten years.
- If subsequent offences are committed, the period of data storage will be extended.
- Data deletion rules are different for young offenders as the criminal record is cleared once the individual reaches the age of 23.
- Article 22 notifications will only be stored in the NCRO if punishment for the crime was served within Poland.
- In 2006, data storage rules were amended so that convictions for sexual crimes against children punishable with a prison sentence are now stored for an indefinite period of time.

2.2.3 Guaranteeing the protection of personal data

Initiatives to improve information exchange can fail if there is insufficient assurance that the data will be subject to high standards of protection in order to guarantee privacy rights. The EU has addressed and continues to address the issue of data protection in parallel with initiatives to exchange data. However, this is a difficult area where reaching consensus has proved problematic.

In October 2005 negotiations started on a proposed framework decision aiming to govern the protection of personal data within initiatives taken in the Justice and Home Affairs (JHA) field.³⁵ This includes establishing common standards for the protection of personal data used for the purpose of preventing and combating crime, and setting up an independent working party on the protection of information.³⁶ As stated by the European Commission (2005): “The Union must support constructive dialogue between all interested parties in order to find solutions accommodating both the availability of information and the observance of fundamental rights, such as the protection of privacy and the protection of data.”³⁷

However, discussions on this proposal stalled due to fundamental differences of opinion between member states.³⁸ The 2007 German Presidency of the European Council gave a fresh impetus to the debate by presenting a new draft of the framework decision, but the European Data Protection Supervisor (EDPS)³⁹ has warned that the new text does not fulfil expectations and lowers the level of protection afforded to the citizen (Hustinx, 2007). Negotiations suggest that it may be some time before an agreement is reached on this subject.

It is imperative that agreement is reached regarding data protection, at the very least in relation to data exchanged for purposes of protecting children from abuse. Member states need to arrive at a consensus that is informed by the absolute right of children to protection

³⁵ The 1995 Directive on the protection of personal data (95/46/EC) designed to ensure a common level of protection of the privacy rights of the individual with respect to the processing of personal data across the EU does not apply to JHA.

³⁶ Proposal for a Council framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters COM (2005) 475 final.

³⁷ Communication from the Commission to the Council and the European Parliament. The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM(2005) 184 final]

³⁸ States could not agree on whether the rules should cover both police and judicial cooperation, and whether customs authorities should be included (5485/06 Discussion of issues, 23 January 2006).

³⁹ The EDPS is an independent supervisory authority devoted to protecting personal data and privacy and promoting good practice in the EU institutions and bodies.

from sexual abuse. It is essential that this should underpin further developments in information sharing.

3 EU initiatives to protect children from known sex offenders

The EU has agreed or discussed a number of initiatives specifically aimed at tackling child sexual abuse and exploitation⁴⁰. These are a useful basis for further cooperation, but provisions for preventing unsuitable persons from working with children are minimal, and proposals to improve collaboration in this regard have so far failed. Without these, initiatives will inevitably have limited success.

3.1 Ensuring member states prevent unsuitable people from gaining employment with children

Every EU member state should have an effective mechanism in place to ensure that unsuitable people, including those convicted of sexual offences against children, are not able to obtain paid or volunteer positions working with children.

In December 2003, the EU adopted a Framework Decision “on combating the sexual exploitation of children and child pornography.”⁴¹ This introduced minimum standards for the criminalisation and punishment of sexual offences against children, to ensure that member states should each “lay down effective, proportionate and dissuasive sanctions in national law”.⁴² Article 5(3) requires member states to ensure that individuals convicted of certain offences are prevented from working with children: “Each member state shall take the necessary measures to ensure that a natural person, who has been convicted of one of the offences referred to in Articles 2,3 or 4,⁴³ may, if appropriate, be temporarily or permanently prevented from exercising professional activities related to the supervision of children.”

⁴⁰ Article 29 of the EU Treaties, part of provisions on police and judicial cooperation on criminal matters, enables the EU to act in the area of ‘preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud.’ This has provided a basis for initiatives in relation to combating child sexual exploitation in general, and preventing sex offenders from gaining employment with children in particular.

⁴¹ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

⁴² The European Commission is obliged to report on the implementation by the member states of the Framework Decision, which at the time of writing of this report was due to be published in September 2007. Anecdotal evidence to date suggests that implementation of Article 5(3) has been mixed.

⁴³ ‘Offences concerning sexual exploitation of children’ (Article 2), ‘Offences concerning child pornography’ (Article 3) and ‘Instigation, aiding, abetting and attempt’ (Article 4)

This was a welcome recognition of the importance of preventing unsuitable persons from working with children as one aspect of national efforts to realise children's right to protection from abuse. However, it is a long way from creating a set of minimum standards or requirements which would help guarantee a common basis across the EU. It is also not yet clear to what extent even this provision has been implemented by all member states; the Commission will report on this in autumn 2007.

3.1.2 Mutual recognition of disqualifications from working with children

It is important that every member state has an effective mechanism to prevent unsuitable people from working with children, and that a decision to ban an individual in one country should be recognised and applied in all other EU countries.

In 2004, in the wake of the Fourniret case, Belgium attempted to address this issue by proposing an initiative that would lead to “mutual recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children” across the EU.⁴⁴ If an individual had been awarded a “temporary or permanent prohibition from exercising professional activities related to the supervision of children” in one EU country due to a conviction for a sexual offence, all other member states would be obliged to recognise and enact the ban. The proposal noted that “prohibitions are generally imposed either because of the gravity of the offence committed or to prevent the commission of further offences by the convicted person”.

This initiative was made possible by the common basis established in the earlier Framework Decision of December 2003 described above.⁴⁵ It was intended to supplement work to improve the exchange of criminal records information, which would enable information about a disqualification to be passed to other member states.

Some member states welcomed this initiative. The UK, for example, in a 2007 cross-governmental action plan on sexual violence and abuse, stated a commitment to “working with EU counterparts to develop mutual recognition of prohibitions from working with

⁴⁴ Initiative of the Kingdom of Belgium with a view to the adoption by the Council of a Framework Decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences against children.

⁴⁵ European Council Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA). This extends an initiative brought earlier by the Kingdom of Denmark which attempted to gain a Council decision on increasing cooperation between European member states with regard to disqualifications (Procedure CNS/2002/0820). This initiative was rejected on the grounds that it would do little to improve the current situation.

children” (HM Government, 2007 pp. 44). However, the Belgian proposal has encountered major political and practical obstacles, explored in section 3.2, which have led to a stalling of negotiations on this proposal in the European Council.

As the difficulties with the original Belgian proposal became apparent, a watered-down version was proposed, known as ‘assimilation’. It proposed that if one member state had disqualified a person from working with children as a result of a sexual crime against a child, other member states would be required to assign the legal consequences to this crime that would normally apply in their respective countries – so not necessarily enforce the same disqualification. In this way, member states who, for example, rely upon indirect disqualification would not be required to enforce administrative bans for which they lacked the mechanism for implementation (for an outline of disqualification see Ritchie, 2001 and the report Appendix). However, this alternative also failed to find consensus.

It is likely that aspects of the Belgian proposal will now be incorporated into the Framework Decision on the organisation and content of the exchange of information extracted from criminal records between member states. The conclusions of the June 2007 Justice and Home Affairs Council state that, “The Framework Decision also addresses the important issue of information exchange arising from convictions for sexual offences committed against children.” It is not yet clear to what extent the original objectives of the Belgian initiative have, for the time being, been abandoned.

It should also be noted that certain vetting-related issues have not yet been discussed at EU level, such as the use of ‘soft’ information (non-conviction information) for pre-employment screening, which varies from country to country, and the issue of whether pre-employment decisions should take into account convictions and disqualifications which result from violent and drug-related offences against children. These will need to be addressed in future.

3.2 Why is progress difficult?

Awareness of the sexual abuse and exploitation of children has generally increased over recent decades,⁴⁶ although levels of knowledge and awareness of its prevalence, as well as the understanding of how to address it, still vary across Europe.⁴⁷ However, the commitment to national or trans-national action to combat abuse is often expressed, for example through the recent adoption of a Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse⁴⁸. Unfortunately, the wide discrepancies between child protection arrangements and social attitudes across the countries of the EU can pose problems when it comes to agreeing measures to implement this.

Reconciling different approaches to the management of sex offenders in order to prevent further abuse is especially challenging at a cross-border level, as it relates closely to national approaches to criminal justice. In the UK, typical concerns were recognised in a recent House of Commons report which stated: “Justice and Home Affairs ... issues are very closely tied up with national sovereignty, and each state’s ability to determine its own laws and manage its justice system” (House of Commons Home Affairs Committee Inquiry, 2007).

A range of arguments have been put forward by different member states which, to them at least, make the Belgian proposal for mutual recognition (and variations on it) unfeasible. For example, a wide range of disqualification methods are applied, including those based on civil, administrative⁴⁹ and disciplinary proceedings⁵⁰. In some countries there are no automatic disqualifications following conviction for serious offences.⁵¹ Ireland, for example, does not

⁴⁶ The CUPICSO study (2000), noted that, “There is evidence of European criminal laws and codes being strengthened to deter child sex offenders with harsher penal sentences, longer supervision periods etc. Police forces have re-examined their methods of investigating these crimes. Extra-territorial laws have been introduced to prosecute sex-tourists on their return home.” In addition it argues that, “Child protection services have become more aware of their responsibilities to investigate alleged child sexual abuse and the need for decisive action to protect children” (Thomas et al, 2000).

⁴⁷ In the UK, the prevalence of sexual abuse was unknown until the NSPCC produced its groundbreaking study into the prevalence of abuse in the UK (Cawson et al, 2000).

⁴⁸ The Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse was adopted by the Committee of Ministers on 12 July 2007, and open for signature at the 28th Conference of European Ministers of Justice, in Lanzarote on 25-26 October 2007.

⁴⁹ Automatic bans triggered when an individual is convicted of a listed offence.

⁵⁰ In 2001, the Institute for Advanced Legal Studies published research which outlined the different types of disqualification arrangements in each of the 15 then EU Member states. (Ritchie, 2001). For more details see summary table in Appendix 1.

⁵¹ In these countries, criminal record extracts will be sent to employers, who then have the discretion to decide whether it is appropriate to recruit each individual. For an example of this kind of system, see the Sweden case study in this report.

issue employment disqualifications on the grounds of legal and constitutional issues related to protecting an individual's right to work.⁵²

In addition to this, there may be up to 27 legal definitions of the same crime across the European Union, and a lack of agreement on what the consequences of certain crimes should be. This can mean that when national authorities share conviction information, they may not easily be able to identify equivalent offences in their own national law. States may also disagree about the level of seriousness and the types of consequences which are to be assigned to each crime, including which crimes constitute serious offences against children, and whether or not violent or drug-related crimes, as well as sexual crimes, are sufficient grounds for preventing an individual from working with children.

Policies also vary on which types of job require applicants to be made subject to vetting before individuals are allowed to work with children. In Sweden workers in the healthcare sector do not have to be vetted before they can work with children or vulnerable adults; in Poland, while there appears to be some vetting in the education sector, no vetting is required for most people working in children's homes.

Differing ages of consent for sexual activity can also complicate definitions of what constitutes a criminal act. In Spain, for example, it is legal to engage in sexual activity from the age of 13, whereas in Malta, legal consent cannot be given until 18 years of age. Such differences in the legal and social context of the evolving capacities of children clearly affect definitions of and punishments for crimes related to child sexual abuse.

The nature and extent of employment restrictions – if they exist - varies between countries. In Belgium, individuals can be disqualified from working with children under the age of five, for instance. However, if such an individual moved to the UK, they would face a much more stringent ban, as the only form of disqualification that exists in the UK is for employment with all children and vulnerable adults. It may be difficult for the enforcing state to decide which rules around disqualification should apply.

A set of minimum vetting and barring standards and clear definitions of the constituent elements would help overcome these difficulties, by reducing the differences between EU countries that can currently be exploited by perpetrators of sexual abuse. These should cover the types of information to be used in vetting and the types of employment for which prospective employees must be vetted. It would be important, however, to avoid setting very

⁵² Outlined in an interview with a representative from the ROI Department of Justice, Equality and Law Reform.

low common standards with a view to achieve consensus between member states more easily, particularly when a legislative route is chosen (House of Commons Home Affairs Committee Inquiry, 2007).

It may be that as expected changes in EU decision-making in the field of Justice and Home Affairs take place, joint policies related to preventing unsuitable people from working with children will become easier to formulate and agree. Currently, within this policy area, decisions must be unanimous across the 27 member states. This has led to concerns that decisions cannot be made efficiently, and arguably contributes to the difficulties in negotiating the Belgian initiative. It will also make agreement on future EU legislation on sexual exploitation of children more problematic. However, the results of the Inter-Governmental Conference which started in July 2007 with the aim of agreeing a 'Reform Treaty' are due to determine the future of decision making and provide an important opportunity for making progress in this area.

3.3 Beyond vetting: the need to monitor sex offenders who travel

This report has focused on preventing abuse to children by persons working closely with them. However, there is also a need for greater cooperation to protect children (and the wider population) in Europe from convicted sex offenders, whether or not they seek employment with children.

While exact figures are not available, relevant agencies, in particular the police, are aware that among the millions of people moving around the EU each year a small proportion have previous convictions for sexual offences against children. These individuals will be known to the authorities in their own country of nationality or residence and the necessary procedures to minimise the risk they pose should be in place. However, when they go to another member state the authorities there may well be unaware of the risk they pose to children.

Sex offender registers are used in some countries to keep police informed of the movement of individuals with convictions for sexual offences.⁵³ These registers place certain requirements on sex offenders. In the UK for example, an individual who is on the sex offender register is obliged to notify police if they intend to change their address, and must inform police seven days before they travel abroad for a period of three days or more. The authorities in the UK

⁵³ England and Wales, The Republic of Ireland and France currently maintain sex offender registers.

can then notify their counterparts overseas that the offender will enter their territory, so they can take measures to minimise the risks that the individual may pose. The UK authorities are also able to impose a complete ban on foreign travel lasting six months or more for high risk offenders, in the form of foreign travel orders.

Establishing equivalent sex offender registers in every EU member state would be one way of facilitating the cross-border monitoring of sex offenders. If this took the form of a searchable database the information could also be used in pre-employment recruitment decisions.

A recent example of cross-border sharing of information to protect the public from sex offenders is a Memorandum of Understanding developed between the UK Home Office and the Republic of Ireland Department of Justice. Police forces across the United Kingdom and Ireland share intelligence on sex offenders who move between or relocate into either jurisdiction or apply for employment. The Irish police may also be able to assist with the surveillance and management of the offender when they cross the border.⁵⁴ This example demonstrates that relationships can be brokered to manage sex offenders who move frequently between different jurisdictions. However, such measures may prove more difficult to develop between countries who have adopted very different approaches to the management of sex offenders.

⁵⁴ Outlined in an interview with a representative of the Police Service of Northern Ireland.

Conclusions

With increasing movement of people across EU borders, and in the wake of a number of high-profile child abuse cases with a cross-border dimension, public awareness of the dangerous loopholes in legislation and procedures that enable sex offenders to pose serious risks to children by moving across borders is growing, and pressure on policy makers to close these loopholes is increasing.

The initial steps in this direction have already been taken. Sharing of criminal records information between EU member states is improving, and the exchange of information specifically in relation to child sexual abuse is on the agenda. Key recent European agreements in relation to combating child sexual exploitation recognise the importance of attempting to prevent unsuitable people from gaining employment with children. Some member state governments are also involved in bilateral initiatives to share information about sex offenders.

Much more needs to be done however, to reach a point where employers are easily able to access the necessary information to take sound recruitment decisions. An important attempt at EU level to take even preliminary steps in relation to preventing unsuitable people from working with children – implementing barring decisions by other member states - has so far failed to bear fruit. There is a clear need for more work to be done, reaching consensus and forging a way forward, negotiating the legitimate differences between national approaches to child protection. The safety of children depends on this.

While this report has focused on protecting children from workers who might harm them, it has also identified substantial concerns about the difficulties in monitoring sex offenders who move between EU countries. Some of the following recommendations relate to this broader problem, which merits urgent attention. Rather than waiting for more high-profile cases to galvanise them into action, member state governments and the EU should be prepared to take action now, based on what we already know about sex offenders and how to minimise the risk of children being sexually abused.

The primary motivation for this work must be to implement children's right to protection from sexual abuse and exploitation, in accordance with Article 19 and 34 of the UN Convention on the Rights of the Child. The overriding objective should be to prevent further offences against children, rather than to punish offenders.

Recommendations

All EU member states have ratified the UN Convention on the Rights of the Child and so have a responsibility to cooperate where necessary to prevent the abuse and exploitation of children. The cross-border movement of people calls for child protection systems that reflect this commitment. As this report explains, it is necessary to put in place cross-border mechanisms to protect children from abuse by persons in positions of trust.

Article 29 of the EU Treaty provides a basis to work together in protecting children from abuse. EU institutions should use this to underpin full cooperation between member states to ensure that unsuitable people are not able to work with children.

Pursuing existing initiatives

1. The 2003 Council Framework Decision on combating the sexual exploitation of children and child pornography should be fully implemented by all member states, in particular Article 5(3).⁵⁵ Furthermore, many of the recommendations made in the CUPICSO report relating to both national and international measures to prevent unsuitable people from working with children, are still valid (Thomas et al).⁵⁶ Member states should also prohibit people from working with children if they have been convicted of violent or drug offences and are assessed as posing a risk to children.
2. Forthcoming Council Presidencies should revive discussions on the Belgian proposal for a framework decision on EU-wide the “recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences against children.” This (or an equivalent text) should be agreed as a priority.

⁵⁵ Article 5 (3) requires member states to ensure that individuals convicted of certain offences are prevented from working with children: “Each Member State shall take the necessary measures to ensure that a natural person, who has been convicted of one of the offences referred to in Articles 2, 3 or 4, may, if appropriate, be temporarily or permanently prevented from exercising professional activities related to the supervision of children.”

⁵⁶ Thomas, T, Katz, I and Wattam, C (2000) *CUPICSO: the collection and use of personal information on child sex offenders*. London, NSPCC, part of which is reproduced in Appendix 2.

3. Member states and the European Commission should agree and implement proposed initiatives to facilitate the exchange of criminal record information and ensure that it can be used in other countries.
4. The idea of a European index of offenders, proposed in a 2005 European Commission Green Paper, should again be discussed. At the very least, there should be a European index of persons convicted of sexual or other offences against children. The development of shared databases would serve to improve information sharing for pre-employment vetting, as well as other purposes.
5. The Commission should conduct a full review of relevant information-sharing methods and initiatives to identify the most effective way of achieving consensus on sharing information for vetting purposes. This review should consider:
 - a. The contribution of EU legislative initiatives, such as the Council Framework Decision on organisation and content of criminal records information exchange.
 - b. The relevance of existing information-sharing structures and agencies such as Europol or the pilot project for electronic exchange, to contribute to improving sharing of information for use in vetting and barring procedures.
 - c. An assessment of the potential of bilateral agreements for vetting and barring, such as those recently requested by the UK Criminal Records Bureau, as models for multilateral agreement.⁵⁷ The Commission should make recommendations for action in this regard.
6. Member states should sign, ratify and implement the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, adopted in July 2007.

⁵⁷ The CRB business plan states, "The CRB hopes to be heavily involved in the future exchange of information within the EU and, in particular, promoting the exchange of criminal record information for employment vetting and related purposes" (CRB, 2006). Source: Interview with a CRB representative.

Pursuing other initiatives

1. On the basis of existing evidence, the European Commission should produce a Green Paper on EU cooperation to monitor and exchange information about known sex offenders with the aim of preventing further abuse. Thorough debate is essential to resolve the current difficulties between member states and to work out how to address this problem at EU level. This would also provide an impetus for exchanging experience and best practice between member states.
2. EU member states should agree a set of common principles and minimum standards for vetting and barring systems, based on a draft text from the European Commission. Such standards and principles could include, for example, an agreed list of sectors and/or professions where vetting of individuals would be compulsory, the frequency of checks, and mechanisms of redress for individuals. It could also include a minimum standard for dealing with the rehabilitation of offenders who have sexually offended against children.
3. A mechanism should be established for sharing expertise and best practice at European level to minimise the risks to children, drawing on existing inter-governmental structures⁵⁸ and the new European Forum on the Rights of the Child.
4. EU Institutions and member states should explore the possibility of each member state introducing a sex offender register, or similar tool, with the aim of ensuring that national authorities know when one of their nationals, if a known sex offender who is assessed as likely to re-offend, is planning to travel abroad. The authorities of the country of destination can then be informed, and take the necessary steps to minimise any risk to children and others.⁵⁹
5. Pre-employment vetting should be only one element of safeguarding arrangements, as the checks are valid only for a limited period and do not apply to people who have not been prosecuted for their crimes. For this reason, supervision, short-listing, referencing, evaluation, training, policies and ethical principles are also required if children are to be protected. The Commission should therefore promote the development of EU common

⁵⁸ Informal meetings on a regular basis for Ministers and/ or high-level officials with responsibility for childhood policies.

⁵⁹ This is a preventive measure, based on evidence that persons who have previously committed sexual offences are likely to re-offend, unless successful corrective action (such as therapy) is undertaken.

standards for creating safe environments for children, such as in sports clubs, schools and nurseries.⁶⁰ This could be done on a sector basis. For example, in relation to sport, this should be pursued in the follow-up to the Commission's White Paper⁶¹ on Sport (July 2007).

6. Member states should review their vetting and barring systems including relevant information storage mechanisms and data deletion protocols, to ensure that children are effectively protected. Member states should retain information about relevant offences, in particular sexual offences against children, for as long as an ex-offender may still pose a risk to children. In addition to this, member states should also be prepared to take into account all serious offences against children, not only sexual offences in vetting and disqualification decisions. This will include convictions resulting from violent and drug-related offences against children.
7. The Commission should lead the development of guidance for all countries to help the users of information (including employers) become aware of any potential shortfalls with the information they receive, especially in countries where criminal records are deleted after a set period. The UK Criminal Records Bureau's guidance to assist employers who recruit from overseas would be a helpful model to build on.
8. Further research would enable an evidence-based review of policy and increase awareness levels about the nature and prevalence of child sexual abuse across Europe. This research could take the form of a study into the prevalence of child maltreatment, with a particular focus on sexual abuse. In 2000, the NSPCC published the UK's first major study of the prevalence of child maltreatment⁶² and this was effective in increasing understanding and awareness of child abuse. Countries should also give greater priority to monitoring re-offending rates among sex offenders.
9. Research should be carried out to gain comparative information about member states' systems of management of those convicted for or suspected of sexual offences against children, including how sexual offences against children are punished, what mechanisms

⁶⁰ The NSPCC has a number of publications which provide support for organisations developing a child protection policy. See: http://www.nspcc.org.uk/Inform/resourcesforprofessionals/ReadingLists/writingachildprotectionpolicy_wd_a48907.html

⁶¹ COM (2007) 391 European Commission White Papers contain an official set of proposals in specific policy areas and are used as vehicles for their development.

⁶² Cawson, P, Wattam, C, Brooker, S and Kelly, G (2000) *Child maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect*. London, NSPCC.

are used to prevent re-offending, including interventions such as treatment, and what approaches are taken with regard to children who sexually offend, who ought to be treated differently from adult offenders.⁶³

10. Member states should gather comparative information regarding vetting and barring systems in Europe, in order to examine their relative strengths and weaknesses and to inform the development of common principles and/or standards. This could produce a useful “checklist” of core elements required for an effective system. It should also provide information about the current situation in different countries with regard to obligations on employers to check the criminal records of people applying to work with children, and what happens when an applicant is a national of, or has lived in, another country.
11. Research is needed to establish a reliable estimate of the numbers of known sex offenders moving between EU member states, for employment or other purposes, including any known cases of sexual abuse by individuals working in positions of trust.

⁶³ A significant proportion of offenders who pose a risk to other children are children themselves.

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Association of Chief Police Officers:	http://www.acpo.police.uk
Bichard Enquiry:	http://www.bichardinquiry.org.uk
Criminal Records Bureau:	http://www.crb.gov.uk
Disclosure Scotland:	http://www.disclosurescotland.co.uk
European Parliament:	http://www.europarl.europa.eu
European Union Website:	http://www.europa.eu
Eurlex: Access to European Union Law:	http://eur-lex.europa.eu/en/index.htm
Foreign and Commonwealth Office (UK):	http://www.fco.gov.uk
Home Office (UK)	http://www.homeoffice.gov.uk
National Policing Improvement Agency:	http://www.npia.police.uk
Nobody's Children Foundation (Poland)	http://www.fdn.pl/nowosci/?lang_id=2
NSPCC:	http://www.nspcc.org.uk
Police Service of Northern Ireland:	http://www.psni.police.uk
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Scottish Police Service:	http://www.scottish.police.uk
Serious Organised Crime Agency:	http://www.soca.gov.uk
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Appendix 1 - The use of employment disqualifications across the EU

Short form summary of direct/indirect disqualification in EU jurisdictions.

Courts can disqualify people from working with children after conviction for relevant offences in a significant number of jurisdictions. A notable exception is Portugal. The practice of indirect disqualification is by no means uniform in the European Union.

Countries	Disqualification list	Indirect Disqualification	Employee Criminal Record Extract	Exchange of Criminal Records	Registration of Non Conviction Information
Austria	No	Yes	Yes	Yes	No
Belgium	No	Yes	Yes	Yes	No
Denmark	No	Yes	Yes	Yes	No
England, Wales, Scotland & Northern Ireland	Yes	Yes	Yes	Yes	Yes
Finland	No	Yes	Yes	Yes	No
France	No	Yes	Yes	Yes	No
Germany	No	Yes	Yes	Yes	Yes
Greece	No	Yes	Yes	Yes	No
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	No	Yes	Yes	Yes	No
Luxembourg	No	Yes	Yes	Yes	No
Netherlands	No	Yes	Yes	Yes	No
Portugal	No	Yes	Yes	Yes	No
Spain	No	Yes	Yes	Yes	No
Sweden	No	Yes	Yes	Yes	Under political debate

(Source: Ritchie, G (2001) 'Study on disqualification from working with children within the EU' London: *Institute of Advanced Legal Studies*)

Appendix 2 - CUPICSO

The following extract is taken from previous research on the same subject which was conducted on behalf of the NSPCC. It has been reproduced here as the conclusions and recommendations of the report are still relevant. A copy of the full report is held in the NSPCC library.

Extract from Thomas, T; Katz, I and Wattam, C (1999) *CUPICSO: The Collection and Use of Personal Information on Child Sex Offenders* London: NSPCC

9.1.4 At this time we can only speculate on the nature of any future pan-European police force – an equivalent of the FBI in the USA acting as an EBI (European Bureau of Investigation) for Europe. For the time being each EU member state is content with the idea of policing its own citizens and for Transnational Policing Networks like Europol, Interpol and Schengen to act only as exchanges of personal information and crime analysts rather than as operational law enforcement agencies.

9.1.5 Suggestions have long been made that Europol should become operational (see e.g. Cullen 1992) and that the European Court of Justice in Luxembourg could take on a new role regarding criminal matters. The 1997 Treaty of Amsterdam appeared to give powers to Europol to start becoming operational, albeit in a support capacity, to national police forces and fears have already been expressed that it could become ‘another FBI and be accountable to no one’ (The European Police State’, Daily Telegraph, February 2 1998). Lawyers and academics have reportedly been engaged in the so-called Corpus Juris initiative to further harmonise European criminal justice laws (‘Alarm over Euro-wide justice plan’, Daily Telegraph, November 30 1998).

9.1.6 Whatever the future for policing and law enforcement in Europe, this report is focused on present arrangements and future proposals as they impact on the policing of child sex offenders, and within its terms of reference is particularly examining the role of personal information on such offenders and how it might be used to better protect children.

9.1.7 The report recognises the aim of the EU to permit free movement of people within an ‘area of freedom, security and justice’ but equally recognises that this allows freedom of movement for those with criminal intent as much as it does for the law-abiding. Within that group of people intent on criminality there will be some pre-disposed to commit sexual

offences against children. The contention is that if different countries have different laws and different degrees of law enforcement, when it comes to child sexual exploitation, then the sex offender may well calculate which country it is best to visit because the risk of identification and detection is lowest. Policies designed to equalise the risk differential will in turn, make the offenders' calculations irrelevant – ultimately they will face the same risk wherever they go.

9.1.8 In the absence of any 'escape judiciaire européen,' this report has sought to examine how personal information of known child sex offenders can be put to optimal use to help identify them, exclude them from work with children, assist detection and prosecution and generally make the information available to those who have the task of protecting children. It has sought to see how that aim can be achieved with in the agreed aim of freedom of movement in Europe and within safeguards on data protection, privacy and the rehabilitation of the former offender. In short, to examine how, in terms of personal information on child sex offenders, we can:

'...ensure that the right people always get the right information for the right purposes, but that the wrong people do not, and that the information is not wrong and that it does not get misused for wrong purposes.'

(Siedhort 1983)

9.1.9 The following proposals are grouped into local, national and international levels of policy making.

9.2 Proposals

Local Level

9.2.1 Police and law enforcement agencies should ensure that their officers are well trained and resources in investigating child sexual abuse, conversant with the tactics and behaviour of sex offenders in their area and able to interview children and adults suspects in order to elicit information on child sex offenders and offending patterns.

9.2.2 Child protection agencies should ensure that their officers are equally well trained and resourced in exactly the same way.

9.2.3 Child protection agencies and police/law enforcement agencies should prioritise their storage, maintenance and retrieval systems for personal information on child sex offenders; priority should be given to maintaining this information to as high a form of quality as possible (i.e. accurate, up to date and amended whenever necessary).

9.2.4 Communication of personal information on child sex offenders between child protection agencies (civil) and police/ law enforcement agencies (criminal) should be readily achieved on a need to know basis. The strict separation of information on the adult abusers of children from the information held on the child victims is unhelpful. Protocols and agreements should be drawn up to ensure this information is readily exchanged within appropriate safeguards of data protection and confidentiality.

9.2.5 Child protection agencies and police/ law enforcement agencies should familiarise themselves with all other repositories of personal information/ databases containing information on child sex offenders or information relevant to child sexual exploitation in their locality (e.g. held by probation services, housing authorities, health care professionals, prosecutors' offices, education departments etc.). This information should be retrievable on a need to know basis and in accordance with agreed protocols to ensure adequate safeguards of data protection and confidentiality.

9.2.6 Training and education should be available to police officers and other law enforcement officers to ensure that they see their role in the wider context of local child protection arrangements.

9.2.7 Local agencies and practitioners should consider the necessity for, and mechanisms by which information about known child sex offenders assessed as dangerous, is made available to the local community in the interests of child protection. Such assessments should be by agreed risk assessment protocols and use such personal information on offenders as is necessary.

National Level

9.2.8 All member states should seek to implement the measures in EU Joint Actions 97/1 54 JHA concerning action to combat trafficking in human beings and sexual exploitation of children (esp. Title II of that Joint Action concerning measures to be taken at National Level).

9.2.9 National criminal record databases should be held within an agreed statutory framework and in accordance with data protection legislation. A discrete category of criminal records of child sex offenders should be readily available, by name and geographical location within a country.

9.2.10 National databases with personal information on child sex offenders should be reviewed with a view to ensuring high quality of data and the removal of unnecessary out of date information; such reviews to be repeated at regular intervals.

9.2.11 Where national databases containing information on child sex offenders are held by both police/ law enforcement agencies and child protection agencies there should be clear lines of communication between them and the ready exchange of information on a need to know basis in accordance with agreed protocols to safeguard data protection and confidentiality.

9.2.12 In the absence of a national database (e.g. for child protection agencies), member states should ensure arrangements are in place to facilitate the movement of information on child sex offenders from one part of a country to another, to track such offenders moving within a country, or, alternatively to establish such a database.

9.2.13 In addition to national databases storing criminal records, member states should consider the need for national units charged with gathering and analysing intelligence on child sex offenders and the coordination of information at a high level. A model for such a unit is provided by the UK's National Criminal Intelligence Service's Paedophile Section which collates information from various sources, provides intelligence packages and reports to local police, provides a national overview of trends and developments and provides a national voice for international enquiries on child sex offending.

9.2.14 Member states should consider the need for national DNA database arrangements and automatic fingerprint recognition (AFR) systems organised nationally to facilitate the identification of child sex offenders, and with appropriate protocols and Codes of Practice to ensure information privacy and confidentiality.

9.2.15 Member states should consider the necessity for a sex offender register (as opposed to a database) whereby sex offenders living in the community are obliged by law to notify the

custodians of the register (usually the police) every time they change their address or other circumstances. Such a register is intended to deter or prevent future offending, and assist the police in the detection of the perpetrators of new crimes; the data quality of such a register should (subject to offender compliance levels) be higher than that of a straightforward database.

9.2.16 Member states should consider or review their existing arrangements for using personal information held on child sex offenders to screen applicants for employment giving access to children (i.e. teachers, child care workers, nursery workers etc.) with the aim of improving child safety in such employment workplaces. These arrangements should be located within a clear statutory framework, and not within secondary legislation or administrative guidance.

9.2.17 Member states should legislate to make it an offence for applicants for work with children to be asked to access their own criminal records within existing data protection legislation (enforced subject access); with proper pre-employment screening located in a statutory framework such enforced activities would be unnecessary.

9.2.18 Member states should provide codes of Practice of Protocols to guide those in receipt of criminal records and making selection and recruitment decisions, to ensure consistency in those decisions. Those applicants refused employment on the basis of disclosed previous convictions should be advised of that fact and have recourse to a remedy in the form of an independent tribunal/ court to review those selection and recruitment decisions.

9.2.19 All Member states should have clear statutory arrangements to assist the rehabilitation of the former offender by allowing for the deletion or erasure of old convictions if the former offender has not re-offended for a given period. Existing laws should be reviewed and renewed where necessary. Exemptions for child sex offenders being able to delete or erase previous convictions should be clearly stated in law.

9.2.20 Unauthorised disclosure of criminal records (i.e. other than for purposes listed above) or other information held on identified child sex offenders should be made an offence within existing data protection legislation.

International Level

9.2.21 All member states should seek to implement the measures in EU Joint Action 97/ 1 54 JHA concerning action to combat trafficking in human beings and sexual exploitation of children (esp. Title III of that Joint Action concerning cooperation between member states).

9.2.22 Cooperation between member states is best achieved by having clear national contact points able to talk to the national contact points of other countries on matters relating to the sexual exploitation of children. Such contact points should have access to their national databases on child sex offenders and be able to exchange such information to other member states easily and quickly within international data protection safeguards and on an agreed need to know basis.

9.2.23 Contact points might use the model of the UK's NCIS Paedophile Section located alongside its national Europol office and Interpol NCB in order to develop expertise, analysis and communication skills with other countries.

9.2.24 Member states should access the international component of child sexual exploitation as it affects their internal affairs, e.g. in the form of child sex-tourism, street children from Eastern Europe moving into Germany and Greece, organised crime involving trafficking and child prostitution.

9.2.25 Member states should promote greater awareness and understanding of the work of Transnational Policing Networks like Europol and Interpol, with particular emphasis on their work to combat offending against children; this promotion to include an understanding of the different roles of the two organisations (i.e. Europol serving only the EU member states in respect of serious organised crime, Interpol with a global brief in respect of all crime) and of the specialist work carried out by the Interpol Standing Working Party on Offences against Minors and the development of the Centres of Excellence concept by Europol.

9.2.26 The political and practical possibilities of a European wide database on child sex offenders could continue to be on the international agenda, but it may have to be accepted that such a database is not yet feasible; in the meantime the model of each member state maintaining its own national database for communication purposes internally and internationally will be more expedient.

9.2.27 Similar considerations to the holding of national databases on child sex offenders should apply to the allied means of identification in the form of DNA and Fingerprint databases.

9.2.28 Member states should seek to assess the incidence of movement of people into their territory for purposes for employment giving access to children

9.2.29 Member states should be aware of the pre-employment screening arrangements in other countries and match their own arrangements to ensure appropriate screening can exist for people moving into their own arrangements to ensure appropriate screening can exist for people moving in to their territory for child care related employment. Protocols between member states should facilitate the exchange of such information and the making of screening decisions (e.g. codifying qualifying offences, the status of Certificates of Conduct etc.).

9.2.30 The European Commission and EU institutions should continue to facilitate the debate between themselves (politicians, officers) and practitioners (police, law enforcement officers, child protection officers). Such discussions should evaluate the practical possibilities of future decisions/ policies designed to protect children on a Europe-wide basis and help to keep such decisions/ policies as transparent as possible.

9.2.31 The EC should reaffirm the importance of data protection for international policing and direct its new Data Protection Working Party to look particularly at policing which involves the international collection and use of personal information.

Appendix 3 - EU Member States and Year of Accession

Founding Members (1950/57)	Belgium France Germany Luxembourg Netherlands Italy
1973	Ireland United Kingdom Denmark
1981	Greece
1986	Spain Portugal
1995	Finland Austria Sweden
2004	Czech Republic Estonia Hungary Latvia Lithuania Malta Poland Slovakia Slovenia Cyprus
2007	Romania Bulgaria

More detailed information about EU countries and history can be found on the EU website:

http://europa.eu/abc/european_countries/eu_members/index_en.htm

http://europa.eu/abc/history/index_en.htm

Appendix 4: Accession State worker registration scheme initial approvals/ Top ten occupations – May 2004

Top Ten Occupations	Czech Republic	Estonia	Hungary	Latvia	Lithuania	Poland	Slovakia	Slovenia	Total
Process Operative	4,457	1,495	2,232	10,177	17,517	99,205	13,508	48	148,639
Warehouse Operative	1,000	294	1,268	1,951	3,046	29,769	6,067	16	43,411
Packer	1,699	269	322	2,371	4,370	21,772	4,297	6	35,133
Kitchen & Catering Assistants	2,043	250	1,711	916	2,261	23,056	4,458	29	34,724
Cleaner, Domestic Staff	2,018	207	834	948	2,909	21,205	2,883	12	31,016
Farm Worker/ Farm Hand	667	284	262	3,061	5,105	14,542	1,482	3	25,406
Waiter/Waitress	1,706	306	1,576	766	1,470	13,572	3,070	48	22,514
Maid/Room Attendant (Hotel)	916	206	718	1,249	3,062	12,263	1,863	12	20,289
Care Assistants and home carers	1,093	255	671	283	956	11,525	2,212	18	17,013
Labourer, building	741	153	322	889	2,047	10,808	1,260	8	16,228
Total	27,944	5,959	18,284	31,879	60,770	379,272	59,302	528	<u>583,938</u>

Source: UK Border and Immigration Agency.

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The National Society for the Prevention of Cruelty to Children (NSPCC) has a vision – a society where all children are loved, valued and able to fulfil their potential.

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The NSPCC is the UK's leading charity specialising in child protection and the prevention of cruelty to children. For over 100 years it has been protecting children from cruelty and is the only children's charity with statutory powers, enabling it to act to safeguard children at risk.

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