

**Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States:**

What will this mean for the protection of children from sexual abuse,  
and what more needs to be done?

**NSPCC Briefing for MEPs, August 2008**

**Summary**

The European Parliament has recently adopted the Diaz de Mera García Consuegra Report<sup>1</sup>, which sets out the Parliament's position on the revised proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

This briefing aims to provide information for MEPs about the draft framework decision as it relates to sexual offences against children<sup>2</sup>, as it currently stands, and makes recommendations for further action by MEPs to ensure that unsuitable persons are not able to work with children, an important element of efforts to protect children from sexual abuse in Europe. The French Presidency expects the final legislation to be adopted before the end of 2008.

**Key points:**

- The Framework Decision is a useful step forward and will improve exchange of criminal record information between Member States, including information on convictions for sexual offences against children.
- The European Parliament's amendments strengthen the framework decision in this regard.
- However, there remain a number of other outstanding issues in relation to preventing unsuitable persons from working with children which are not addressed by the framework decision.
- This is a crucial issue that needs to remain on the agenda until there is an effective and comprehensive mechanism in place to ensure that convicted sex offenders, who pose a risk to children, are not able to gain work with children in any Member State.

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<sup>1</sup> 2005/0267 (CNS)

<sup>2</sup> The NSPCC does not expect any significant changes to the final Framework Decision compared to the current proposal but recommends that the Council integrate a number of key Parliament amendments

## **Introduction**

Under Article 34 of the UN Convention on the Rights of the Child, 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...*”.

The NSPCC has been working for a number of years to highlight the need for closer EU cooperation to share information regarding persons known to pose a risk to children, in particular in relation to convictions for sexual offences against children. One of the primary uses for such information is to minimise the risks to children from persons known to have offended against children in the past, in order to prevent further offences. This includes in particular taking into account conviction and other relevant information, such as disqualifications (prohibitions) from working with children, when recruiting individuals to employment or voluntary positions which involve significant levels of contact with children, such as educational, childcare, medical positions or in leisure activities such as sports clubs.

Increased cross-border movement within the European Union increases the need for the efficient exchange of information. Without the relevant personal information, Member States are unable to ensure the cross-border implementation of prohibitions on working with children, or protect children on the basis of known histories of offending. Using criminal records information is only one of a range of measures needed to keep children safe from abuse, but it is an important one.

The NSPCC has briefed MEPs previously on EU initiatives designed to improve EU cooperation to ensure that unsuitable persons are not able to gain access to employment with children<sup>3</sup>, and in November 2007 launched a report on “Protecting children from sexual abuse in Europe: Safer recruitment of workers in a border-free Europe”. The report found that current efforts to share criminal record information in the EU were useful but not sufficient to protect children, and that wide differences between national approaches to criminal records checking in recruitment presented a challenge to attempts to build closer cooperation, which needed to be overcome. It set out a number of recommendations including the development of a set of common principles for pre-employment checking systems.

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<sup>3</sup>These are available at [www.nspcc.org.uk/europe](http://www.nspcc.org.uk/europe) and include: briefing on the 2004 Belgian proposal for a Council framework decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children (May 2006); briefing giving an overview of progress on cross-border cooperation in the European Union to prevent sex offenders from working with children (February 2007).

## **How will the Framework Decision contribute to protecting children?<sup>4</sup>**

The NSPCC particularly welcomes the following elements of the future Framework Decision:

- **That all conviction information regarding an individual must be transmitted to the Member State of nationality.** This will help guarantee that all relevant information regarding an individual can be accessed more easily by any Member State requiring the information and will include information on any disqualifications, including bans from working with children, if these have been entered into the criminal record.
- **Member States will be obliged to store information on their nationals transmitted to them by other Member States,** so that this information can be accessed as required. This should help avoid situations such as that which arose in January 2007, when it was revealed that a number of British nationals who had been convicted of crimes abroad, including 29 for child sex offences, had not had their information added to the UK's Police National Computer.
- **Clear mechanisms are set out for requesting information from other Member States** and transferring this information, including information for purposes other than criminal proceedings, such as pre-employment checking. Instances where an individual requests information from their own criminal record are also covered.
- **A "standardised European format"** will be created for transferring information with the aim of ensuring that information can be understood and used by the receiving Member State.

## **How has the European Parliament improved the Framework Decision?**

The NSPCC welcomes the report and considers that the amendments strengthen the Framework Decision. This includes ensuring that a special section for sexual offence convictions will be included in the standard format for data transfer, to enable easy identification of these convictions (Am. 5). This recognises the particular importance of using information regarding convictions for sexual offences to prevent further such offences. The report also tightens up provisions regarding the exchange of disqualifications arising from criminal convictions.

## **Why is the Framework Decision not enough?**

There are however a number of issues which are not fully addressed by the framework decision, or do not enter within its scope, and require further legislative, practical or other measures, for example:

- **Using the criminal records information for pre-employment checking.** It is unclear to what extent criminal records information will systematically be available to authorities in

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<sup>4</sup> On 22 December 2005 the Commission proposed this Framework Decision on the issue of criminal records information exchange; on 26 June 2007, the European Parliament delivered its opinion; on 31 January 2008, the EU Council submitted its revised proposals; it was in response to these that the LIBE Committee report was adopted by the European Parliament on 17 June 2008.

other Member States for pre-employment checking purposes, as opposed to use in criminal proceedings. For example, the use of information may be limited “in accordance with national law”. It is unclear what the implications of this may be in terms of the use of that information in pre-employment checking. While it is crucial that full data protection safeguards are in place, where an individual may pose a risk to children it is essential that this information where it exists is systematically available for use in pre-employment checking.

- **Disqualifications not entered into criminal records.** Some disqualifications from working with children are not entered into criminal records, for example because they are handed out by an administrative and not a judicial authority. It is important that information on all disqualifications is available for use in pre-employment checking by other Member States.
- **Checking all those who work with children.** Current EU provisions refer only to persons working on a ‘professional basis’ with children; however it is equally important to check those working on a voluntary basis where there is significant contact with children.

### **Recommendations for future action**

The framework decision is a step forward but will not alone resolve the obstacles to effective pre-employment checking across Europe. The NSPCC recommends that MEPs:

- Push the French Presidency to ensure rapid adoption in Council of the framework decision on the organisation and content of the exchange of information extracted from criminal records;
- Urge all Member State governments to sign and ratify the 2007 Council of Europe Convention on the protection of children against sexual abuse and sexual exploitation;
- Ensure the proposed review<sup>5</sup> of the 2003 framework decision on ‘combating sexual exploitation of children and child pornography’ leads to strengthened provisions in any revised legislation relating to pre-employment checking for persons applying to work with children. It is important that in all Member States the criminal record history of persons applying to work with children in either a paid or voluntary capacity is checked;
- Continue to highlight the particular importance of sharing information on convictions for sexual offences for use in pre-employment checking, and push all Member States to remove any obstacles to exchanging information for this purpose;
- Organise and push for more exchange of information and expertise between Member States regarding how to keep children safe from abuse, including through effective pre-employment checking.

Further information and recommendations are included in the NSPCC’s 2007 report “Protecting children from sexual abuse in Europe: Safer recruitment of workers in a border-free Europe”, available at [www.nspcc.org.uk/europe](http://www.nspcc.org.uk/europe).

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<sup>5</sup> Announced by Commissioner Barrot, May 2008. The Commission will start work on the review this autumn.

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