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**COMMISSION STAFF WORKING PAPER**

*Annex to the*

**WHITE PAPER**

**on exchanges of information on convictions and the effect of such convictions in the European Union**

{COM(2005)10 final}

## **ANNEX I**

### **Organisation and content of criminal records in the Member States<sup>1</sup>**

Table 1: Functioning and access to national criminal records

Table 2: General content of national criminal records

Table 3: Detailed content of national criminal records

Table 4: Exchange of information between Member States

Table 5: Recidivism

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<sup>1</sup> These tables are based on Member State's answers to a questionnaire which was sent to them in April 2004. They have been sent to them for verification and the following have provided comments which are integrated in the final version: Austria, Belgium, Czech Republic, Denmark, Germany, Greece, Spain, Finland, France, Hungary, Ireland, Italy, Malta, Netherlands, Sweden, United Kingdom, Slovakia, Slovenia Latvia, Poland and Portugal.

**TABLE 1: FUNCTIONING OF AND ACCESS TO NATIONAL CRIMINAL RECORDS**

	FUNCTIONING		ACCESS						
	computerised	centralised	police	judicial authorities	public authorities	person concerned	private bodies	foreign authorities	extract <sup>2</sup> /types <sup>3</sup>
Austria	Yes: there is a service on-line	Yes: by the police + local registers of some administrative sanctions	Yes	Yes	Ministries/ local administrations Army/ security bodies Customs office/ passport office Prosecutor Financial administration	Yes: right to request some information/ extract to prove a lack of data for employment purposes (need to specify it)	No	Yes, on the basis of a bilateral or multilateral agreement or if there is reciprocity	Yes 2 types; the information can be total/ partial depending on the case
Belgium	Yes: information only since 1992	Yes: by Ministry of justice + local registers	Yes	Yes	If authorized by law: Penitentiary administration/ intelligent services/ public administrations	Yes: consultation/ request an extract/ extract to prove a lack of data for employment purposes	No	Yes, on the basis of a bilateral or multilateral agreement or if there is reciprocity	Yes Different types: the information can be total/ partial depending on the case
Cyprus	Yes	Yes: by the police	Yes	No		Yes: consultation/ request a certification/ extract to prove a lack of data except some offences			Yes
Czech	Yes	Yes: by Ministry of Justice	Yes	Yes	Right to obtain a copy: Ministry of justice/ president's office in some cases/ other authorities if special regulation Right to obtain an extract: public administration in proceedings on misdemeanours/ for other purposes if special regulation	Yes: right to obtain an extract/ right to inspect a copy from the evidence of the evidence of the CR register concerning him/herself	No	Foreign judicial authorities if agreement applicable	Yes Different types: extract from the register/ copy of the register (see answer: access of subject concerned)

<sup>2</sup> Is the content of the extract from the criminal record that an individual may request limited to certain types of information contained in the NCR?

<sup>3</sup> How many types of extract do you have?

	FUNCTIONING		ACCESS						
	computerised	centralised	police	judicial authorities	public authorities	person concerned	private bodies.	foreign authorities	extract <sup>2</sup> /types <sup>3</sup>
Denmark	Yes	Yes: by the police	Yes	Yes	Prosecutors Ministry of justice/ defence Criminal department <u>In some cases:</u> Foreign department Parliament	Yes: right to obtain a copy and an extract/ extract to prove a lack of data for employment purposes	In some cases	Foreign judicial authorities if agreement Nordic countries	
Estonia	Yes	Yes: in the Estonian Police Board by the chief processor in the Ministry of interior	Yes	Yes	If provided by law: Prosecutors Government/ local government agencies President's office Defences Forces Probation officer Other extra judicial bodies	Yes: right to request an extract	No	Foreign official if (ECC or international treaties)	Yes/1
Finland	Yes	Yes: by an administrative authority depending of Ministry of justice	Yes only in some cases	Yes	Prosecutors Criminal Sanctions Agency Probation service Prison service <u>In some cases:</u> Ministry of justice Chancellor of justice of Government Parliamentary Ombudsman	Yes: right to make inquiries/ extract to prove a lack of data/ other extract only in some cases (security and children jobs)	Yes: in accordance with the relevant international treaties (EC on MLA 1959...)		Yes
France	Yes	Yes: by Ministry of justice	No	Yes	Not to all information: Public administrations Commercial courts Some professional bodies	Yes: partial extract provided/ oral communication of all the information	No	Yes: in accordance with the relevant international treaties (EC on MLA 1959, bilateral treaties)	Yes 3 types of extracts: bulletin 1, 2, 3
Germany	Yes+ automatic system of notification to the judicial authorities	Yes: by an authority of the Ministry of Justice (Attorney General)	Yes: not to all and no direct access. Restriction if juvenile	Yes: Restriction if minors	According to law and indirect access: Prosecutors Security bodies of Foreign offices Other public authorities	Yes: right to request a certificate/ extract to prove a lack of data for employment purposes	No	Foreign authorities (penal jurisdiction) if international treaties	Yes Different types of extracts: particulars/ judicial authorities

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	FUNCTIONING		ACCESS							
	computerised	centralised	police	judicial authorities	public authorities	person concerned	private bodies.	foreign authorities	extract <sup>2</sup> /types <sup>3</sup>	
Greece	Yes+ new system of interlinking is being made	The Department of Penal Registration of the Central Service of the Ministry of Justice functions as central authority where all information concerning the NCR will be collected	Yes	Yes	If provided by law: public administrations <u>Indirect access for:</u> Public prosecutor prison/ correctional directors and public, political, military services Ecclesiastical authorities	Yes: right to be informed by publication (legal use) or extract (other cases)/ extract to prove a lack of data to employment purposes	Indirect access and if provided by law: Institutes Enterprises Banks	Foreign authorities (criminal jurisdiction) if international treaties Foreign embassies or consulates in some cases	Yes	
Hungary	Yes	Yes: by Ministry of interior	Yes	Yes	Prosecutors <u>If authorised by law/ special license:</u> other agencies and authorities	Yes: right to request information/ extract to prove a lack of data to employment purposes	No	Yes: in accordance with the relevant international treaties (EC on MLA 1959, bilateral treaties)	Yes	
Ireland	Not all, only the District Court (lower Court)	No	Yes	No	No	Yes: right to request a copy/ the police also provide a vetting check for certain employment purposes	No	In certain circumstances and for certain authorities	Yes No specific extracts	
Italy	Yes the system is being changed	Yes: by the Ministry of justice	Yes, by order of Public Prosecutor or directly, but in another form, more limited	Yes	Prosecutors Some public administration and management of public service	Yes: right to request a certificate (only partial information; it will be total with new system)/ Extract to prove a lack of data for employment purposes	No	Yes, on the same conditions as equivalent Italian authority	Yes	
Latvia	No	Yes: by Ministry of interior	Yes	Yes	If provided by law: law enforcement, other state and regional authorities	Yes: right to request information/ extract to prove a lack or existence of data for employment and other legal purposes	No	On the basis of international agreements	No To individuals those records that are requested	
Lithuania	Yes	Yes: by Ministry of interior	Yes	Yes		Yes: right to request/ extract to prove a lack of data to employment purposes			Yes 4 types of extracts: started investigation/ preventive measures/ convictions/ penalties	

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	FUNCTIONING		ACCESS							
	computerised	centralised	police	judicial authorities	public authorities	person concerned	private bodies.	foreign authorities	extract <sup>2</sup> /types <sup>3</sup>	
Luxembourg	Yes	Yes: by General prosecution office (kept in 2 places)	Yes	Yes	In some cases: State and local administration Almost every Ministry Public commissions, centres, services, societies, military authorities	Yes: right to request/ extract to prove a lack of data to employment purposes	No		Yes 3 types of extracts: bulletin 1, 2, 3	
Malta	No: studying viability for a new system	Yes: by police	Yes	Yes Attorney general's office	Attorney general's office – general prosecutor/ state lawyer- Financial services authority	Yes: right to request/ extract to prove a lack of data to employment purposes			No No specific extracts	
Netherlands	Yes	Yes: by a public service which comes under the Ministry of Justice	Yes: all info only when needed for law enforcement purposes	Yes, for a good administration of justice	Sometimes (public authorities must be appointed by royal decree, based on a legal obligation to verify the integrity of the person concerned), Minister of justice when the person concerned asks him for a declaration of good conduct for employment purposes	Yes: right to request oral information to verify the correctness of data	In some cases: Some natural persons/ employers appointed by royal decree		Yes Various types: -all information -declaration of conduct (info of past 4 or 8 years) -selected information	
Poland	Yes	Yes: by Ministry of justice	Yes	Yes	President Prosecutors <u>In some cases:</u> Security agency/Military Intelligence service/ Government, local Administration bodies if it is justified by need to perform their activity prescribed by law	Yes	In some cases: employers	Foreign states if international treaty/ reciprocity	Yes Only one type of form	

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	FUNCTIONING		ACCESS							
	computerised	centralised	police	judicial authorities	public authorities	person concerned	private bodies.	foreign authorities	extract <sup>2</sup> /types <sup>3</sup>	
Portugal	No	Yes: by Ministry of justice	Yes: in case of criminal proceedings	Yes: in case of criminal proceedings	Prosecutors <u>In some cases:</u> Internal security bodies Reinsertion/ Crime prevention services Public authorities	Yes: right to request/ extract to prove a lack of data to employment purposes	Authorized bodies for statistics purpose	In some cases: Foreign embassies or consulates/ Public authorities of EC MS	Yes 1 extract with different content depending on the requesting person and the purpose	
Slovakia	Yes	Yes: by General prosecution office	Yes	Yes	Prosecutors <u>In some cases:</u> President's office Some Ministries Intelligence, security, military services Post/ communications Other authorities	Yes: right to request a copy or an extract/ extract to prove a lack of data to employment purposes		Foreign judicial authorities if international treaty	Yes 2 types of extracts: copy of the register/ extract of the register	
Slovenia	Yes	Yes: by Ministry of justice	No	No	Only the Ministry of justice has access	Yes: right to access/ extract to prove a lack of data to employment purposes	No	No	No No specific extracts	
Spain	Yes	Yes: by Ministry of justice	Yes: in some cases under judicial request	Yes	Prosecutors	Yes: right to request/ extract to prove a lack of data to employment purposes	No	Yes: in accordance with the relevant international treaties (EC on MLA 1959, bilateral treaties)	Yes 2 types of extracts: for judicial authorities/ individuals	
Sweden	Yes	Yes: by the National Police Board	Yes, in certain prescribed cases	Yes, in certain prescribed cases	Prosecutors Tax authorities and customs authorities Other authorities in certain prescribed cases and under certain conditions limited information	Yes		Yes, in certain prescribed cases	No Several types of extracts with various content depending on requesting authority/ person concerned and purpose	
UK	Yes	No: there are 3 NCR (in England and Wales, Scotland and Northern Ireland) They are kept by the police	Yes	Yes, provided by the police and in some cases directly.	Some government departments/ criminal justice institutions for prosecution and security	Yes: right to request/ extract to prove a lack of data to employment purposes	Yes: registered bodies may apply to CRB for vetting in child access/ vulnerable adult caring roles	Yes: with other data sharing protocols between criminal justice authorities	Yes No special criminal division extracts	

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**TABLE 2: GENERAL CONTENT OF NATIONAL CRIMINAL RECORDS**

	Legal person		convictions pronounced by national courts against foreigners	authority who pronounces convictions	type of decision	content of decision	period of time that files are maintained
	responsibility	recorded					
Austria	Not yet	Not yet applicable	Registered in the same way as national	Judicial authorities in criminal matters	Definitive sentences	Convictions and penalties Execution measures Preventive measures	<u>Life prison</u> is not erased <u>Period of retention</u> of 3,5,10,15 years depending on the gravity <u>Special rules</u> for several convictions/ some older conviction <u>Calculated</u> since the completion of penalty Erasision takes place 2 years after the period of retention has expired
Belgium	Yes: since 1999	A new central record registry is being made	Registered in the same way as national	Judicial authorities Not administrative and financial authorities	Definitive sentences	Convictions (criminal, correction)/ penalties Accessory or subsidiary sanctions Preventive measures Execution: suspended/ probation Revocation Financial sanctions of traffic Disqualifications (parents) Minors' decision Amnesty	<u>Period of retention:</u> less serious offences ( <i>peines police</i> ) 3 years since definitive decision except if disqualifications are longer  Principle of "non mention" for some penalties after 3 years.
Cyprus	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive and provisional sentences	Convictions: prison/ pecuniary sanctions Remuneration Suspension sentences Judicial supervision and guarantee Disqualifications	<u>Period of retention:</u> convictions (custodial or not) are rehabilitated depending on the gravity. <u>Life prison/ more 4 years</u> are not rehabilitated Some cases never are erased <u>Calculated</u> since moment of sentencing
Czech	Not. A draft act introducing the criminal liability of legal persons was	Not applicable	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive sentences	Convictions: prison/ suspension sentences/ pecuniary sanctions Disqualification/ forfeiture of a thing/ forfeiture of property/ publicly beneficial work Loss of honorary titles/ rank	<u>Period of retention:</u> prison convictions 10,5,3 years after + orderly way of life Beneficial work, prohibitions, pecuniary penalty for negligence offences, forfeiture of a thing: after

	Legal person		convictions pronounced by national courts against foreigners	authority who pronounces convictions	type of decision	content of decision	period of time that files are maintained
	responsibility	recorded					
	rejected by the Parliament					Expulsion/ prohibition of residence Protective therapy/ reformative training	accomplishment Loss honorary/ ranks: depends on the length of the imprisonment 3 years- forfeiture of property, expulsion, prohibition of residence, pecuniary penalties pour intentional offences
Denmark	Yes		Registered in the same way as national	Judicial authorities in criminal / military Not administrative and financial authorities	Definitive sentences	Convictions and penalties Suspension of sentences Disqualifications Clemency/ Release/ supervision	
Estonia	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive sentences	Convictions: prison/ pecuniary penalty/ fine Dissolution of legal persons Substitutions of sanctions Coercitive psychiatrique traitement Minor's sanctions Disqualifications	Period of retention: from 1 to 10 years depending on the gravity Death person/ legal person activities are terminated Calculated since moment of enforcing
Finland	Yes	Recorded in the same registry as natural persons but manually	Registered in the same way as national	Judicial authorities Not administrative and financial authorities	Definitive, not definitive (revocable) and provisional sentences	Prison: conditional/ unconditional Community service Juvenile sentences Fine against legal person	Period of retention: depending on the penalty (5, 10, 20 years) Death person/ 90 years old Some cases are never erased Calculated since the final sentence was passed
France	Yes, since 1994	Recorded in a special registry	Registered in the same way as national	Judicial and some administrative authorities (depending on the nature of the measures)	Definitive sentences (sentence issue from a process: contradictory or in absentia)	Convictions: prison/ pecuniary penalty Suspension of sentences Expulsion/ other disciplinary sanctions Disqualifications Minors' sanctions Other complementary sentences pronounced	Total: death/ 100 years old/ 40 years after last conviction/ expiration period of rehabilitation/ judicial rehabilitation/expiration/ special rules for minors Partial: judicial exempt/ other rules depending of the "bulletin"-3 types
Germany	No	Not applicable	Registered in the same way as national Nationality of the person is included	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive sentences	Criminal convictions: prison/ pecuniary Additional penalty Treatment measures/ special institutions Suspended sentences/ Joined convictions Disqualifications/ Interdictions Circumstances of not ability to be judged	Period of retention: depending on the gravity/ severity of the offence/ penalty Not erased: life long prison/ treatment in hospitals/ dangerous person

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	Legal person		convictions pronounced by national courts against foreigners	authority who pronounces convictions	type of decision	content of decision	period of time that files are maintained
	responsibility	recorded					
							Calculated since the judgement of first instance
Greece	No	Not applicable	Registered in the same way as national	Judicial authorities exclusively Not administrative or financial authorities	Final (definitive) sentences	Convictions/ Financial penalties Main/ additional sentences Reformed measures Suspension/ changes of sentences	Period of retention: depending on the gravity (after 5, 8, 10, 30 years) <u>Death/</u> 80 years old/ minor over 18 years old Cancelled decision Clemency measures Others specifics rules
Hungary	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities in criminal matters Not administrative/ financial authorities	Definitive sentences	Convictions: prison/ labour in the public interest/ financial penalties Disqualifications and prohibitions Expulsion Medical forced treatments Probation/ supervision by probation Measures against legal persons	Period of retention: depending on the gravity (after 3, 5, 10, 15 years)
Ireland	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities Not administrative and financial authorities	Definitive sentences	Convictions/ Fines/ Community services Suspension of sentences Disqualifications Probation	The Court Service does not erase
Italy	Yes	Not registered New system is being made	Registered in the same way as national	Judicial authorities Foreign judicial authorities if recognized by Italian Court Appeal Administrative authorities and not financial authorities	Definitive sentences	Convictions Accessory penalties Disqualifications/Interdictions Suspension sentences Safety measures Prevention measures	Period of retention: depending on the sanction <u>Death/</u> 80 years old Revocation/ revision Non execution Special rules for minors
Latvia	No	No applicable	Registered in the same way as national	Judicial authorities	Definitive sentences	Basic sentence: prison, forced labor, fine Additional sentence: confiscation of property, deportation, fine, rights limitation, police control	Information is maintained 10 years death of person
Lithuania	Yes	No registration	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive sentences	Convictions Preventive measures	Period of retention: depending on the gravity (3,5, 8, 10 years)/ on suspended penalty/ on careless crime. Common period: 75 years Clemency measures: 5 years

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	Legal person		convictions pronounced by national courts against foreigners	authority who pronounces convictions	type of decision	content of decision	period of time that files are maintained
	responsibility	recorded					
							Investigation suspended: 2 years <u>Calculated</u> since the completion of penalty
Luxembourg	Yes	Recorded in another registry	Registered in the same way as national	Judicial authorities Administrative authorities	Definitive sentences	Convictions (criminal, correctional, infringement) Convictions in military matters	<u>Legal rehabilitation:</u> Time elapsed depending on the gravity (after 10, 15, 20 years) + not recidivism <u>Judicial rehabilitation:</u> asked by the condemned after 3/ 5 years depending on the severity of penalty. <u>Special rules</u> for recidivism/ in absentia judgements <u>Calculated</u> since the completion of the penalty
Malta	Yes	No info	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive and provisional sentences	Convictions: prison/ fines Verbal admonitions Other obligations/ community services Disqualifications Suspension of sentences Probation	For judicial purpose: never erased For particulars: time elapsed depending on the penalty. <u>Calculated</u> since the execution of the penalty/ serving sentences for the cases of suspended
Netherlands	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities Not administrative and financial authorities	All decisions taken by public prosecution or judge, including definitive convictions	Amongst others: Convictions: prison/ alternative sanction/ fines Clemency measures Transactions Detention in hospitals Acquittals	General rule: 20 years/ death <u>Special rules</u> to extend the time limit: imprisonment/ detention in hospital <u>Calculated</u> from moment the conviction has become final
Poland	Yes	Recorded in the same registry as natural persons but different systems of registration	Registered in the same way as national	Judicial authorities Not administrative and financial authorities	Definitive sentences and decision on pre-trial detention and search for person warrants	Convictions: prison/limitation/ fines Disqualifications and prohibitions Forfeiture Obligation to compensate Money consideration Public pronouncement Educational, corrective, therapeutic measures	Period depends on the type of sanction and length of deprivation of liberty imposed is between 5 and 10 years with the possibility of shortening it upon specific judicial decision. The period starts running d of the execution of the sanction imposed.

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	Legal person		convictions pronounced by national courts against foreigners	authority who pronounces convictions	type of decision	content of decision	period of time that files are maintained
	responsibility	recorded					
Portugal	Only in some cases	Eventually in the commercial register	Registered in the same way as national	Judicial authorities in criminal matters	Definitive sentences	Convictions Safety measures Suspension Probation Revocation Clemency measures Extradition	<u>Period of retention:</u> depending on the severity of the penalty (5, 7, 10 years) Recidivism: interruption of counting time <u>Calculated</u> since the completion of the penalty
Slovakia	Not yet: new Criminal Code will entry into force in 2005.	No info about the new Code.	Registered in the same way as national	Judicial authorities in criminal matters Prosecutors Not administrative and financial authorities	Definitive sentences	Convictions : prison/ financial penalty Deprivation of honours/ranks Prohibitions Forfeiture of property Expulsion/prohibition of residence Suspension sentence	<u>Period of retention:</u> depending on the length and the type of the penalty/ <u>Age:</u> 100 years old
Slovenia	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive sentences	All definitive measures	<u>Period of retention:</u> Time elapsed depending on the gravity/ severity of the penalty <u>Calculated</u> since the completion of the penalty
Spain	No	Not applicable	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities	Definitive sentences	Convictions: penalties Preventive measures Decision of suspension/ in absentia	<u>Period of retention:</u> depending on the gravity of the penalty/ suspended execution <u>Calculated</u> since the completion of the penalty + remuneration/ for the prohibitions, since the starting of the privation
Sweden	No info	<i>No registration</i>	Registered in the same way as national	Judicial authorities <u>In some cases:</u> police authorities/ prosecutor Not administrative and financial authorities	Definitive, not definitive (revocable) sentences	Convictions: penalties/ fines Free of sanction Prohibition to visit Extradition Execution (imprisonment/custody/fine) Decision of mercy/ hearing case Personal case studies	<u>Period of retention:</u> depending on the severity of the penalty: 5, 10 years. <u>Calculated</u> since the sentencing/ completion of the penalty

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	Legal person		convictions pronounced by national courts against foreigners	authority who pronounces convictions	type of decision	content of decision	period of time that files are maintained
	responsibility	recorded					
UK	Yes	Recorded in the same registry as natural persons	Registered in the same way as national	Judicial authorities in criminal matters Not administrative and financial authorities Police forces dispose by way of cautions and penalty notices	Definitive and provisional sentences	Convictions: Penalties/ Fines Custodial sentences Orders in consequence of conviction (disqualifications) Others: cautions, reprimands, final warnings, acquittals, not guilty decisions, cases ordered to lie in file...	<u>Weeding rules:</u> -after 10 years if 1-2 convictions+ no recidivism - in some cases (severity penalty/ type victim/ type offence/ + 3 convictions...) - others: death/ 100 years <u>Rehabilitation rules:</u> conviction becomes spent after a qualifying period <u>Calculated</u> since the date of conviction

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**TABLE 3: DETAILED CONTENT OF NATIONAL CRIMINAL RECORDS****SUBTABLE 3.1**

	name surname nickname	name of parents	domicile residence	nationality	date/ place birth	occupation	sex	ID or Passport number	fingerprints	court (name, degree)	type of judgement (first instance/ appeal)	file identification number	date of decision
Austria	X	X	X	X	X		X			X		X	X
Belgium	X		X	X	X	X	X			X	X	X	X
Cyprus	X	X	X	X	X	X	X	X	X	X		X	
Czech	X	X	X	X	X		X	X (ID number)		X	X	X	X
Denmark	X	X	X	X	X			X		X	X		X
Estonia	X No nickname		X	X	X Not always		X	X		X		X	X
Finland	X			X				X		X			X
France	X	X		X	X		X			X	X		X
Germany	X		X	X	X		X			X		X	X
Greece	X	X			X	X		X		X		X	X
Hungary	X	X	X	X	X		X			X	X	X	X

	name surname nickname	name of parents	domicile residence	nationality	date/ place birth	occupation	sex	ID or Passport number	fingerprints	court (name, degree)	type of judgement (first instance/ appeal)	file identification number	date of decision
Ireland <sup>4</sup>	X		X		X					X		X	X
Italy	X			X	X		X			X	X	X	X
Latvia	X		X	X	X			X		X		X	X
Lithuania	X	X	X	X	X			X		X			X
Luxembourg	X	X	X		X	X		X		X			
Malta	X	X	X		X		X	X		X	X		X
Nederland	X		X		X			X		X	X	X	X
Poland	X	X	X	X	X	X		X		X		X	X
Portugal	X	X	X	X	X			X	X If possible	X		X	X
Slovakia	X	X		X	X					X		X	X
Slovenia	X	X	X	X	X		X	X		X	X	X	X
Spain	X	X	X	X	X			X		X		X	X
Sweden	X			X	X			X		X		X	X
UK	X		X	X	X		X	X	X	X		X	X

<sup>4</sup>

The Courts Service does not feed into a national register. The data vary from one Jurisdiction Court to another.

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**SUBTABLE 3.2**

	nature of decision (in absentia/ contradict)	date/ place of facts	legal type of offence	type of sanction	duration of sanction/ quantity of financial penalty	time spent in pre-trial detention	provisional measures before trial	protective/educational/treatment measures (after trial)	specific mention that the person is wanted	date of definitive sentence	file number for the execution.	date of final execution/ date payment of financial penalty	suspension of conviction
Austria		X	X	X	X			X		X		X	X
Belgium	X	X	X	X	X	X	X			X			X
Cyprus		X		X					X				
Czech				X				X				X	
Denmark			X	X	X			X				X	X
Estonia		X Not always		X	X	X		X		X		X	
Finland		X	X	X		X				X			X
France	X	X (only date)	X	X	X	X		X	X			X	X (in certain cases)
Germany			X	X	X			X		X		X	
Greece	X	X	X	X	X								X
Hungary		X	X	X	X			X		X			X
Ireland			X	X	X								

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	nature of decision (in absentia/ contradict)	date/ place of facts	legal type of offence	type of sanction	duration of sanction/ quantity of financial penalty	time spent in pre-trial detention	provisional measures before trial	protective/ educational/ treatment measures (after trial)	specific mention that the person is wanted	date of definitive sentence	file number for the execution.	date of final execution/ date payment of financial penalty	suspension of conviction
Italy	X	X	X	X	X			X	X	X			X
Latvia				X				X	X	X		X	
Lithuania			X	X	X	X				X		X	
Luxemburg	X		X	X	X					X			X
Malta		X	X	X	X					X		X	X
Nederland	X		X	X	X	X	X	X	X	X	X	X	X
Poland		X	X	X	X	X	X	X	X	X			
Portugal	X	X	X	X	X			X		X	X	X	X
Slovakia	X		X	X	X			X		X		X	
Slovenia			X	X	X			X		X		X	X
Spain	X		X	X	X			X	X	X	X	X	X
Sweden		X	X	X	X			X		X		X	X
UK	X	X	X	X	X	X			X	X			X

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**SUBTABLE 3.3**

	conditional release/ parole/ probation	substitution/ reduction sanction	clemency measures	date of rehabilitation	period during which files are maintained	disqualifications prohibitions	others	date of transmission to CR	Legal persons
Austria	X	X	X				Offences committed under the influence Road traffic offences Special mention if recidivism		
Belgium	X		X	?	?	X (provided by the sentence)	Number of judges in Court	X	
Cyprus				X		X	Telephone number/ <i>previous convictions</i> / Military record number/ Election book number/ number social insurances Reference to "modus operandi"		
Czech	X		X		X				
Denmark	X	X	X			X			
Estonia	X	X	X				Data of decisions of punishments in a misdemeanour matter Foreign convictions against nationals Not disciplinary penalties	X	Name/ address/ registration/ court/ offence/ conviction/ date payment/ enforcement/ substitution
Finland	X	X	X				Impunity if the person is mentally ill/ forfeiture of parole		
France	X	X	X (in some cases such as pardon)			X			Name/ address/ registration/ court/ offence/ conviction/ date payment

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	conditional release/ parole/ probation	substitution/ reduction sanction	clemency measures	date of rehabilitation	period during which files are maintained	disqualifications prohibitions	others	date of transmission to CR	Legal persons
Germany	X						Special register for youth educational measures		
Greece		X					Reformatory measures	X	
Hungary		X	X			X	Recidivism/ name of prosecutor's office/date of death of person		
Ireland									X
Italy	X	X	X	X		X	Recidivism Military offences Impunity if person is mentally ill Minor offender		
Latvia		X	X				Pre-trial investigations/ trial's decision/ civil suit claim, community which the person will go after, info about changes in personal data		
Lithuania					X		Information about all the investigation		
Luxembourg	X						Foreign convictions against nationals Road penalties Not disciplinary penalties		
Malta	X	X	X			X			
Nederland	X	X	X	X				Not possible	Entities: name, legal form, register number, address
Poland	X	X	X	X		X	Foreign convictions executed in Poland Information about juveniles' houses	X	

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	conditional release/ parole/ probation	substitution/ reduction sanction	clemency measures	date of rehabilitation	period during which files are maintained	disqualifications prohibitions	others	date of transmission to CR	Legal persons
Portugal	X	X	X			X (if pronounced by Court)		X	
Slovakia	X	X	X	X		X	Birth registration number	X	
Slovenia	X		X						X
Spain									Not possible
Sweden	X	X	X	X		X	Extradition Personal case studies Foreign authorities convictions Sentence appealed		
UK			X		X	X	Personal physique (facial characteristics, hair/eyes colour...)		

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**TABLE 4: EXCHANGE OF INFORMATION BETWEEN MEMBER STATES**

	Article 22 <sup>5</sup>				Article 13 <sup>6</sup>		Other agreements
	send	receive	register	problems/solutions	requests received	requesting authority	
Austria	Yes (four times/year)	Nationals/ residents: yes, but not sure that all is received	National/ residents: yes if the offence is also punishable under national law. In 2003: +/- 4500	The examination of the double criminality requirement may sometimes cause problems	937 in 2003, but it's not possible to specify if EU/non EU countries		No other agreements
Belgium	Don't use art 22, only under request	Nationals/ residents Driving disqualification/ Pple of nationality	Only nationals: nationality is the fact of reference. 2064 in 2002 1702 in 2003	Only register offences existing in national law	+/- 1000	Judicial authorities	No other agreements
Cyprus	Yes	Yes	Nationals: yes but not automatically +/- 200 Residents: not	Conversion from foreign sentences to national decision (in enforcement cases)	+/- 150	Interpol	Yes
Czech	Yes	Nationals: yes Residents: not	Nationals: yes in some cases and after decision of the Supreme Court Residents: not	No problems	No data	Judicial authorities/ National criminal register	Bilateral agreements with surroundings countries Convention on MLA with non EU countries

<sup>5</sup> European Convention on Mutual Assistance in Criminal Matters of 1959, Council of Europe, European Treaties Series, N 30.

**Warning:** The answers correspond to the following questions (figures are included when available in Member States' answers):

- 1- Do you send convictions pronounced by national courts against other members states' nationalities on the basis of art. 22?
- 2- Do you receive convictions pronounced by foreign courts against your nationals/ residents?
- 3- Do you register foreign convictions against nationals/ residents?
- 4- Which problems do you find and how do you face them?

<sup>6</sup> European Convention on Mutual Assistance in Criminal Matters of 1959, Council of Europe, European Treaties Series, N 30.

**Warning:** The answers correspond to the following questions (figures are included when available in Member States' answers):

- 1- How many requests have you received on the basis of article 13 in 2003?
- 2- From which authorities have you received requests?

	Article 22 <sup>5</sup>				Article 13 <sup>6</sup>		Other agreements
	send	receive	register	problems/solutions	requests received	requesting authority	
Denmark	Yes	Nationals/ residents: yes	Nationals/ residents: yes No statistics	Only register offences if accord to national law	No statistics		Nordic agreement No other agreements
Estonia	No	Nationals/residents: partial information	Nationals: but not automatically Residents: if they are in the "Estonian national records"	Languages Some of different procedural rules	20 Finland, 1 Germany No more data	Interpol	ILA- Division Justice
Finland	Yes	Nationals/ Residents: Yes	Nationals/ Residents: Yes	Languages	+/- 250	Judicial authorities/ prosecutors	Convention between the Nordic Countries
France	Yes	Yes: Nationals	Nationals +/- 4500	Reliability Languages Specific law's systems/ Conversion Offences are registered only when corresponding to offences in French law	1456 in 2001 1392 in 2002 1305 in 2003	Judicial and administrative authorities	No other agreements within the EU 29 Bilateral Conventions
Germany	Yes, numbers not available	Only nationals: principle of nationality It's not sure that all is received	Nationals: Yes if the offence is also criminalised by national law and the sentence is definitive Residents: basically not, some exceptions	No problems related to article 22 Difficulties: date birth/conversion to national law; if it's not possible, not registration	2643 in 2003		No other agreements Foreign sentences must be registered if the comply national conditions
Greece	Yes	Nationals: yes Residents: yes if there is a collaboration in criminal matters with the origin country	Nationals/ residents: yes +/- 3000	Some of different procedural rules Identification Equivalence of illegal action	+/- 200	No data	Bilateral conventions
Hungary	No, only under request	No data	Nationals: yes: 100 Residents: yes: 1500/2000	Identification	No data	No data	No other agreements

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	Article 22 <sup>5</sup>				Article 13 <sup>6</sup>		Other agreements
	send	receive	register	problems/solutions	requests received	requesting authority	
Ireland	No, a reservation was made	Nationals: only send France notifications Residents: not	No registration of foreign convictions	X	Not possible because there is not a national record However, it is possible that information is exchanged, on request, by the Gardaí (police authorities) with other police authorities	If the Gardaí exchange information with other police authorities, the Gardaí would be the sending authority	No info available
Italy	Yes	Nationals/ Residents: yes	Nationals: not automatically 56 in 2003 Residents: yes	Identification Language	1578 in 2003	No data	Several multilateral and bilateral agreements Ratification of the Additional Protocol to Strasbourg Convention of 1978
Latvia	No: system between ministries of justice	Nationals: yes 426 in 2003 Residents: yes	Nationals/ Residents: yes	Not effective	1	Judicial authorities/ prosecutors	International Convention for the suppression of terrorist bombings, NY, 1998 International Convention for the suppression of the financing terrorism, UN, 1999 International Convention against the taking hostages, NY, 1979 Bilateral Conventions
Lithuania	Yes	Nationals/ Residents: yes	Nationals/ residents: not registered, only stored +/- 2300	Residents from non-EU countries Languages	3	No data	No other agreements
Luxembourg	Yes	Nationals/ Residents: yes	Nationals: yes if dual criminality Residents: yes	If there is not equivalence, there is not registration	No data	No data	No other agreements
Malta	Yes	Nationals: some Residents: not	Nationals: yes Residents: not	No data	No data but there must be few request: +/- 36	No data	No other agreements
Nederland	Yes: but only from Court of appeal	Nationals: not all +/- 2400 Residents: not	Nationals: yes if dual criminality Residents: no (as they are not received)	Conversion	+/- 500	Ministry of justice	Other conventions but not obligation of register

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	Article 22 <sup>5</sup>				Article 13 <sup>6</sup>		Other agreements
	send (under change) +/-240	receive	register	problems/solutions	requests received	requesting authority	
Poland	Yes	No data	Nationals: yes after conversion into national law by national Court Residents: no data	No problems	No data	Judicial authorities/ prosecutors	No other agreements
Portugal	Yes	Nationals/ Residents: yes	Nationals/ Residents: yes	No problems	+/- 15	Judicial authorities	No data
Slovakia	Yes	Nationals: yes but only “penal sheets” Residents: yes	Nationals/Residents: yes	Language Conversion identification	No data	Judicial authorities Prosecutors police	No other agreements
Slovenia	Yes	Nationals/ residents: yes	Nationals: yes +/- 100 Residents: yes +/- 30	No problems	No data	No data	No other agreements
Spain	Yes	Nationals/ residents: yes	Nat: yes but not automatically +/- 10000 Residents: no data	Language If problem of conversion: analogy/ judicial points of contact	+/- 300	Judicial authorities Prosecutors Interpol	No data
Sweden	Yes	Nationals: yes 14 Residents: no	Nationals: yes	Identification of residents Language	+/- 15	Ministry of justice	Yes
UK	Yes	Nationals: not at all Residents: yes	Nationals/ residents: yes but received by different channels; not comprehensive information	Conversion If problem: contact the other country	+/- 1500 (80% from EU countries)	Interpol	No other agreements

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**TABLE 5: RECIDIVISM**

	EFFECTS OF CONVICTIONS	
	Do you know “recidivism” in your system?	Can foreign convictions be taken in account?
Austria	Large discretionary power of judges: when sentencing they can aggravate but it's not a special qualification Special rules for some cases where judges are obliged to take into account recidivism	Principle of “equal treatment” of foreign convictions. Nevertheless, the offence have to be also punishable under national law and the conviction must have been rendered following proceedings that respect article 6 of the ECHR
Belgium	Yes, as an aggravation of the penalty	No. Only as a fact element.
Cyprus	Not during the trial, yes when sentencing	Yes, according to the Convention on the Enforcement of Foreign Sentences and under certain conditions. Same consequences as a national conviction
Czech	Yes, previous conviction ranks among the aggravation circumstances taken into account when sentencing. However, the court is entitled with respect to the character of previous conviction and other aspects not to consider this circumstance as aggravating. Special rules for dangerous recidivist (upper limit of the sentence increases by 1/3)	Yes
Denmark	Large discretionary power of judges: they can aggravate	Yes
Estonia	Yes, in some cases: aggravation of the penalty	No. Only as a fact element
Finland	Large discretionary power of the Court: when sentencing as a aggravation of the penalty	Yes, if foreign conviction has been entered into the criminal records.
France	Yes, depending of different parameters and as an aggravation of the penalty (double)	Yes but only as an element fact
Germany	Large discretionary power of judges, they are not obliged	Yes, except if according to national law the conviction would be deleted

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	EFFECTS OF CONVICTIONS	
	Do you know “recidivism” in your system?	Can foreign convictions be taken in account?
Greece	Yes, when calculating the sanction as a mitigating/ aggravating and when issuing or not the suspension of the execution	Yes, EU citizens/ non EU if other agreement.
Hungary	Different rules relating 3 types of recidivism: recidivist/ qualified/ habitual Qualified/ habitual: as a aggravating ( increasing by ½, not exceed 15 years)/ not possibility of probation/ more severe rules of the imprisonment	Yes, if the proceeding conducted/ sentenced imposed are in conformity with national law (recognized by a national court)
Ireland	No during the trial, yes when sentencing Rarely as an aggravation but large discretionary power of judges	No, but some exceptions
Italy	Yes, as an aggravating of the penalty (increasing 1/6, 1/3, ½)	Yes, it can be recognized
Latvia	Definition of “Multiplicity of criminal law” which contains different concepts and rules: repetition/ aggregation/ recidivism It could be considered as an constituent element/ aggravating	Yes, if the foreign conviction is enforced in Latvia.
Lithuania	Yes, when sentencing/ deciding execution and commutation of the penalty/ recognising as a dangerous recidivist No imposed any heavier punishment	No
Luxembourg	Yes, as aggravating of the penalty. Different rules depending of gravity offence	Yes For sentences executed abroad, if the offence is also punished in the national law
Malta	Yes, during the trial/ when sentencing as an aggravation	Unclear legislative framework
Nederland	Large discretionary power of judges when sentencing: can take into account when determining the penalty Obliged to consider penalties imposed after the currently prosecuted offence. Recidivism can also be an aggravating circumstance for and an element of certain criminal offences in our Penal Code If felony: increasing 1/3 penalty	Obliged to take in account convictions pronounced for the same offence for which the suspected is prosecuted (ne bis in idem) No special conditions for other offences; they can be taken into consideration in the same way as national convictions. It is not clear whether or not a foreign conviction can prove the element of recidivism in the certain criminal offences mentioned in the other box

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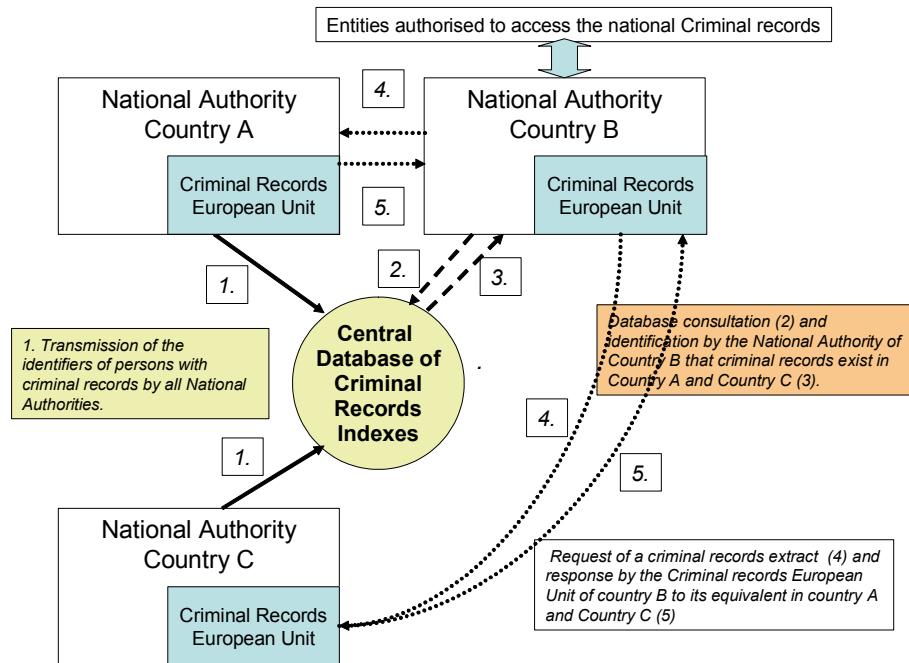
	EFFECTS OF CONVICTIONS	
	Do you know “recidivism” in your system?	Can foreign convictions be taken in account?
Poland	Yes, as a constituent element/ aggravation of the penalty	No answer
Portugal	Yes, different situations and as an aggravation (fixing the minimum increased in 1/3)	Yes, if the offence is also punished in the national law
Slovakia	Yes: when sentencing as an aggravation of the penalty. Special rules for dangerous recidivists.	Yes
Slovenia	Yes	Yes
Spain	Yes, as an aggravation of the penalty When “habitually” as a constituent element	
Sweden	Yes, when sentencing/ deciding the execution of the penalty (can influence on the choice of sanctions, number of fines imposed, period of imprisonment, forfeiture of conditional liberty)	Yes
UK	Exceptionally, during trial proceedings Yes, when sentencing as an aggravation	Yes

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## ANNEX 2

### Organisation of a European computerised system for exchanging information on criminal convictions



Note: in this plan, the term "National Authority" designates the authority responsible for the management of national criminal records.

### Description

- (1) National authorities “feed” a central database with elements enabling the identification of convicted persons (flow 1 in the above plan). Only the elements enabling the identification of the convicted person (surname, first name, place and date of birth, nationality, and if possible, fingerprints) are communicated, not the content of the criminal record itself. These identifiers are simply alphanumeric. An update mechanism will be foreseen to enable the deletion of obsolete information. Only the Member State which has passed the sentence will “feed” the index. In order to keep the Member State of nationality informed of the sentences passed against one of its nationals in another Member State and to ensure that Member States are still able to obtain the information which is sent to them under the current system, the index could send a specific notification to the Member State of nationality each time a national of this Member State is introduced in the index by another Member State. It will then be up to this Member State to request the appropriate information from the “sentencing” Member State.
- (2) An authority which wishes to know whether a person has a criminal history will consult the database on the basis of the person’s name (flow 2 in the above plan). The database will

answer with a simple "hit" and identify in which countries the person has a criminal history (flow 3 in the above plan). The effective operation of this system requires that a conviction be transmitted from one national register only, i.e. the register of the Member State which has passed the sentence.

- (3) Requests for extracts of criminal records are made bilaterally between the authority responsible for criminal records and its counterpart from another Member State, which has been identified as holding information (flow 4 in the above plan). Technically, this request could be generated automatically as soon as a "hit" is identified. These exchanges are structured by creating, within each national authority in charge of the European criminal record, a Criminal Records European Unit (CREU) responsible for these exchanges. Each CREU is dependent on the authority responsible for the management of the national criminal record. In this example, the CREU from country B asks for the extract of the criminal record from the CREU of countries A and C (flow 4 in the above plan), which comply with this request (flow 5 in the above plan). The exchanges between CREUs are supported by the electronic exchange of documents (electronic transmission of scanned documents). In a first phase, the information is transmitted in its national format as is the case currently within the framework of mutual assistance, in accordance with the future Council decision on the exchange of information extracted from the criminal record.<sup>7</sup>
- (4) As soon as a standardised European format, accepted by all the Member States, is established, the CREU of country C will use structured forms (for example by using numerical codes to avoid translation problems), which will enable the CREU of country A to obtain information that it can understand and use with ease.

## Advantages

The proposal which has just been described makes it possible to achieve previously identified objectives and constitutes a workable solution both from a legal and technical point of view.

1. **Reliable identification of a person having a criminal record.** The identification of Member States in which a person has a criminal history is based on a simple and tested mechanism. This mechanism will allow the same degree of reliability for all EU citizens and for third country nationals.
2. **Fast and secure exchanges of information.** As from the first phase, it will be possible to obtain within a very short time-frame, exhaustive information on the convictions pronounced against a person on EU territory.
3. **Exchange of information which is comprehensible and can be used.** The creation of a standardised European format, described in the second phase of the proposed solution, will enable end-users to obtain quickly comprehensive information in a European format recognised everywhere. It will moreover reduce considerably the need for translation.
4. **Simplicity and system effectiveness.** The solution makes it possible on the one hand to avoid interrogating each and every national record at each request (it is the central system which is interrogated instead of the national systems) and, moreover, to limit exchanges to

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<sup>7</sup> Once the Commission's proposal for a Council decision on the exchange of information extracted from the criminal record of 13 October 2004 (COM(2004)664)) is adopted.

those Member States which have information to communicate by eliminating routine and superfluous requests.

5. **Taking into account the need to protect personal data.** Most of the data protection issues will remain at national level as each national authority will keep control of its criminal record:

- only the national authority in charge of the criminal record will be able to add information in the central index;
- only national authorities will be entitled to send requests for information to the index, after verification that the requesting person or authority has the right to have access to this information.
- national authorities will transmit the information obtained to the requesting person or authority in accordance with their national legislation. This implies for example that they will not transmit the information obtained if they would not have been able, under their national law, to transmit similar national information to the person or authority (e.g. because the retention period in the criminal record has expired, because it is covered by an amnesty or because this information would not have been given to the requesting person or authority under national law).

6. **Limited impact on national legislations.** The first phase will not impact radically on national competences and consequently does not require any heavy mechanism to be implemented. The definition of a "standardised European format" raises more complex legal issues which will need to be addressed in a second phase.

7. **Limited investments.** The re-use of existing infrastructures for information exchanges should limit the necessary investments. It will be enough for each Member State to be connected to the central database (the necessary networks already exist) and to ensure that the central index is updated regularly, in accordance with national law.