

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

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Executive Summary

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This is a summary of a report that presents the case for improving cooperation across the European Union (EU) to protect children from abuse, and makes recommendations on how to achieve this.

The report will be used to inform politicians and policy makers, child protection practitioners and members of the public about the challenges of pre-employment vetting in a Europe where there is significant cross-border movement of people.

It is published by the UK National Society for the Prevention of Cruelty to Children (NSPCC) and can be downloaded from: www.nspcc.org.uk/inform

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

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.

Safe recruitment across borders in the EU – the challenge

Pre-employment checks are an essential part of safe recruitment processes aimed at protecting children from abuse. They allow employers to find out whether prospective employees have previous convictions for sexual, violent or drug-related crimes, which may make them unsuitable to work with children, or whether they have been banned from working with children.²

It is crucial that every person is subject to the same background checks when seeking work with children. The safe recruitment of people from other countries, or nationals who have lived abroad, currently presents significant challenges to employers, who need to be able to check whether the individual has a criminal record in any of the countries where they have lived.

This is of particular concern given the significant numbers of people who, taking advantage of their right to live and work in other EU member states, now move across EU borders. For instance, figures from May 2004 show that 17,013 nationals came to the UK from the ten newly acceded EU member states and applied to the Home Office Worker Registration Scheme to work with children and vulnerable adults as care assistants or home carers.³

In 2004, the case of Michel Fourniret showed what can happen if workers from abroad are not properly checked. Fourniret, a French citizen, had convictions for a series of murders and sexual assaults against children before moving to Belgium. As the Belgian authorities were not aware of these previous convictions, Fourniret was able to start working in a school. He was then able to use this position to commit further murders and sexual assaults against children.

² 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.

³ Source: The UK Border and Immigration Agency showing numbers of workers from countries that acceded 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 the UK Border and Immigration Agency). For full figures, see report appendix.

There is evidence to suggest that people who have been convicted of sexual offences against children are increasingly travelling to other countries.⁴ What we know about the behaviour of sex offenders indicates that convicted offenders may seek to exploit differences between countries' systems to evade detection, or obtain employment with children and abuse again. In some EU member states it is easier to get jobs that provide access to children than it is in others.

Cooperation between member states needs to be at a level that ensures convicted sex offenders cannot get a job that brings them into contact with children when they move between countries. Member state governments and EU institutions should take action now, based on what we already know about sex offenders and how to minimise the risks to children, before another high-profile case takes the headlines.

How has the EU addressed the need to prevent unsuitable people working with children so far?

The EU has agreed or discussed a number of initiatives aimed at tackling child sexual abuse and exploitation. These are a useful basis for further cooperation, but they do not ensure that unsuitable people are unable to gain employment with children when they move across borders.

A 2003 Council Framework Decision on “combating the sexual exploitation of children and child pornography”⁵ requires member states to ensure that individuals convicted of certain offences are prevented from working with children.⁶ This is a welcome recognition of the importance of such measures. However, it is a minimal provision and does not contribute to resolving differences in vetting and disqualification rules, which are difficult to align effectively across borders. It is also not clear to what extent this framework decision has been implemented by member states.

⁴ CEOP (Child Exploitation and Online Protection Centre) Strategic Overview 2006–07.

⁵ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (<http://europa.eu/scadplus/leg/en/lvb/l33138.htm>).

⁶ “Offences concerning sexual exploitation of children” (Article 2), “Offences concerning child pornography” (Article 3) and “Instigation, aiding, abetting and attempt” (Article 4).

If an individual is banned from working with children in one country, it is imperative that this decision is recognised in other countries. In an attempt to bring this about, in 2004, Belgium proposed an initiative to enable the “recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children” across the EU.⁷ Despite the urgent need for such an agreement, the proposal has faced political and practical obstacles, and negotiations have stalled.

Why is it difficult to obtain and use information from other countries for pre-employment checking?

Crucially, there are no dedicated systems in place between EU countries to exchange criminal records information for use in pre-employment checking. Employers often have to find out how to access criminal records information from other countries, which can be very difficult to obtain, and they may lack dedicated time and energy to carry out these time-consuming checks.⁸ In addition, some countries may be reluctant to release information to other states for this purpose.

Where information is obtained, it can be difficult to put it to use. For example, if the information sent is written in another language, or with reference to legal terms that are difficult to interpret, the employer may not be able to understand and use it properly. The fact that states have such different rules about data storage and applicability also means that there may be limitations to the data, and employers need to be aware of this. For example, criminal records in Sweden, even for serious crimes, are deleted after ten years if the individual has not had any further convictions.

Across the European Union, the legal definition of one and the same crime may be different in each of the 27 countries, and there is no agreement on what the consequences

⁷ Initiative of the Kingdom of Belgium with a view to the adoption by the European Council of a Framework Decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences against children.

⁸ Employers may also not have the appropriate expertise to analyse the information nor to understand the risks to children posed by sex offenders or others who wish to exploit their position of power and trust.

of certain crimes should be. When national authorities share information about convictions, they may therefore find it difficult to identify equivalent offences in national law.

Are current efforts to share criminal record information in the EU sufficient to protect children?

Member states are currently working to improve the exchange of criminal records information in the EU through a number of different initiatives.⁹ This work is 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. This means that when, for example, a UK national is convicted of a crime in Slovenia, the Slovenian authorities should notify the UK authorities so that this information can be stored on the UK criminal record system.

Ensuring that member states hold all criminal record information about their own citizens, including convictions obtained in other EU member states, should in theory make it easier to access relevant information for use in pre-employment checking. However, a shared EU database that identifies persons convicted of sexual offences against children could greatly facilitate efforts to protect children. In 2005 the European Commission proposed the establishment of a “European index of offenders”.¹⁰ This proposal was rejected, as member states were not prepared to centralise information about their citizens on such a database.

The EU is also addressing difficulties that member states experience in storing and making use of each other’s criminal records data. Sometimes there are doubts about the reliability of information sent from other countries; in some cases it is incomplete and difficult to understand. Work on creating a “standardised European format” for

⁹ 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 (http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0690en01.pdf), on which a general approach was reached in June 2007.

¹⁰ White Paper of 25 January 2005 on exchanges of information on convictions and the effect of such convictions in the European Union, COM (2005) 10 final (http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0010en01.pdf).

information that would enable information to be exchanged in a uniform, electronic and easy machine-translatable way is still in the early stages.

However, all of these efforts are primarily aimed at facilitating the exchange of information for use in criminal investigations. It is a matter of concern, however, that these agreements will not oblige member states to share such information for the purposes of pre-employment checking. In addition, they do not address the broader needs of employers in the vetting process.

Member states need to arrive at a consensus about how the protection of personal data and integrity can be balanced out against the absolute right of children to protection from sexual abuse. It is essential that this should underpin further developments in information sharing.

The effects of different vetting and disqualification rules across Europe

European countries have varying rules dealing with the vetting of prospective employees. In the UK, anyone whose work is likely to bring them into direct contact with children, in whatever capacity, will be subject to pre-employment vetting. Yet in Sweden, for instance, people can work in the health sector without being vetted, while in Poland most can work in children's homes without any such checks being carried out.

Systems for preventing unsuitable people from working with children also vary widely. In some countries, individuals can be banned from working with children on the grounds of a criminal conviction whereas in other member states, employers take the decision on a case-by-case basis, having seen the prospective employee's criminal record extract.

Differences such as these present serious challenges to reaching agreement at EU level to help address the problems described.

Beyond vetting: monitoring of sex offenders who travel

In a wider context, there is a need generally across Europe to protect everyone, including children, from convicted sex offenders, whether or not they apply to work with children. The UK's sex offender register is a tool designed to monitor persons convicted of sexual offences aimed at preventing further offences, which helps to ensure that other national authorities can be made aware when a sex offender plans to travel abroad. One way of facilitating cross-border monitoring of sex offenders would be for all EU member states to have such a register, or an equivalent.

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).¹¹ Furthermore, many of the recommendations made in the

¹¹ 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."

CUPICSO report relating to both national and international measures to prevent unsuitable people from working with children, are still valid.¹² 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 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.
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.

¹² Thomas, T, Katz, I and Wattam, C (2000) *CUPICSO: the collection and use of personal information on child sex offenders*. London, NSPCC.

- 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.¹³ 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.

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 is 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 structures¹⁴ and the new European Forum on the Rights of the Child.

¹³ 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). Interview with a CRB representative.

¹⁴ Informal meetings on a regular basis for Ministers and/ or high-level officials with responsibility for childhood policies.

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.¹⁵
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 standards for creating safe environments for children, such as in sports clubs, schools and nurseries.¹⁶ 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 Paper¹⁷ 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.

¹⁵ 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.

¹⁶ The NSPCC has a number of publications which provide support for organisations developing a child protection policy:
http://www.nspcc.org.uk/Inform/resourcesforprofessionals/ReadingLists/writingachildprotectionpolicy_wda48907.html

¹⁷ 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.
(http://eurlex.europa.eu/LexUriServ/site/en/com/2007/com2007_0391en01.pdf).

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 maltreatment¹⁸ 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 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.¹⁹
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.

¹⁸ 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.

¹⁹ A significant proportion of offenders who pose a risk to other children are children themselves.

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.

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Our mission is to end cruelty to children.

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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