



**ASSOCIATION OF
CHIEF POLICE OFFICERS**



MUCRI Project

*"Promoting the Mutual Understanding
of Criminal Records Information"*

Final Report

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DG JUSTICE**

PROMOTING THE MUTUAL UNDERSTANDING OF CRIMINAL RECORDS INFORMATION

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List of Acronyms and Abbreviations

ACPO	Association of Chief Police Officers
ACPOS	Association of Chief Police Officers Scotland
ACRO	Association of Chief Police Officers Criminal Records Office
AEDH	Association Européenne pour la défense des Droits de l'Homme (European Association for the Defense of Human Rights)
ANITA	Anwenderfreundliche Normenvergleichsdatenbank durch inhaltliche und technische Aktualisierung (user-friendly legal norm database for comparison with regards to content and technical actualisation)
CHS	Scottish Criminal History System
CJ	Criminal Justice
COPFS	Crown Office and Procurator Fiscal Service
CPS	Crown Prosecution Service
CRB	Criminal Records Bureau
ECRIS	European Criminal Records Information System
EJN	European Judicial Network
ESP	ECRIS Support Programme
FEEU	Fingerprint Exchange between European Union Member States Project
Framework Decision	Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation of the exchange of information extracted from the criminal record between Member States
ID	Identification
ILOR	International Letter(s) of Request
IT	Information Technology
MLA	Mutual Legal Assistance
MO	Modus Operandi (circumstances of the crime)
MS	European Union Member State(s)
MUCRI	Promoting the Mutual Understanding of Criminal Records Information Project
NICTS	Northern Ireland Courts and Tribunals Service
NJR	Network of Judicial Registers
NOMS	National Offender Management Service
NPIA	National Policing Improvement Agency
OM	Offender Manager
PNC	Police National Computer
PPSNI	Public Prosecution Service for Northern Ireland
PESEL	Powszechny Elektroniczny System Ewidencji Ludności (Universal Electronic System for Registration of the Population)
PSNI	Police Service of Northern Ireland
SCS	Scottish Court Service
SID	Scottish Intelligence Database
SPSA	Scottish Police Services Authority
UKCA-ECR	United Kingdom Central Authority for the Exchange of Criminal Records
UKCA-MLA	United Kingdom Central Authority for Mutual Legal Assistance

Member State abbreviations¹

BE	Belgium	LU	Luxembourg
BG	Bulgaria	HU	Hungary
CZ	Czech Republic	MT	Malta
DK	Denmark	NL	Netherlands
DE	Germany	AT	Austria
EE	Estonia	PL	Poland
IE	Ireland	PT	Portugal
EL	Greece	RO	Romania
ES	Spain	SO	Slovenia
FR	France	SK	Slovakia
IT	Italy	FI	Finland
CY	Cyprus	SE	Sweden
LV	Latvia	UK	United Kingdom
LT	Lithuania		

¹ As per 7.1.1 'Designations and abbreviations to use' contained in the Europa interinstitutional style guide < <http://publications.europa.eu/code/en/en-370100.htm> > [accessed 20 December 2011]

Executive Summary

In a European Union where citizens including criminals can freely cross borders, it is essential for public safety that criminal records information exchanged between Member States (MS) is correctly understood.

The requirement for a research project

The United Kingdom Central Authority for the Exchange of Criminal Records (UKCA-ECR) – the designated central authority in the UK for the exchange of criminal records – reported that the information exchanged between MS is not always sufficient to guarantee a complete understanding of the criminal record. Gaps in understanding undermine the process of criminal records exchange and create a risk to public safety.

Scope of the project

The research project 'Promoting the Mutual Understanding of Criminal Records Information' (MUCRI) aims to enhance the understanding between MS of exchanged criminal records information by identifying problems and challenges experienced and making recommendations for improvement.

Methodology

1. Central authorities in each of the 27 MS were consulted.
2. Authorities in the UK with an interest in exchanged criminal records information (Government, judiciary and police) were consulted.
3. A review of the process used in the UKCA-ECR to 'match' notified foreign offences to UK offences was conducted by independent experts.

Key findings

- **Verifying the identity of the convicted person** – MS had limited understanding of the wide variety of information required by other MS for verifying identity which can lead to convictions not being added to the record due to the required information not being obtained.
- **Understanding translations** – There is no standard approach to translation across the MS. Translating legal terminology is difficult because not only the languages but also the legal systems involved must be understood.
- **Understanding offences** – some MS require a higher level of understanding of foreign offences than other MS. This cannot always be achieved with the information routinely exchanged. Not all MS comply with the requirement to supply the offence name or legal classification as well as the relevant legal provision.
- **Obtaining additional information** – where additional information is needed to assist with understanding a criminal record this can be challenging and time consuming to obtain, causing delays to criminal proceedings.
- **Communication** – communication between central authorities could be improved particularly in respect of answering queries about legal/judicial systems.

Conclusions and Recommendations

Identity – Failure to provide sufficient information to verify identity of the convicted person undermines the system of criminal records exchange and creates a risk to public safety.

- It is recommended that the identification requirements for each MS are collated and communicated to relevant criminal justice professionals to ensure the right information can be collected.
- In the longer term, it is recommended that a standard set of identification requirements across the MS is developed.

Translation – Literal translation of words does not guarantee that the full meaning of the conviction will be understood in legal terms. Consideration must be given to the precise meaning of each word in the legal context of the originating jurisdiction.

- It is recommended that a standard methodology for the translation of criminal records is developed which incorporates the specific legal meanings of words.

Understanding offences – The higher the level of specificity required by a MS in comparing a notified offence to an offence in national law, the greater the challenges in understanding the offence.

- It is recommended that all MS comply with the requirement to provide the offence name or legal classification as well as the legal provision.
- It is recommended that MS which find the obligatory information on offences insufficient for the level of understanding they require should review their processes so they can process notifications based on the obligatory information.

Obtaining additional information – The information routinely exchanged between central authorities may be insufficient for court cases and proceedings can be delayed by the need to request additional information.

- It is recommended that a regulated framework for the exchange of limited categories of additional information (e.g. circumstances of the crime, sentencing remarks) via a designated central authority including specified timescales for responses should be scoped and developed.

Communication – MS have limited understanding of the legal systems and processes of other MS which is detrimental to mutual understanding of criminal records information.

- It is recommended that a web-based repository of information relevant to the mutual understanding of criminal records information and to assist communication between central authorities should be developed.

1. Introduction

1.1 Background

Criminal Justice Programme – Interconnection of Criminal Records

In 2009, the European Commission published a call for proposals for projects focused on developing and improving the exchange of national criminal records. The call formed part of the Criminal Justice Programme which aims to promote judicial cooperation by improving the interconnection of national criminal records systems and strengthening mutual recognition and confidence between MS. It specified a number of priority areas, one of which was projects aimed at improving the mutual understanding of criminal records information.² In response to the call for proposals, the UKCA-ECR, which is the designated central authority in the UK for the exchange of criminal records information, submitted a successful bid for a 12-month research project aimed at enhancing the mutual understanding of criminal records information between MS.

Criminal records exchange in the European Union

The efficient and meaningful exchange of criminal records information between MS is a crucial component of the area of justice, freedom and security for citizens that the European Union is committed to establish and uphold. Prior to 2005, protocols for the exchange of criminal records information between MS did not define how frequently information should be exchanged or specify contact points, resulting in an unsystematic exchange mechanism often subject to delays or omissions, presenting a risk to public safety.³ The lack of coordination created a situation in which criminals could ‘wipe clean’ their criminal records by travelling between MS, potentially enabling them to continue their offending behaviour in circumstances that may have been denied to them had their criminal records been available to authorities.

Since then, a range of improvements to the procedures for the exchange of criminal records information between MS have been agreed and implemented. Although the possibility of a European-wide criminal register was considered, this was rejected in favour of an improved set of mechanisms for MS to exchange criminal records information maintained

² European Commission, ‘Call for Proposals 2009 Under “Criminal Justice” Programme (2007-2013) Interconnection of Criminal Records JLS/2009/JPEN/AG/CR,’ p.1 < http://ec.europa.eu/justice/funding/jpen/call_10041/icr_call_2009_en.pdf > [accessed 3 February 2011].

³ European Convention on Mutual Legal Assistance in Criminal Matters of 1959 < <http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm> >; its additional Protocols of 1978 < <http://conventions.coe.int/Treaty/en/Treaties/Word/099.doc> > and 2001 < <http://conventions.coe.int/Treaty/EN/Treaties/Html/182.htm> >; the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union 2000, OJ C 197 12.7.2000 < http://www.eurojust.europa.eu/jit/documents/c_19720000712en00010023.pdf >, and its Protocol of 2001. OJ C 326, 21.11.2001 < <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:326:0001:0008:EN:PDF> >

on their national criminal registers in accordance with national laws.⁴ Developments implemented to date include technical enhancements to assist with the transmission of information as well as designated contact points, agreed timescales and responsibilities for the notification, provision and storage of criminal records information between MS. The agreed procedures, as set out in the Council Framework Decision 2009/315/JHA on the organisation of the exchange of information extracted from the criminal record between Member States (Framework Decision), are designed not only to improve the mechanisms in place for exchanging the information, but also to improve the understanding and utilisation of the information once it has been transmitted.⁵

The requirement for a research project

In an expanding European Union it is essential for the protection of public safety that criminal records information, exchanged between MS in accordance with agreed mechanisms, is not only effectively transmitted but is also correctly understood. The Framework Decision makes this point explicitly:

Improving the circulation of information on conviction is of little benefit if such information cannot be understood by the Member State receiving it.⁶

The improvements to criminal records exchange already put in place include innovations designed to improve mutual understanding of information, for example by introducing electronic exchange of information by the Network of Judicial Registers (NJR) in some MS and work to introduce the European Criminal Records Information System (ECRIS) for all MS by April 2012. This has involved mapping national offences to a set of agreed categories and codes; however gaps in understanding may remain. Through experience and from discussions with other national and European authorities, the UKCA-ECR recognises that:

The information exchanged between EU MS is not always sufficient to guarantee a complete understanding of a particular offence in the country receiving the conviction notification.⁷

⁴ See James B. Jacobs and Dimitra Blitsa, 'Major "minor" Progress under the Third Pillar: EU Institution Building in the Sharing of Criminal Record Information,' *Chicago-Kent Journal of International and Comparative Law*, Spring 2008, pp. 111-165 for a more detailed history and background of criminal records exchange in the EU.

< http://www.kentlaw.edu/jicl/articles/spring2008/jacobs_major_progress_2008.pdf > [accessed 9 September 2011]

⁵ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation of the exchange of information extracted from the criminal record between Member States. OJ L 93, 7.4.2009 < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:093:0023:0032:EN:PDF> > [accessed 15 April 2011]

⁶ Framework Decision, para.17.

⁷ United Kingdom Central Authority for the Exchange of Criminal Records, Grant Application submitted to the European Commission in respect of Criminal Justice Programme 2007-2013 JLS/2009/JPEN/AG/CR, dated 26 November 2009. Copy held on file.

Some MS, depending on their national legislation and systems, need to conduct complex and resource intensive research into the criminal codes of other MS to acquire the required level of understanding of exchanged conviction information. Even with this research, understanding may be incomplete or inconsistent because of the sheer number of jurisdictions and languages involved in the exchange of information between 27 MS. Any gaps in understanding exchanged criminal records information potentially create a risk to public safety and could infringe on the rights of the convicted person if misunderstanding leads to inaccurate information being stored or transmitted.

In addition to the challenges the UKCA-ECR faces in this area, there is also anecdotal evidence from other central authorities suggesting that the problem of understanding exchanged criminal records information is not confined to the UK. A dedicated research project provides the opportunity to identify and document key areas of challenge experienced across the EU, consult experts for their opinions on how to improve the situation and work towards enhancing mutual understanding. This benefits the central authorities responsible for processing exchanged criminal records information, courts and law enforcement agencies throughout the EU and persons whose conviction information is entered onto criminal registers. Ensuring that exchanged criminal records information is understood as fully as possible also reduces the risk to public safety created by dangerous criminals travelling between MS and supports the EU objective of creating an area of justice, freedom and security for its citizens.

1.2 Project Scope

Aim

The project 'Promoting the Mutual Understanding of Criminal Records Information' aims to enhance the mutual understanding of exchanged criminal records information by identifying problems and challenges experienced in the UK and other MS and making recommendations for future improvement.

Objectives

1. Engage with central authorities and other relevant agencies across the EU to explore the problems faced when processing foreign EU conviction information.
2. Engage with relevant authorities in the UK and Europe to gain an understanding of the problems experienced when trying to match foreign convictions, offences and sanctions to national law.
3. Undertake a study to enhance the interpretation of EU convictions.

4. Compile and present a report to the European Commission and all MS summarising the findings of the research and drawing conclusions, including recommendations for the future.⁸

1.3 Reporting Strategy

During the course of the research over 100 individuals working in over 40 authorities spread across 24 MS contributed to the research. Consequently, a great deal of research material has been gathered. For accessibility and ease of reading, the main part of this report is limited to summarising and analysing the key findings of the research and to drawing conclusions and making recommendations based on those findings.

The research team recognises that some of the primary research material obtained may be helpful in its own right in promoting the mutual understanding of criminal records information and to this end relevant material has been placed into the appendices attached to this report.

Where the findings refer to views expressed during the consultation these are generally attributed, for convenience, to the authority where the person providing the response is based. It should be noted that these views may not be the official view of the authority or MS.⁹ Any views expressed by the authors of the report are their own and do not represent the official view of either the European Commission, the Association of Chief Police Officers Criminal Records Office (ACRO) or the UKCA-ECR.

Chapter Two provides a detailed breakdown of the approach taken to meet each objective and the methodology used at each stage of the research.

Chapter Three is a summary of the key findings, broken down by the findings for each of the objectives: central authorities, UK stakeholders and the offence matching review exercise. Findings for the central authority and UK stakeholders' consultation are organised thematically by key area of challenge identified.

Chapter Four provides a more detailed consideration of the research findings, again broken down into the findings for each separate stage of the research and organised thematically. Key areas where problems in understanding criminal records information have been identified are explored for each area, with accompanying statistics and examples gathered during the research along with selected suggestions for improvement made by the consulted parties. In the section relating to the offence matching review, the report provided by the University of

⁸ Grant Application

⁹ In the detailed findings and the appendices containing the raw data returns, where the response was in writing the researchers have used the respondents own words (edited for clarity where appropriate). Where the response was verbal (e.g. during an interview) it has been paraphrased by the research team. Every attempt has been made to represent the consulted parties' views accurately.

Northumbria at Newcastle Law School is reproduced in full, along with additional findings and discussion from the MUCRI research team.

Chapter Five draws brief conclusions based on the findings of the research as discussed in the preceding chapters and makes recommendations aimed at enhancing the mutual understanding of criminal records information in the future.

The **Appendices** contain the detailed raw data gathered during the research process, along with examples of questionnaires and queries from the consulted MS that were answered by the research team during the course of the project.

2. Methodology

Preliminary research design

The first challenge for the research team was to narrow the relatively broad project terms of reference to ensure the research activities could be focused on the most significant issues and, just as importantly, be achieved with the resources available. It was decided to consult designated central authorities with responsibility for managing the exchange of criminal records information in each MS as well as other relevant agencies identified in the project proposal to allow experts working within these authorities to identify the most important issues, with the results informing the design of subsequent research activities. To accomplish this, the research team adopted a mixed method approach, engaging with central authorities and other relevant agencies using a variety of methods including questionnaires, focus groups and semi-structured interviews. This approach was maintained throughout the research project, in effect creating a 'self-narrowing' methodology that allowed the experts rather than the research team to primarily define the direction of the research.

Objective 1 - Engage with central authorities and other relevant agencies across the EU to explore the problems faced when processing foreign EU conviction information

The consultation with central authorities was divided up into distinct stages, with the results of each intended to inform the design of the next stage.

Stage 1

Action - Focus group with analysts and managers in the UK central authority.

Purpose - To formally record UKCA-ECR's observations as to the key challenges faced in understanding exchanged criminal records information.

Stage 2

Action - Initial questionnaire sent to the central authorities of all MS (excluding the UK).

Purpose - To collect baseline information about the nature of the challenges experienced across MS in understanding exchanged criminal records information and in particular any challenges experienced in understanding information transmitted from the UK.

Stage 3

Action - Detailed questionnaire sent to central authorities of MS which had completed the initial questionnaire and expressed an interest in contributing further to the research.

Purpose - To obtain more detailed information about the processes followed in the relevant MS central authority and how these might relate to the specific challenges already identified.

Stage 4

Action - Observation and semi-structured interviews to be conducted on-site with a selected group of MS central authorities.

Purpose - To gain an in-depth understanding into the challenges experienced at local level. MS for this stage of the research to be selected to ensure a broad representation of the various issues already identified by the research.

Methodological Issues

The commencement of the research with a focus group within the UKCA-ECR was necessary to identify key issues and provide a basis for subsequent research design. However, this approach also risked creating, by definition, a UK-centred approach to the research design which could potentially exclude the identification of problems and challenges relevant to other MS but not relevant to the UK. To reduce this risk and to ensure the research was as objective as possible, the research team ensured that all contact with central authorities in other MS, either through questionnaire or interview, invited the respondents to specify any areas of challenge that had been omitted by the research team.

Objective 2 - Engage with relevant authorities in the UK and Europe to gain an understanding of the problems experienced when trying to match foreign convictions, offences and sanctions to national law

Action - Questionnaire and/or semi-structured interview with authorities in the UK with an interest in exchanged criminal records information.

Purpose - To collect data relating to challenges in understanding exchanged criminal records information from a strategic and operational perspective within all three jurisdictions of the UK (England and Wales, Northern Ireland and Scotland) to provide case-study level analysis of the situation in the UK relating to the use of exchanged criminal records information after it has been processed by the central authority. A small number of authorities in other MS were also to be consulted in order to provide a comparative perspective.

Methodological Issues

This objective assumes that matching foreign offences to national law is a problem for the relevant authorities. Early feedback during the research design phase indicated that this may not be a problem for all of the consulted authorities, and therefore respondents were requested to identify the areas in which they experienced challenges with understanding exchanged criminal records information, regardless of whether this included specific problems with matching notified offences to national law. This was

also consistent with the approach taken with central authorities, which allowed the consulted authorities to define the parameters of the research.

Objective 3 - Undertake a study to enhance the interpretation of EU convictions

Action - Review by the University of Northumbria at Newcastle Law School of offence matches previously conducted by the UKCA-ECR.

Purpose - To enhance understanding by the UKCA-ECR of relevant offences by providing specialist legal advice and to identify challenges relating to the UK process of matching notified foreign offences to offences in national law.

Methodological Issues

This objective was particularly broad and serious consideration had to be given to what could realistically be achieved within the time and resources available. It was decided, after consultation with the team at the Law School, to limit the review to offences that had previously been notified to the UK by Germany and matched by staff in the UKCA-ECR to offences in national law, to provide a snapshot of the problems and challenges related to matching offences between those two jurisdictions. The Law School was tasked to provide detailed feedback on an agreed set of previously matched offences and to provide a written report summarising their findings.¹⁰

Objective 4 - Compile and present a report to the European Commission and all MS summarising the findings of the research and drawing conclusions, including recommendations for the future

Action - This objective is met in part by this report. The findings given here will be presented to the European Commission and MS at a later date.

Purpose - To disseminate the findings of the research to relevant authorities which in itself contributes to the overall aim of enhancing mutual understanding of criminal records information.

¹⁰ For reasons of space, the completed matrix containing the detailed feedback given on the offences is not included in this report. It is held on file in the UKCA-ECR.

3. Summary of Findings

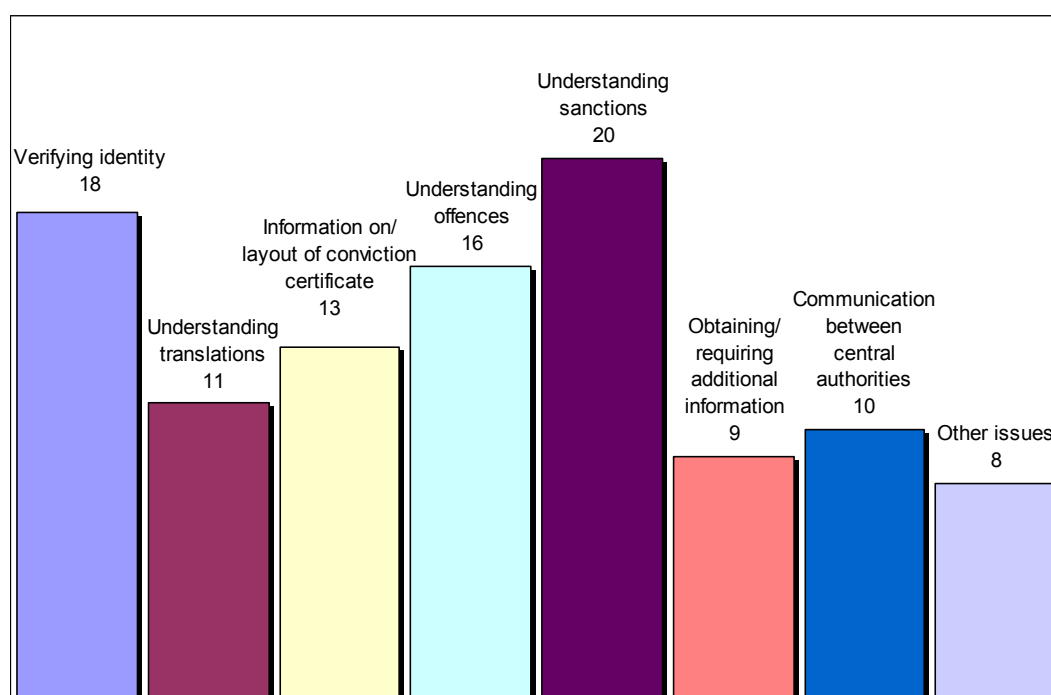
This chapter provides a summary of the main findings of the research broken down between central authorities, UK stakeholders and the offence matching review.

Central authorities

As explained in detail in the methodology chapter consultation with central authorities consisted of three main stages. These were the initial questionnaire, detailed questionnaire and semi-structured interviews. A number of key areas were identified throughout these stages and are shown in the below chart and discussed briefly in the following paragraphs. There was no significant trend in responses depending on the administrative location of the central authority.¹¹

Responses to at least one stage of the consultation were received from the central authorities in 24 MS.

Figure 1 – Number of central authorities that identified each key area of challenge



1. Verifying identity

There were too many different categories across MS required for verifying identification. This made it impossible for MS to be aware of all the requirements for each MS, leading to potentially a significant number of notifications not being added to the criminal register. Possible solutions to

¹¹ Figure 3 on page 25 provides a full breakdown of the administrative location of the central authority for each MS.

this problem include education around the requirements for each MS and the need for MS to come closer together in terms of identity requirements.

2. Understanding translations

There were a variety of approaches to translation in use across MS and some MS do not routinely translate. Translating legal terminology is difficult because translations which would be valid in a non-legal context may be invalid in the context of understanding criminal records as the meanings of words in a legal sense can be very specific. It is necessary to know the legal system that sits behind the word to fully understand translations. A standardised approach to translation which incorporates the translation of legal terminology from one jurisdiction to another would assist in this area.

3. Information on and layout of conviction certificate

The differing format of conviction certificates causes challenges in understanding the information. ECRIS should assist with the understanding of the information by standardising the format in which it is provided. The use of abbreviations was identified as a problem as they may not be understood outside of the jurisdiction to which they are relevant. MS should provide a glossary where abbreviations are used.

4. Understanding offences

The Information contained on the notification in relation to the offence is not always sufficient to enable the MS to fully understand the offence which was committed. MS use different approaches to establishing dual criminality which require different levels of understanding and therefore sometimes the information is not sufficient. The more specific the match of offences, the more challenging it is to achieve a match with the routinely exchanged information. Therefore MS that conduct offence matching to a very specific level may wish to consider reviewing their processes to ensure they are able to process notifications based on the information specified in the Framework Decision.

5. Understanding sanctions

Sanctions were raised as challenging by more MS than offences. The problem seems to be due to not understanding the judicial system of the other MS which provides the context for the sanction and because information on the sanctions of other MS is not widely available. To assist with this it would be helpful to have a central resource where definitions and explanations of sanctions available in each MS are provided.

6. Obtaining/requiring additional information

Occasionally some MS require additional information and identified that obtaining this was sometimes challenging. This is partly because central authorities do not hold additional information such as Modus Operandi (MO – the circumstances of the crime) but also because the routes for obtaining this information vary between MS and information on what to do is not available. It would assist if MS provided instructions for other MS central authorities on how to obtain additional information.

7. Communication between central authorities

MS felt that communication was generally effective. However the research team identified that in some cases it could be improved. Some of these issues could be resolved with access to an online resource containing relevant information relating to each MS. This suggestion would go some way to improving communication and which in turn would help to resolve some of the other key areas of challenge that have been discussed.

8. Other issues – A number of other relevant issues were raised by the MS including:

- ECRIS/NJR (e.g. volumes)
- understanding the rules/processes of other jurisdictions
- lack of information exchanged
- requests

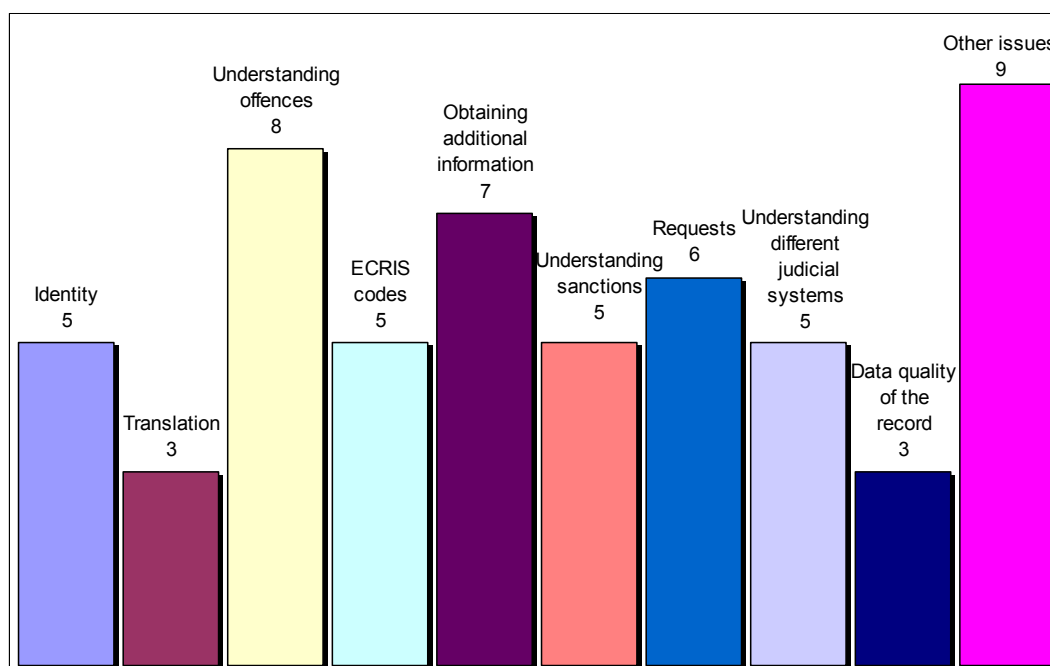
These are discussed individually in the detailed findings.

UK stakeholders

Consultation with UK stakeholders identified a number of key areas shown in the below chart and discussed briefly in the following paragraphs.

Responses to the consultation were received from 16 authorities.

Figure 2 – Number of UK stakeholders that identified each key area of challenge



1. Identity

Respondents specified that identifying the person is important and this may be assisted by the exchange of fingerprints.

2. Translation

Respondents sometimes found translations difficult to understand and it was suggested that literal translations may not capture the full meaning of the criminal record.

3. Understanding offences

Understanding offences was identified as challenging due to the differences between MS legislation which could be a problem when considering a previous conviction in the course of new criminal proceedings.

4. ECRIS codes

It was identified that ECRIS codes would streamline criminal record exchange but that the mapping of offences to codes is subjective and open to challenge.

5. Obtaining additional information

Information additional to that routinely exchanged under the Framework Decision is frequently required, however this is subject to delays by using Mutual Legal Assistance (MLA). It was suggested that a more mechanised approach to obtaining such information should be developed.

6. Understanding sanctions

Sanctions were identified as challenging due to the variation of sanctions imposed across MS. Not understanding sanctions is a problem because the severity of the sanction is an indicator of the severity of a previous offence and how that offence should be taken into consideration during new proceedings. Suggestions for improvement included a glossary defining different sanctions.

7. Requests

Respondents identified two issues in relation to requests. The first is the lack of an automated system to request information and the second is the limits imposed on the use of the requested information. Restrictions on the use of requested information was seen as a potential risk to public safety and it was suggested that these restrictions need to be reconsidered.

8. Understanding different judicial systems

A number of problems were identified by respondents that relate to this area. It was generally felt that it was difficult to understand criminal records information because of the different judicial systems. A suggestion to assist in this area is an online repository of information which may help to explain other MS judicial systems.

9. Data quality of the record

The importance of the quality of data on the criminal record was identified and it was suggested that each MS needs to manage this internally.

10. Other issues

A number of other relevant issues were raised by the respondents including:

- foreign convictions shown on employment certificates
- regularly changing criminal codes in other MS
- a risk of challenge to the whole system of criminal records exchange

Offence matching review exercise

The Northumbria University at Newcastle Law School raised some challenges in their report on the offence matching exercise including the following points:

- elements of the offence
- defining key terms
- differences in approach
- offences with no match
- matching offence seriousness
- need for full facts of the conviction

They concluded that the current approach by the UKCA-ECR of matching notified offences very precisely to national law and adding notified convictions to the criminal register as if they were a offence under national law is problematical. There were important legal differences between many of the offences in the two jurisdictions which could mean that behaviour that would constitute an offence in Germany may not constitute an offence or may be a very different offence in the UK or that a defence not available in the convicting MS may be available in the UK. Also in most cases the routinely exchanged information would not be sufficient to make such a close match. They suggested an alternative way of recording convictions which eliminated the requirement to conduct such specific offence matching by adding a translation of the original offence to the criminal register instead of using codes.

The MUCRI research team reviewed the report from the Law School and the process undertaken to match offences and add them to the register and suggested their own alternative method which reserved very specific offence matching for a limited number of serious offences.

Detailed findings in relation to each stage of the research are contained in the following chapter.

4. Detailed Findings

This chapter provides the detailed findings from the research broken down into the findings from each stage of the research – central authorities, UK stakeholders and offence matching review. Findings are organised thematically according to the key areas of challenge that were identified during the research. Where information was provided as a free-text response in a questionnaire or verbally during interview they have been coded by the research team and placed in the most relevant category. Relevant areas of the raw data collected are contained in the appendices at the end of this report.

Each section contains an introduction explaining relevant background information in relation to the consulted authorities in order that the findings can be considered in the appropriate context. Following this the key areas where problems in understanding criminal records information have been identified are explored for each area, with accompanying statistics and examples gathered during the research along with selected suggestions for improvement made by the consulted parties.

4.1 Central Authority Findings

4.1.1 Introduction to Central Authorities

What is a central authority and where are they located?

Under the Framework Decision, each MS is obliged to designate a central authority with responsibility for managing the information exchanged under the provisions of the agreement. The table below shows which authority within each MS is responsible for providing the designated central authority.

Figure 3 - Administrative location of central authority in each MS

Member State (MS)	Ministry of Justice	Ministry of Interior	Police	Other
Belgium (BE)	X			
Bulgaria (BG)	X			
Czech Republic (CZ)	X			
Denmark (DK)			X	
Germany (DE)				X ¹²
Estonia (EE)	X			
Ireland (IE)			X	
Greece (EL)	X			
Spain (ES)	X			
France (FR)	X			
Italy (IT)	X			
Cyprus (CY)			X	
Latvia (LV)		X		

¹² The Federal Office of Justice under the Federal Government.

Member State (MS)	Ministry of Justice	Ministry of Interior	Police	Other
Lithuania (LT)		X		
Luxembourg (LU)	X			
Hungary (HU)		X		
Malta (MT)			X	
Netherlands (NL)	X			
Austria (AT)			X	
Poland (PL)	X			
Portugal (PT)	X			
Romania (RO)			X	
Slovenia (SI)	X			
Slovakia (SK)				X ¹³
Finland (FI)	X			
Sweden (SE)			X	
United Kingdom (UK)			X	

What do central authorities do?

The role of the central authority is to be the central point of contact for the exchange of criminal records information under the Framework Decision. The MS of nationality is responsible to hold and maintain the full record of convictions for their nationals regardless of in which MS a conviction was handed down. The main areas of exchange are ‘notifications’ and ‘requests’.

Notifications¹⁴

When a national of another MS is convicted the central authority of the convicting MS must inform the central authority of the MS of which the convicted person is a national. The notification should include mandatory information such as personal details of the convicted person and information around the offence and sanction. The central authority of the person’s nationality is responsible for storing this information to ensure it can fully respond to any future requests for information relating to the convicted person. In addition, they may then add the notified conviction to their criminal register in accordance with their national law.

Requests¹⁵

MS may request criminal records information relating to a person from the central authority of the MS of the person’s nationality under certain circumstances such as when the person is subject to new criminal proceedings. MS must reply to requests within 10 days, in accordance with national law. For data protection reasons, requested information may only be used for the purpose for which it was requested (e.g. a specific criminal proceeding).

¹³ The General Prosecutor’s Office of the Slovak Republic.

¹⁴ Titled in the Framework Decision as ‘own-initiative information on convictions’ but referred to colloquially and in this report as ‘notifications’.

¹⁵ Titled in the Framework Decision as ‘request for information on convictions’ but referred to colloquially and in this report as ‘requests’.

What is the European Criminal Records Information System (ECRIS)?

As of April 2012 when ECRIS is implemented all MS will be obliged to exchange criminal records electronically using this system. ECRIS is a computerised framework for the electronic exchange of information via secure data networks. Offences and sanctions will be transmitted using pre-defined codes against which national offences and sanctions have been mapped. ECRIS will also provide a non-binding manual of guidance for practitioners setting out the procedures for exchange of information via the ECRIS system. 13 MS are already exchanging criminal records information electronically in a similar way to ECRIS via NJR but this will cease with the implementation of ECRIS.¹⁶

4.1.2 Detailed Findings in Relation to Central Authorities*Figure 4 – Responses to the consultation from MS central authorities*

Member State (MS)	Initial Questionnaire	Detailed Questionnaire	Structured Interviews
Belgium (BE)	X	X	X
Bulgaria (BG)	X	X	
Czech Republic (CZ)	X	X	
Germany (DE)	X	X	X
Estonia (EE)	X	X	
Greece (EL)	X	X	
Spain (ES)	X	X	X
France (FR)	X	X	
Italy (IT)	X	X	
Cyprus (CY)	X	X	
Latvia (LV)	X	X	
Lithuania (LT)	X	X	X
Luxembourg (LU)	X		
Hungary (HU)	X		
Malta (MT)	X	X	
Netherlands (NL)	X	X	
Austria (AT)	X		
Poland (PL)	X	X	X
Portugal (PT)	X		
Romania (RO)	X	X	X
Slovakia (SK)	X	X	
Finland (FI)	X		
Sweden (SE)	X		
United Kingdom (UK)			X ¹⁷

¹⁶ There are an additional four observer states.

¹⁷ UK consultation included the UKCA-ECR, the Police Service of Northern Ireland (PSNI) and the Scottish Police Services Authority (SPSA) to represent all three jurisdictions.

Figure 5: Challenges identified and suggestions made by consulted central authorities at each stage of the research in relation to key areas

Main Area of Challenge	Member State																							
	Initial and Detailed Questionnaires																	Structured Interviews						
	BG	CZ	EE	EL	FR	IT	CY	LV	LU	HU	MT	NL	AT	PT	SK	FI	SE	BE	DE	ES	LT	PL	RO	UK
1. Verifying identity	X	X			X		X	X		X	X		X		X	X	X		X	X	X	X	X	X
																		X		X	X	X	X	X
2. Understanding translations					X		X	X	X	X					X			X	X		X	X		X
																		X			X	X		X
3. Information on/layout of conviction certificate	X	X				X			X	X			X		X			X	X	X	X	X		X
																		X	X	X		X		X
4. Understanding offences		X	X	X	X	X		X			X		X				X	X	X	X	X	X	X	X
																					X	X		X
5. Understanding sanctions		X	X	X	X	X		X	X	X	X	X	X		X		X	X	X	X	X	X	X	X
																		X	X	X		X		X
6. Obtaining/requiring additional information		X				X		X									X	X	X		X	X		X
																			X		X			X
7. Communication between central authorities	X			X	X					X									X	X				
																		X	X	X	X	X		X
8. Other issues		X		X						X											X	X		X
																				X		X	X	X

X – challenge identified X – suggestion made X – challenged identified and suggestion made

1. Detailed findings in the area of verifying identity¹⁸**Key statistics**

- **75%** (18 of 24) of MS which responded to the consultation overall indicated that they experienced challenges in verifying the identity of the convicted person
- **70%** (16 of 23) of MS which responded to the initial questionnaire indicated that they experienced challenges in this area specifically relating to notifications received from the UKCA-ECR
- **38%** (363 of 965) of a sample of notifications received by Romania from the UKCA-ECR could not be proceeded with because of insufficient or incorrect details to enable verification of the identity of the convicted person
- **100%** of interviewed MS with a centralised population register/identity database raised verification of identity as a significant issue
- **70%** (7 of 10) of MS which exchange fingerprints are based either within the interior ministry or the police service¹⁹
- **63%** (5 of 8) of MS central authorities based within the police exchange fingerprints with at least one other MS

Key challenges

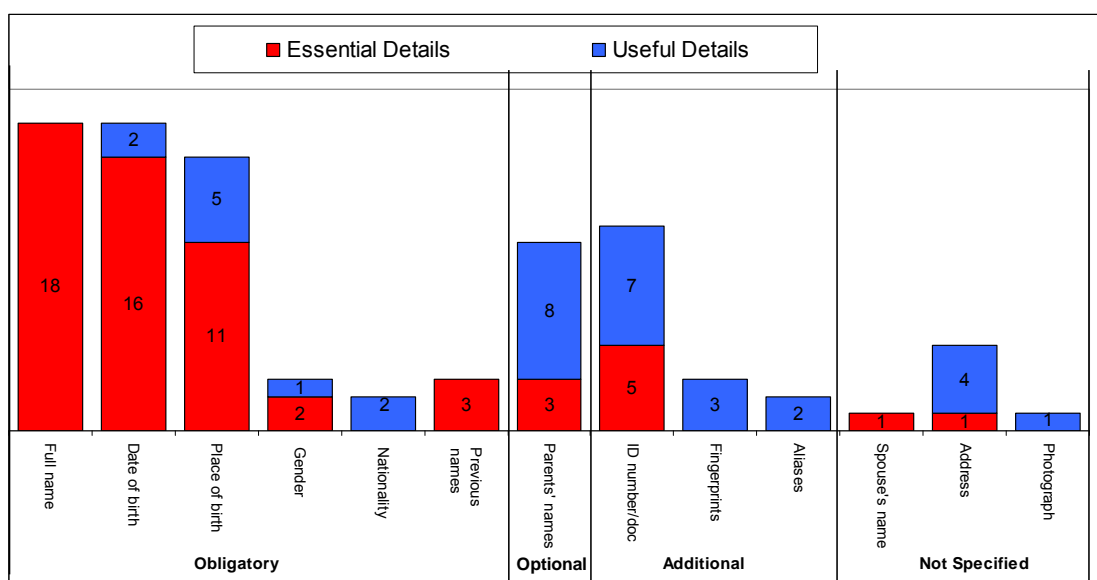
- Insufficient data provided means a person cannot be identified on the population register and the notified conviction cannot be added to the register
- Identity disputes are challenging to resolve as the additional information required is often not available
- Important information in relation to verifying identity is optional under the terms of the Framework Decision and therefore not always supplied
- The specification of obligatory information in the Framework Decision is of limited value if authorities do not have the powers to require persons to provide this information

¹⁸ Detailed data by MS is contained in Appendix B on page 94.

¹⁹ Interior ministries are typically responsible for policing matters while justice ministries are typically responsible for maintaining and administering justice. The 10 MS referred to are those which, to the knowledge of the research team, are exchanging fingerprints with the UK (including the UK). Other MS may have bilateral agreements for the exchange of fingerprints on which the research team did not receive information.

Selected suggestions for improvement

- Use standardised reference tables in ECRIS to create drop-down lists for place of birth
- Amend Article 11 of the Framework Decision so that personal data currently listed as optional/additional becomes obligatory
- Provide education for criminal justice professionals as to what identification details are required by each MS so the correct information can be collected from the convicted person

Analysis of data returnsInformation required by MS for verification of identity of convicted persons*Figure 6: Essential and useful details required by MS to verify identity²⁰*

- The only information required by **all** responding MS is the full name of the convicted person.
- Previous names, nationality and gender, while obligatory information, were essential or useful to only a relatively small number of MS.
- 11 MS indicated that parents' names were either essential or useful, although this is optional information in the Framework Decision.²¹

²⁰ 18 MS provided free text responses detailing the essential and useful information they required to enable the verification of the identity of the convicted person. These responses were categorised by the research team according to the obligatory, optional and additional categories of personal information specified in Article 11(1) of the Framework Decision. A more detailed breakdown of the responses by MS is contained within Appendix B on page 99.

²¹ Both the European Data Protection Supervisor and the European Association for the Defense of Human Rights (AEDH) have cautioned against transmitting the names of

- Identification documents/numbers – although specified as additional information (to be sent if available) – were essential to five MS and useful to another seven.
- Some information, such as the address of the convicted person, was considered useful by a handful of MS even though this is not information that is specifically mentioned in the Framework Decision.

Identification challenges for MS with and without centralised population registers/identity databases²²

- 5 of the 7 interviewed MS operate a centralised population register or identity database and all raised verification of identity as a significant challenge.
- 2 of the 7 interviewed MS did not operate a centralised population register or identity database and did not raise verification of identity as a significant issue.
- Where verification of identity was not raised as a significant issue, difficulties were still noted in relation to ascertaining what identity information was needed to accompany notifications and requests because of the differing requirements between MS.

Fingerprint Exchange²³

- Central authorities based within the police service or interior ministries are the most likely to exchange fingerprint information.
- The least likely to exchange fingerprint information are central authorities located in justice ministries.

Discussion

Information required by MS for verification of identity of convicted persons

MS found it difficult to understand the identification standards and methods used in other MS. For example, it seemed inconceivable to colleagues in one MS, which has a population register, that a person could be convicted in court without having had their identity verified against such a register.

parents of the convicted person unless absolutely necessary. See European Data Protection Supervisor, *Opinion of the European Data Protection Supervisor on the Proposal for a Council Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/.../JHA* (OJ C 42 of 20.2.2009) and European Association for the Defense of Human Rights (AEDH), 'The European Criminal Records Information System (ECRIS) creates new risks for the protection of personal data.' Press release dated 23 October 2008

<http://www.aedh.eu/plugins/fckeditor/userfiles/file/Protection%20des%20donn%C3%A9es%20personnelles/Communique_ECRIS_EN.pdf> [accessed 24 January 2011].

²² A detailed table comparing the methods of identity verification used by MS with and without centralised population registers is available in Appendix B on page 94.

²³ A detailed table comparing the fingerprint exchange status of all interviewed MS is available in Appendix B on page 96.

Conversely, MS which rely on biometric information may perceive the systems in MS which are predominantly based on the use of identity numbers or documents to be vulnerable to fraud.²⁴

MS reported a wide variety of essential and helpful information for verifying the identity of the convicted person. It is of note that of the six categories of obligatory personal information specified in the Framework Decision, only three (full name, date of birth and place of birth) are considered essential or useful to the majority of responding MS. The remaining three (gender, nationality and previous names) do not appear to be widely required. In contrast, optional or additional information such as parents' names or identification number/documents were significant to the majority of responding MS.

Consulted central authorities generally lacked understanding of the identification requirements of central authorities in other jurisdictions and the reasons for these requirements. This is perhaps not surprising given the breadth of different categories cited by responding MS but it does make it more difficult for the right information to be collected and supplied and for central authorities to assist one another in resolving issues.

An example of good practice in this area is Northern Ireland, as the Police Service of Northern Ireland (PSNI) provides a specialist team which functions as a single point of contact for police officers needing to make requests, providing guidance on the required information.

It was noted by the research team that all of the MS visited and observed indicated a willingness to try to verify identification if possible even if they had not been provided with their minimum specified information.²⁵

Identification challenges for MS with and without centralised population registers/identity databases

Generally, problems confirming the identity of the convicted person were more significant for MS which have a requirement to verify identity against a centralised population or identity database before adding a notification to the criminal register. When the verification cannot be made against the population register, the notification cannot be processed and no entry is made onto the criminal register. As indicated by the statistics provided by Romania, this can lead to significant numbers of notified convictions not being added to the criminal register, which could present a risk to public safety.²⁶ In contrast, in the UK a notified conviction would be able to be added to the national criminal register even if the person was previously

²⁴ For example, in the UK identification is more reliant on fingerprints and even if a pseudonym is used, convictions can be linked together using the biometric information, because the fingerprints of the convicted person act as the central point of reference for identity for police purposes.

²⁵ Of course, in many cases this is not possible, especially if the person has a common name.

²⁶ Romania was the only MS to provide such statistics so it is unclear as to whether these figures are replicated in other MS.

unknown, as a new record could be created using the details provided on the notification.

Fingerprint exchange

Central authorities located within a policing environment (including interior ministries) appear to attach a greater value to fingerprints as a means to verify identity. This may be because central authorities located in policing environments have easier access to fingerprint information. The UK, for example, considers biometric information the most reliable method of verifying identification. Therefore fingerprints are widely used within the police service for identification and are linked to the criminal record.

Conclusion

Identification was a frequently raised area of challenge during the consultation with MS, although the significance of the problem varied depending on a number of factors such as whether the MS has a requirement to verify identity on a population register or what specific categories of personal information are required.

There was some discussion among the research team as to whether identification issues fell within the terms of reference of the project. It was eventually decided that a perfectly understood criminal record is of little value if it cannot be matched to an individual and that because this issue was evidently very important to the central authorities consulted, it should be included. The personal information of the convicted person does form part of the criminal record information and therefore it is important that MS have mutual understanding of the categories of information in use and why they are required by other MS.

One suggestion from a MS for improving this area was to expand the categories of obligatory information in relation to personal data in the Framework Decision. However, the research shows that not every MS requires all the personal information currently categorised as obligatory. There is a very broad range of 'essential' information categories across the MS, which would be almost impossible to capture within the obligatory category as specified in the Framework Decision. It was also noted by another MS that obligatory information is of limited value if the authorities do not have the powers to require convicted persons to provide the information.

It was also suggested that identification requirements for each MS should be collated and made available to all central authorities and relevant criminal justice professionals, which could improve the quality of the data obtained. The identification information matrix contained within Appendix B on page 99 gives an example of how this information could be organised.

Education of criminal justice professionals as to the requirements of each MS in respect of identity was also suggested. An example of a training initiative was reported by the UK, which is developing a computer based training package for police officers about data capture for foreign nationals.

However, if legal frameworks do not enable criminal justice professionals to obtain this information, as was pointed out by each of the jurisdictions within the UK, the benefits of educating police officers or other relevant criminal justice professionals about what information is required may not be fully realised.

While education and improved communication between MS central authorities as to their requirements in relation to verification of the identity of the convicted person are positive steps forward and should be encouraged, the current very wide variety of information required by the different MS will make any such attempts challenging to achieve. Alongside education and communication it may be appropriate for the European Commission to assist MS in working towards a standard set of identity information to reduce complexity and maximise the chances of sufficient information being obtained to ensure that notified convictions are added to the appropriate record and replies to requests contain the relevant person's criminal record.

2. Detailed findings in the area of understanding translations²⁷**Key statistics**

- **45%** (11 of 24) of MS that responded to the consultation overall indicated that they experienced challenges in understanding translations
- **70%** (12 of 17) of MS that responded to the detailed questionnaire indicated that notifications are routinely translated
- **None** of the 7 MS in the interviews had knowledge of a dispute specifically in relation to translation

Key challenges

- Not having any facility to translate information received in a language that nobody within the central authority understands
- Re-transmitting notified convictions which have been translated into another language instead of in their original format in the original language, as this may mean any subsequent translation could result in the meaning being lost or altered

Selected suggested for improvements

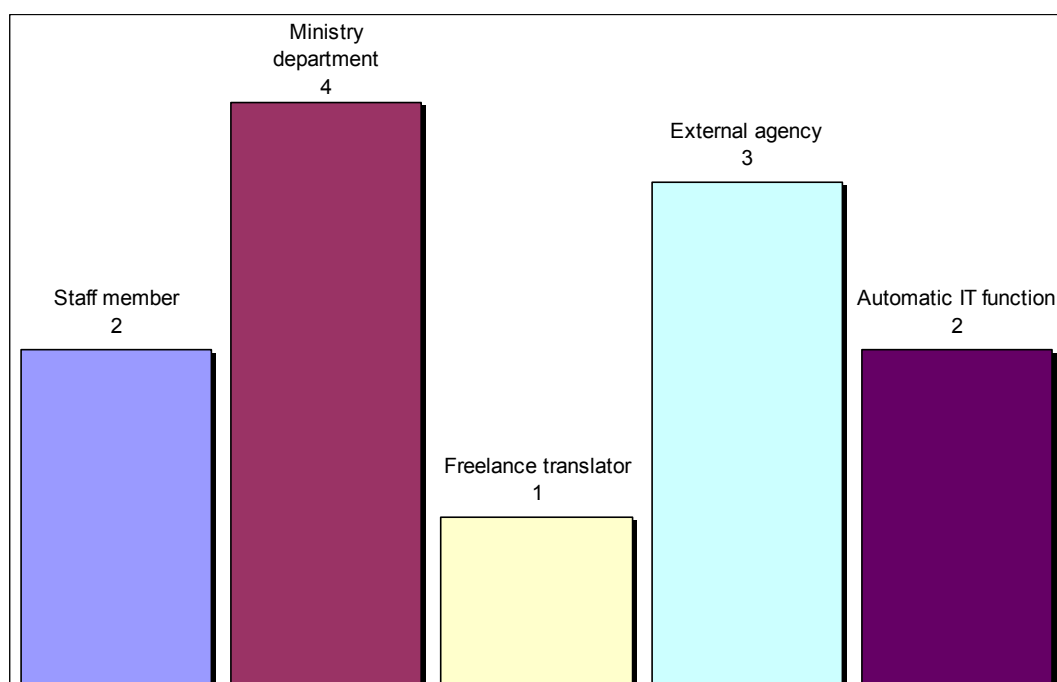
- MS to use a common working language, preferably English
- Convictions should be retransmitted in their original format and language

Analysis of data returns

The majority of consulted MS do engage in some form of translation of notified convictions although the method varies. Figure 7 shows the range of different methods used by the seven interviewed MS.

²⁷ Detailed data by MS is contained in Appendix C on page 103.

Figure 7 – Methods of translation used by interviewed central authorities



Of the 17 MS which responded to the detailed questionnaire, only two do not translate at least some notified convictions. There was no identifiable trend in terms of the difficulties raised in relation to translation but it was generally acknowledged that translating legal terminology is difficult and requires a combination of legal and language knowledge to be applied by one or more parties.

Discussion

Some MS are developing an automatic translation facility for use within ECRIS. While this will reduce the resources required for translation, it may be possible that an inaccurate translation could be saved within the system meaning that subsequent automatic translations using the first translation as a template would also be inaccurate. Although no specific examples or challenges were provided to the research team, this is a risk that has been identified by a number of observers including the European Association for the Defense of Human Rights (AEDH), Justice and the Law Societies of Scotland and England and Wales.²⁸

²⁸ See AEDH, 'The European Criminal Records Information System (ECRIS) creates new risks for the protection of personal data'; Justice, 'Coroners and Justice Bill Part 5: Briefing and suggested amendments for Committee Stage House of Commons', (London: Justice, 2009)

< http://www.justice.org.uk/data/files/resources/142/Coroners_and_Justice_Bill_HCcommitteestage_Part3_JUSTICE_amendments_feb09.pdf > [accessed 22 March 2011];

Law Society of England and Wales and the Law Society of Scotland, 'Joint position of the Law Society of England and Wales and the Law Society of Scotland on a vision for an area of freedom, security and justice in Europe from 2010 to 2014 in relation to criminal matters including procedural rights,' (Brussels: 14 July 2009)

While none of the interviewed MS had knowledge of any official disputes specifically in relation to translation issues, in the latter stages of the research the UK shared with the research team an example which illustrates many of the difficulties of translating not only between languages but between legal terminology.

The UK received a conviction notification from Italy and had it translated and added to the person's record. This was later disputed by the convicted person specifically in relation to the meaning of the sanction. Three separate translations were obtained by various parties and in each case the translators used a different English word – variously cancel, remit and dismiss – to describe the Italian sanction. All of these choices represented an equally valid translation outside of a legal context, but none of them enabled the UKCA-ECR to definitively understand the full meaning of the sanction. Only when the Italian central authority was asked to explain the legal meaning of the original Italian term, could the matter be brought to a resolution.

This example illustrates why translating legal terms is not straightforward as the meanings of words in the context of a particular jurisdiction tend to be very specific and have evolved through complex case-law, judgements and legal commentary which are not always transferable to another jurisdiction.

Another example provided by the UK is in relation to the offence under Section 224 of the German Criminal Code '*Gefährliche Körperverletzung*'. This was initially translated into English for the UKCA-ECR as 'grievous bodily harm' which is a valid translation in a non-legal sense. There is a specific offence in the UK of 'grievous bodily harm' so if the German offence is translated in that way, it might give the impression that it is the same as the English offence of the same name. However, research conducted in the UKCA-ECR concluded that the German offence was not necessarily a close match to the English offence as it would depend on the exact circumstances.²⁹

To try to overcome such difficulties, the translation company used by the UKCA-ECR is instructed to translate the notifications very literally rather than trying to translate or transpose a foreign legal concept onto a UK offence or sanction as the translators are not specialists in the law. For example the Spanish offence of '*delito de lesiones*' could be translated as a

<http://www.lawscof.org.uk/media/30006/3669_joint%20position%20on%20afs%20vision%20on%20criminal%20matters.pdf > [accessed 1 April 2011].

²⁹ The offence matching review conducted by the Northumbria University at Newcastle Law School and discussed in further detail later in this chapter on pages 72-84 concluded that the German offence could potentially be matched to Section 39 Criminal Justice Act 1988 – 'Battery', Section 47 Offences Against the Person Act 1861 – 'Assault occasioning actual bodily harm', Section 20 Offences Against the Person Act 1861 – 'Wounding/grievous bodily harm', or Section 18 Offences Against the Person Act 1861 – 'Wounding/grievous bodily harm with intent to do some grievous bodily harm'. The MO would be required in order to make a final determination.

whole offence into ‘grievous bodily harm’, but a more literal translation could be ‘offence of injuries’. This approach enables the experienced staff within the central authority to interpret the meaning of offence in the context of UK law using their knowledge and available resources to establish an equivalent offence rather than the translators who may not have this level of experience.

Conclusions

Even when a notification is translated into understandable language, this does not mean that the legal terms will be understood. Even if a common language was used by the majority of MS, while this would reduce the number of languages central authorities need to get translated, it would not resolve the underlying issue which is that translating legal ideas across jurisdictions is not straightforward because words which appear simple in terms of translation may have very different legal meanings attached in different jurisdictions. Depending on what the information is being used for there may be circumstances when a less precise translation is adequate. However as discussed in the detailed findings on understanding offences, on pages 42-47, a very precise understanding of the meaning of the offence is sometimes required and therefore the translation would need to reflect the appropriate legal nuances.

A variety of approaches to translation are employed by MS, as listed in detail in Appendix C on pages 103-105, all of which may be equally valid. No MS raised a significant issue in relation to their method of translation, indicating that each MS is content with their individual approach. However, a more standard approach across the MS which incorporates the translation or transfer of legal terminology or meanings may assist with the underlying challenge of translating legal ideas from one jurisdiction to another.

3. Detailed findings in the area of information on and layout of conviction certificate³⁰

Key Statistics

- **54%** (13 of 24) of MS which responded to the consultation overall indicated that they experienced challenges relating to the information contained on the conviction certificate, or the layout of the certificate

Key Challenges

- Missing information such as penal code article and court case number
- Certificates include abbreviations which cannot be understood
- Updates sent as new notifications and vice versa
- Introduction of NJR has changed the format in which the information is presented which in some cases makes it more difficult to understand
- Difficult to identify which sanction relates to which offence (UK notifications)

Analysis of data returns

Information on certificates

It was noted by some respondents that conviction certificates often contain abbreviations which cannot be understood.

Missing court case numbers and the absence of penal code articles on some notifications were also raised as problems. No information was provided on the problem caused by missing court numbers, but for penal code articles it was explained that without them, the detailed offence wording cannot be located by the central authority to assist with understanding of the offence.

Layout of information on certificates

Several MS reported that since the introduction of NJR the layout of information on conviction certificates had become more challenging to understand, particularly in relation to notifications from the UK which contained multiple offences where it was difficult to ascertain which offence linked to which sanction.

Discussion

Information on certificates

It is not surprising that MS receiving conviction certificates which contain abbreviations that relate to the legal system of another MS have difficulty in understanding these. It may be unavoidable to include them where the abbreviation is used on the criminal register of the convicting MS.

³⁰ Detailed data by MS is contained in Appendix D on page 107.

However, in such cases it would be useful if the convicting MS provided an explanation or glossary of the abbreviation to the MS of nationality.

The Framework Decision specifies that the applicable legal provision of the offence is obligatory information which the authors of the report interpret to mean the relevant penal code article should be supplied. For MS which require detailed information about the nature of the notified offence the absence of the penal code could be significant as without it, it is not possible to locate the detailed offence wording to enable the elements of the offence to be properly understood. How significant a problem this is will depend on the practice of the MS of nationality and how precisely they match notified offences to national law.³¹

Layout of certificates

The change in format of some MS notifications following the implementation of exchange via NJR was raised a number of times as presenting difficulties. As shown below, in this example provided by Spain, in some UK notifications the sanctions appear in one field whereas each offence appears in its own field but with no clear link between offence and sanction. In addition, information about sanctions which should appear on separate lines is all in one line making it even more difficult to identify which sanction relates to which offence.³²

Figure 8 – Example of challenging notification from the UK

Retirada permiso conducir:	
Condena condicional:	
Notas adicionales:	
Otras penas:	1 SENTENCE POSTPONED SENTENCED 27/01/11 AT [REDACTED] 1 SUPERVISION REQUIREMENT 2 SUSPENDED IMPRISONMENT 20 WKS CONCURRENT, WHOLLY SUSPENDED 12 MTHS 3 ALCOHOL TREATMENT REQUIRED 9 MTHS NON-RES DRUG/ALCOHOL TREATMENT 1 SENTENCE POSTPONED SENTENCED 27/01/11 AT [REDACTED] 1 SUPERVISION REQUIREMENT 2 SUSPENDED IMPRISONMENT 20 WKS WHOLLY SUSPENDED 12 MTHS 3 COSTS 85.00 4 COMPENSATION 500.00 5 ALCOHOL TREATMENT REQUIRED 9 MTHS NON-RES DRUG/ALCOHOL TREATMENT
Delito:	(360400) Otras lesiones dolosas (8.9.4.1) ASSAULT A CONSTABLE - F. Comisión delito 07/12/2010
Delito:	(360400) Otras lesiones dolosas (1.8.11.1) COMMON ASSAULT - F. Comisión delito 07/12/2010

Handwritten annotations: A large '1' with an arrow points to the first set of sanctions. A large '2' with an arrow points to the second set of sanctions. A large '1' with an arrow points to the first offence. A large '2' with an arrow points to the second offence.

The research team provided advice on how to interpret these notifications but, despite being based within the UKCA-ECR, also found it difficult and time-consuming to decipher this information.

³¹ This issue is discussed in greater detail in the section on understanding offences, on pages 42-47.

³² The example was one of a number provided all showing similar issues. The handwritten numbers and arrows were added by the research team to provide clarity.

Conclusion

Ideally, notifications should not contain abbreviations, but if this is unavoidable, the convicting MS should provide a glossary to assist other MS in understanding the information.³³

As of April 2012, all MS will be required to use ECRIS and therefore the format of conviction certificates may change again from that currently used by NJR. However, ECRIS should allow the format and content of conviction certificates to be standardised across the MS (notwithstanding differences in the information held on each MS criminal record and therefore available for transmission). Once users have become familiar with the ECRIS format, challenges in this area should be greatly reduced.

As with many of the key finding areas discussed in this report, if MS had greater knowledge of one another's legal systems and processes, which could be achieved with a centralised online resource of information, this would go a long way to increasing mutual understanding of one another's requirements and resolving some of the issues raised in this area.

³³ Detailed discussion around the issue of communication between central authorities and the requirements for a glossary of terms can be found in the detailed findings on communication on pages 53-54.

4. Detailed findings in the area of understanding offences³⁴

Key statistics

- **66%** (16 of 24) of MS which responded to the consultation overall indicated some problems in understanding the offences notified to them by other MS

Key challenges

- Insufficient information supplied to enable dual criminality to be established/for notified offence to be matched to an offence in national law
- Insufficient information provided to establish whether the notified offence is an administrative/minor offence or a criminal offence

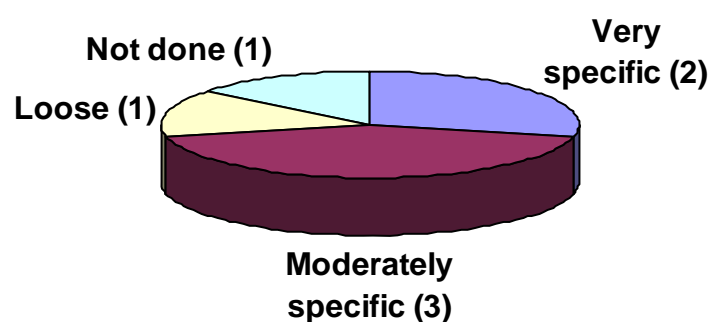
Selected suggestions for improvement

- Provision of the precise legal qualification/penal code article number **and** the offence wording on notifications
- Access to the laws of the convicting MS

Analysis of data returns

Establishing dual criminality³⁵

Figure 9: Level of dual criminality required by interviewed MS³⁶



³⁴ Detailed data by MS is contained in Appendix E on page 108.

³⁵ The simplest definition of dual or double criminality is the concept that the offence must be a crime in both relevant MS. De Bondt and Vermuelen argue that this definition is insufficient because 'in practice [dual criminality] has...many shapes and sizes[.]' The different approaches to assessing dual criminality are discussed later in this chapter. See Wendy De Bondt and Gert Vermeulen, 'Appreciating Approximation: Using common offence concepts to facilitate police and judicial cooperation in the EU', *EU and International Crime Control: Topical Issues*, ed. by Marc Cools and others (Antwerp: Maklu, 2010), pp.15-40.

<http://hdl.handle.net/1854/LU-885013> [accessed 15 March 2011].

³⁶ A detailed description of the processes followed by each of the interviewed MS can be found in Appendix E on page 109-110.

Interviewed MS described their processes for establishing dual criminality (also sometimes referred to as 'double criminality') to the research team, which then categorised these processes as either 'very specific', 'moderately specific', 'loose' or 'not done,' as shown in Figure 9. An example of 'very specific' matching would be a need to match a notified offence exactly to an offence in national law, to the point where the article or section of the criminal/penal code can be identified and confirmed to be a match to the notified offence. 'Moderately specific' matching would be where an offence is matched to a similar offence without the need for comparing precise sections and subsections of the statute. 'Loose' matching would be a general consideration of whether the behaviour described by the offence name would also be an offence in the MS of nationality, without comparing statutes. In some cases, no matching or consideration of dual criminality takes place, for example if the notified conviction is appended to the criminal record in its original format.

In the majority of MS some degree of assessment is made as to whether the notified offence is a criminal offence in the MS of nationality. Across the 18 MS which completed the detailed questionnaire and/or participated in interview, there are a wide variety of processes in operation as to how dual criminality is established, ranging between the 'loose' and 'specific' approaches. In some MS, there is the ability to add notified offences in a different format if a match to a national offence cannot be identified, such as recording it on the register under an open option that would not be disclosed, for example, on a criminal records certificate.

An issue raised by several MS is that the level of information provided is not always sufficient to be able to identify whether the notified offence is a criminal offence under national and therefore can be added to the register. For example in some MS the exact value of items stolen, smuggled or quantities of drugs possessed are required to establish whether the notified offence is a criminal offence (added to the register) or an administrative/minor offence (not added to the register) in the MS of nationality.

Three consulted MS which seem to require the most detailed correlation of notified offences to national law are the Czech Republic, Germany and the UK. Each of these MS has a very different process and reason for requiring this level of detail, as summarised below.

Czech Republic

Notified offences may only be added to the Czech criminal register following a decision by the Supreme Court. To do this, the full judgement including the description of the criminal code and the legal qualification of the offence is required. The court examines the facts contained within the judgement to establish if the act would have been a criminal offence in the Czech Republic. Only when this has been decided will it be entered onto the criminal register in the same manner as a conviction from a Czech court would be added.

Germany

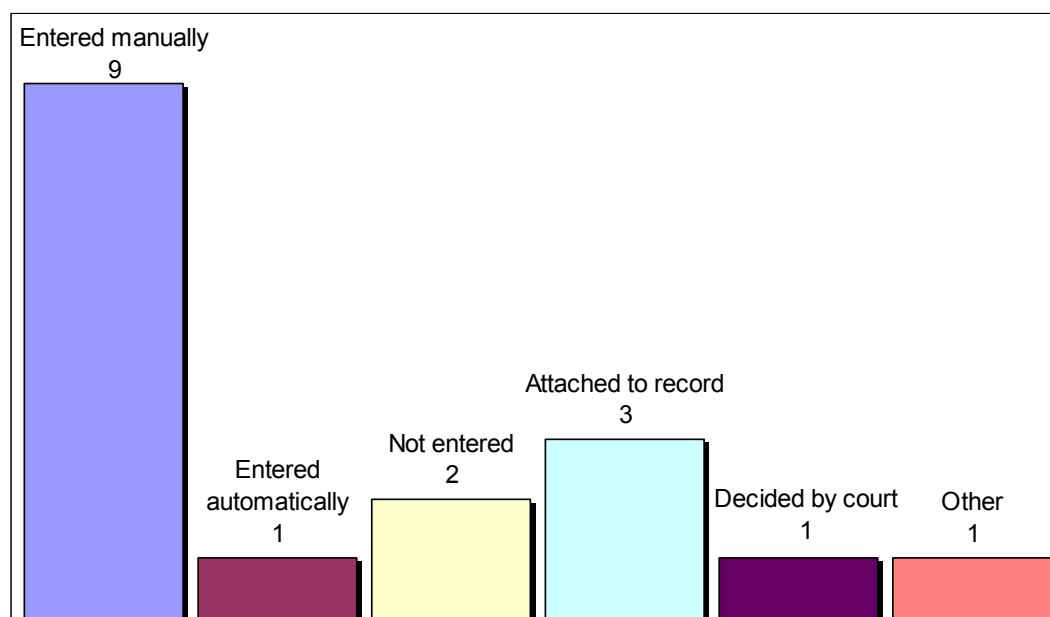
According to Section 54 *Bundeszentralregistergesetz* (German Central Registration/Record Law) notified offences must be confirmed to be an offence under German law. This is established by comparing the convicting MS offence to offences in Germany as described in Appendix E on page 110. Once the notified offence has been matched to the relevant section of the German criminal code, it is recorded onto the criminal register as a free text translation of the information on the notification document. If possible, the central authority then writes to the convicted person to advise them that their foreign conviction has been compared to the German criminal code and is deemed an offence in Germany and therefore added to the register. The letter includes details of the offence as translated into German from the notification (as entered onto the register) and gives the convicted person the opportunity to dispute the conviction.

United Kingdom

The national criminal register requires offences to be added using predefined codes which relate to specific UK offences.³⁷ Therefore, in order to add a notified offence to the criminal register, a comparison must be made and the closest equivalent UK offence selected and the offence is added using that code. This therefore means that the foreign offence is displayed as the UK equivalent, with a marker indicating its origin as a foreign offence. The English translation of the notified offence from the notification document is entered into a free-text field usually used for describing the circumstances of the crime. The free-text entry does not appear on disclosures made from the register and therefore only the UK equivalent offence would be included on disclosure certificates. In a small number of cases, generic offence codes are available for use for foreign offences for example 'fraud' and 'assault.'

All three of these MS are required to match the notified offences very specifically to their national laws and all have commented that additional information is required at least on some occasions to enable the match to be made. In the Czech Republic, additional information is always required and is requested via Mutual Legal Assistance. In Germany and the UK, additional information is requested on a case by case basis.

³⁷ The UK has three criminal registers, one for each jurisdiction. When referring to the national criminal register of the UK the authors unless otherwise specified are referring to the Police National Computer because this is the register updated by the UK Central Authority. If the discussion relates to the criminal registers in Northern Ireland or Scotland this will be specified.

Adding convictions to the criminal register*Figure 10: General procedure used by MS for adding convictions to the criminal register³⁸*

Once dual criminality (if a requirement) has been established, the ways in which notified offences are recorded onto the national criminal register vary from the straightforward attachment of scanned documents to codified entry. A common method of entering offences appears to be by free text as a translation of the information on the notification document.

DiscussionEstablishing dual criminality

Offence matching or equivalency is a significant challenge for some MS, such as the UK and the Czech Republic, but for many other MS it is less of a problem. Although the majority of MS consulted do assess the notified offence in the context of their national law, many have alternative options for recording the offence if an equivalent cannot be found. Generally, the researchers noted a pragmatic attitude to interpreting notified offences except where national law or systems required a more specific approach. Those MS which indicated on the initial questionnaire that they experience problems in understanding offences tend to be those which conduct a more specific process for understanding notified offences in the context of national law whereas those which did not raise understanding of offences as a problem tend to have alternative routes available if no comparable offence in national law can be established.

Ondrejova, in an article on the implementation of the principle of mutual recognition in criminal matters, discusses two different approaches to

³⁸ Based on the 17 MS which responded to the detailed questionnaire. Detailed information by MS on the procedures used is contained within Appendix E on page 108-109.

establishing dual criminality: examination *in concreto* which includes assessing all circumstances of the act for each specific case to establish whether the act conducted would also be a crime in the other MS. Examination *in abstracto* assesses only whether the criminal act is generally a criminal act in both MS and does not take into account the specific circumstances of the act which was committed.³⁹ The Czech Republic's approach is an example of examination *in concreto* whereas Romania appears to adopt an *in abstracto* approach, for example an offence of 'theft' would be processed because theft is also an offence in Romania, whereas an offence of 'abortion' would not be processed as abortion is not illegal in Romania. Most MS come on a spectrum between the two approaches, with Germany and the UK closer to *in concreto* than, for example, Spain and Cyprus. This is significant because it means that the level of understanding required in relation to notified offences differs between MS and is largely dependent upon the laws and processes of each jurisdiction. The more specific the offence matching required the more likely it is that the information exchanged routinely under the Framework Decision will be insufficient.

It is significant that those MS which conduct a form of dual criminality closer to *in abstracto* were the most positive about the forthcoming benefits of ECRIS in terms of understanding offences. For example, Spain, Italy, the Netherlands, Romania and Belgium were all very positive about the consistency and common categories of offences which will be used on notifications. Some of these MS specifically commented that the provision of codes will make understanding offences easier and may reduce the need for a detailed comparison of criminal codes because all MS have had to map their offences against an agreed set of codes. The need for translation may also be reduced. In contrast, the UK, which inclines more towards the *in concreto* approach, stated that when ECRIS is implemented the penal code article and offence title as well as the code will still be required to enable them to conduct the necessary level of comparison.

Conclusion

Because of the challenges experienced by the UK in matching notified offences, the terms of reference of the project assumed that this would be a common challenge for other MS. However, the research has shown that significant problems in this area tend to be limited to MS that for legal or technical reasons are required to carry out such specific matching that an in-depth understanding of the notified offence beyond that which is required in other MS is necessary.

There is evidence of general challenges for MS in understanding one another's offences. However, the consensus between consulted MS is that these can largely be resolved by good communication, one-off

³⁹ Anna Ondrejova, 'Implementation of the principle of mutual recognition in criminal matters,' *European Criminal Law Academic Network*, < <http://www.eclan.eu/Utils/ViewFile.aspx?MediaID=542&FD=4E> > [accessed 24 March 2011]

explanations, availability of criminal or penal codes for consultation and a pragmatic approach to establishing dual criminality. Where a more detailed level of understanding of offences is required this is very much dependent on national laws or systems and processes which vary across MS. MS which conduct very specific matching seem to encounter more challenges than other MS. This can lead to a requirement for additional information outside of the obligatory information specified in the Framework Decision. The difficulties of obtaining this additional information in turn can lead to difficulties in attaining the required levels of understanding of offences to meet national requirements. Processes which do not allow for offences to be understood to the required level using the information routinely exchanged under the Framework Decision may need to be reconsidered due to the challenges that have been identified in relation to obtaining additional information that are discussed on pages 50-51.

5. Detailed findings in the area of understanding sanctions⁴⁰**Key statistics**

- **83%** (20 of 24) of MS that responded to the consultation overall indicated challenges in understanding sanctions

Key challenges

- Sanctions in relation to driving offences not understood
- Unknown legal institutions
- Challenges regarding understanding joint sentences from some jurisdictions

Selected suggestions for improvements

- Need to know the detailed information about the legal norm that the sentence is based on in order to compare the decisions
- ECRIS will help with understanding sanctions as all MS will have to use the same method of recording decisions
- ECRIS will also assist with the use of common reference tables and sanctions codes which will improve understanding

Analysis of data returns

Overall in the consultation, understanding offences was the issue raised by the most MS. In the detailed questionnaire, two MS found the UK sanction 'driving licence endorsed' confusing. UK community orders were also raised as difficult by more than one responding MS. A number of MS noted that the difficulties in understanding sanctions lay in the differences between the legal systems of different MS. There was some acknowledgement that the introduction of common recording methods for sanctions with ECRIS may go some way to resolving the problems identified.

Discussion

One of the key issues identified by MS is that sanctions handed down within the context of one legal system may attract a different meaning if interpreted within the context of another jurisdiction. A very simple example of this is found in the way Spain and the UK respectively record punishments for traffic infringements on the person's driving licence. In Spain, each licence-holder begins with 12 points, which are deducted as a sanction when a traffic infraction is committed. In the UK, the opposite system is used. Licences have no points to begin with but points are accumulated in response to infractions. In this context, the UK sanction of 'driving licence endorsed' means that points have been added to the licence. Spain provided an example which highlights the importance of

⁴⁰ Detailed data by MS is contained in Appendix F on page 113.

understanding these differences when a notified UK sanction ‘driving licence endorsed’ was incorrectly interpreted to mean a disqualification from driving which was subsequently disputed by the convicted person.

Although problems in understanding sanctions were frequently raised as an issue in both the initial and detailed questionnaires, limited information in respect of understanding sanctions was collected during interview. Where specific examples in relation to UK sanctions were included on the questionnaires, the research team provided the MS with an explanation or definition of the sanction which in the majority of cases resolved the query and did not therefore require discussion at interview. In some cases, problems initially identified as understanding sanctions were actually due to the confusing layout of conviction certificates and these problems are dealt with in the detailed findings on the layout of conviction certificates on pages 39-41.

Conclusions

While attempting to answer the specific queries on UK sanctions which had been raised on the questionnaires, the research team found it challenging to identify reliable source material for the provision of legal definitions, even though they personally understood what was meant by the sanction wording because of their familiarity with the UK legal systems. This may explain some of the challenges raised as generally across the EU this information appears not to be as widely available as information on offences which can usually be found in online versions of the relevant penal code. In other words, sanctions are probably no more difficult to understand than offences, despite being raised by more MS as a problem. The problem is that it is more difficult to research the meaning of sanctions and therefore more difficult to resolve problems which have arisen in respect of understanding.⁴¹

⁴¹ Further examples relating to the understanding of sanctions are discussed in the section on detailed findings for translation on page 37-38. The detailed findings on communication discuss how improved communication between central authorities could enhance understanding of sanctions, see page 54.

6. Detailed findings in the area of obtaining/requiring additional information⁴²

Additional information should be understood to mean information relating to the circumstances of a conviction which the convicting MS is not required to supply under the Framework Decision.

Key Statistics

- **16%** (4 of 24) of MS that responded to the consultation overall indicated that they experienced challenges in obtaining/requiring additional information
- **30%** (7 of 23) of MS that responded to the initial questionnaire selected the MO as useful
- **100%** (7 of 7) of the MS which stated that the MO would be useful also indicated that they had difficulties understanding foreign offences

Key Challenges

- Obtaining a copy of the judgement from the convicting country can be problematic
- Difficult to know which authority or which court to contact when trying to obtain the full conviction

Selected suggested for improvements

- To include the process of requesting additional information and judgements in the ECRIS non-binding manual for practitioners
- Create a list stating which authority should be contacted in each MS to obtain MO information

Analysis of data returns

There are no discernable trends as to whether MS do or do not require additional information such as MO as responses were very variable. Based on the interviewed MS, the majority do not hold MO or similar information within the central authority.

A specific issue was raised by the Czech Republic in relation to the information provided on UK conviction notifications which is never sufficient to enable convictions to be added to the criminal register. Additional information is requested via MLA, but it is very difficult to obtain this information.

The interviews identified the key problem relates to central authorities not knowing the procedure to obtain additional information from other MS because of the different processes and systems in operation. Some of the interviewed MS expressed frustration that they are frequently asked for

⁴² Detailed data by MS is contained in Appendix G on page 115.

additional information that they do not hold. In response to this area of challenge, two MS suggested compiling information about the correct process for each MS and making it available to all central authorities.

Discussion

The problem detailed above and identified by the Czech Republic is because the Czech Supreme Court decides on the entry of notified offences onto the Czech criminal register and for this purpose requires information relating to the description of the criminal conduct in more detail than is routinely provided on the notification document. The Czech central authority advised that MS typically provide court judgements on request containing the necessary additional information. The Home Office in the UK, which is responsible for the exchange of information under MLA, is unable to provide this additional information routinely and therefore the Czech Republic is unable to enter UK notified convictions into their criminal register.

Germany provided an example of a bilateral agreement made with Switzerland for which all traffic violation offences are automatically accompanied by additional information. Although Switzerland as a non-EU country sits outside of the Framework Decision, this demonstrates good practice in that an agreement has been made to provide additional information routinely in response to a specific issue. MS could look to set up these types of agreements in the future where they encounter specific issues.

The main problem raised in relation to obtaining additional information was knowing how to best obtain this information from other MS as the processes varied. The research team themselves can appreciate this problem because of the challenges they experienced in trying to obtain answers to queries they received from other MS about the correct route for obtaining certain types of additional information from the UK.

Conclusions

Additional information is not required by all MS all of the time. It is however helpful occasionally to some MS and links to the challenges in understanding offences and sanctions. Where MS commented that they do sometimes require additional information, they also identified some challenges in obtaining it. As there is no clear definitive process for obtaining this additional information across the EU and each MS has a different process a key suggestion made was in relation to compiling information about the process for obtaining this information for each MS in an easily assessable format and location. This may go some way to making the process clearer.

7. Detailed findings in the area of communication between central authorities⁴³

Key statistics

- **37%** (9 of 24) of MS that responded to the consultation overall indicated that they experienced challenges with communication between MS
- **26%** (6 of 23) of MS indicated on the initial questionnaire that better communication with the UKCA-ECR would be helpful
- **39%** (9 of 23) of MS indicated on the initial questionnaire that one off explanation of specific queries would be useful

Key challenges

- Reason for rejecting requests is not always specified by some MS
- Different judicial systems can be difficult to understand and affects the understanding of criminal records information
- Duplicate queries and questions from the same central authority when central authorities do not have a specific contact person for queries
- Receiving requests from other MS asking for information which the central authority does not hold
- Notifications and communications received in some languages cannot be understood by staff in the central authority
- Contact details contained in the Manual of Procedure are out of date
- Differing information available to different central authorities depending on their set-up

Selected suggested for improvements

- Have named contact(s) in each central authority for queries and communications
- All communications to be in standard language, for example English
- Update the Manual of Procedure to include more up to date contact details
- Conduct exchange visits between central authorities to develop better understanding of each other's systems

⁴³ Detailed data by MS is contained in Appendix H on page 117.

- Develop a more structured communication strategy for communication and each MS to provide general guidance information
- The ability to send a query within the ECRIS system

Analysis of data returns

Day to day communication between central authorities is generally effective. Most MS acknowledged that communication with some MS is better than others, which was generally because they shared a common language or exchanged higher volumes of information than with other MS. The most common method of communication was email. Several MS also identified that responding to queries was a burden on their limited resources. The most popular suggestion for improving communication between MS and reducing the burden on resources was to have named contact persons within each central authority.

Discussion

No MS identified a significant problem in current communication. Although some MS expressed a preference for a specific type of communication – usually email – every MS which was consulted was flexible in this matter depending on the needs of the MS with which they are communicating.

One MS which stated that dealing with queries was sometimes a burden also identified that the burden was increased because they were repeatedly asked the same queries by the same MS but by different individuals. This indicates that some MS neither have a single point of contact for communicating with other MS nor a method in place for centrally storing answers to queries.

The Czech Republic stated that the legal system of ‘continental’ states is closer to theirs than a state with ‘common law’ implying that it is easier to understand those MS with similar systems. In the focus group conducted with the UKCA-ECR at the beginning of the research, it was suggested that to help improve the understanding of other MS systems larger central authorities could consider designating ‘country champions’ which would assist not only with managing the flow of communication but also in reducing queries as those individuals would then be able to build up specialist knowledge about the legal systems of the MS they are championing.

Some MS were frustrated because they are constantly asked for information they do not hold, for example information about wanted persons or additional information which is not held in the central authority. This issue may be linked to the broader remit of the authority which provides the central authority in each MS for example whether it is based in the police or in a justice ministry again indicating a lack of understanding by other MS as to how this affects the information available to central authority staff.

Conclusions

Communication in itself was not raised as a major problem by MS as most acknowledged that day to day communication is effective. However, the research team found that communication may resolve some of the major issues raised in relation to other areas. Challenges identified in the areas of obtaining additional information, understanding disposals, identity verification, information on/layout of conviction certificate, understanding offences, translations and understanding judicial systems would all benefit from improved communication between central authorities. For example, a centralised web-based resource could provide definitions of terms, information about legal systems and processes, access to criminal codes, a history of frequently asked questions and perhaps an online discussion forum which may reduce the numbers of queries made through other routes. As discussed in the relevant sections, one of the main causes of problems in understanding exchanged criminal records information is in not understanding the context from where the criminal record originates. This resource may be useful to MS to improve their understanding in all areas and this will overall help to improve the general understanding of criminal records information across MS.

The suggestions relating to named contacts are relatively easy to implement and if central authorities were to do this it may decrease the number of queries and therefore the resources needed to deal with these at the same time increasing understanding of the criminal records information.

8. Detailed findings on other issues raised⁴⁴

The areas which are included within other issues have been grouped by the research team into the following areas:

- ECRIS/NJR (e.g. volumes)
- understanding the rules/processes of other jurisdictions
- lack of information exchanged
- requests

Key statistics

Challenges categorised as other issues were specified by **33%** (8 of 24) of MS.:

- **30%** (7 of 23) MS responding to the initial questionnaire indicated that they expected **NJR / ECRIS** to improve the other challenges they had identified
- **8%** (2 of 24) of MS provided challenges in relation to the **lack of information exchanged**

Key challenges

Understanding the rules/processes of other jurisdictions

- Require information about when the conviction becomes final (*res judicata*) in respect of UK notifications
- Different MS rules on retention/deletion of convictions is challenging
- Convictions in absentia lead to disputes
- Historic laws – when convictions are notified which relate to historic legislation these can be particularly challenging to understand as it is difficult to locate the relevant penal/criminal code

Lack of information exchanged

- Some MS not sending any notifications

Requests

- Other MS making requests for non-nationals when they should be making that request to the country of nationality as they should hold all notified convictions for their nationals
- MS that will only accept requests for their own nationals and those that will accept requests for other nationals is inconsistent
- The restrictions under Article 9 of the Framework Decision mean that information about criminality received in response to a request which could be of relevance for policing purposes and public protection cannot be stored on police systems

⁴⁴ Detailed data by MS is contained in Appendix I on page 119.

Selected suggestions for improvements

Requests

- Amend the Framework Decision to enable conviction information obtained in response to a request to be stored either on the criminal register or on intelligence databases
- Information to be supplied by each MS as to how long in each country conviction information takes to be entered onto the criminal register

Analysis of data returns

ECRIS/NJR

The most frequently raised concern in respect of ECRIS is the anticipated increase in volume of exchange that it will initiate and how MS will be able to cope with these increases.

Requests

The only problem relating to requests which was raised by more than one country was the issue of responding to requests in relation to non-nationals, but even this was only raised by Spain and the UK.

The issue around the restrictions on storage of requested information was raised three times, by each of the jurisdictions within the UK, but was not an issue for any other MS.

Discussion

ECRIS/NJR

Generally MS were positive about the forthcoming implementation of ECRIS. Although some concerns were expressed about how MS would cope with the anticipated increase in volume of exchanged information overall this increase will lead to a fuller record being held in the MS of nationality.

Understanding the rules/processes of other jurisdictions

A number of MS identified that the UK submits notifications of convictions where the conviction is not final. For example, in Greece there are three types of judicial decisions:

1. First instance decision (first instance courts)
2. Final Decision (courts of appeals)
3. Irrevocable Decision (Supreme Court)

Numbers 1 and 2 (*οριστική* and *τελεσίδικη*) both translate into English as 'final decision' although they have a significantly different meaning in Greek. The legal system in Greece permits that only 'irrevocable' convictions or orders may be kept. However, in the UK the convictions notified to the MS of nationality are the equivalent of the first instance decisions, which under some legal definitions are also 'final decisions' but differ from the Greek understanding. This creates difficulties for Greece in dealing with UK notifications because they don't know whether the decision is irrevocable in the context of Greek law.

The issue of understanding the deletion/retention rules of other MS was raised as a challenge by only one MS but was discussed in general terms in all of the structured interviews. For those MS which apply the deletion rules of the convicting MS it can be challenging to know the rules for all other jurisdictions.

The issue of convictions in absentia was raised specifically by the UK because it leads to disputes as the convicted persons are not aware they have been convicted in another MS until the information is disclosed from their UK criminal record. Convictions in absentia are very rare in the UK and therefore can be difficult to comprehend for both the central authority and the convicted person.

Requests

Relatively little data was collected in relation to problems in understanding relating to requests. This may be explained by the fact that the only MS that routinely translate the reply is the UK and therefore specific challenges with understanding information contained on the replies are not of great importance to the majority of MS.

The issue raised by Spain and the UK relates to the making of requests to MS for information about persons who are not nationals of the requested MS. Although in theory, each MS should have a complete record of convictions for its own nationals, it is generally recognised that convictions which pre-date the implementation of the Framework Decision may not have been notified to the MS of nationality or may not have been added to the criminal register or stored for retransmission. Therefore if a requesting MS is aware that there may be convictions in another MS not of the person's nationality they may choose to make the request direct to the convicting country to ensure they have a full conviction record.

The UK notes that there is inconsistency in which MS will respond to such requests. Spain's view is that such requests ideally should not be made, although they will respond to them if the person is a national of a MS with which Spain has not completed full exchange or which Spain is aware is subject to delays in responding to requests. These rationales may be different from MS to MS, leading to the inconsistency noted by the UK

The Framework Decision specifies that the requested information may only be used by the requesting MS for the purposes of the specific criminal proceeding for which it was requested, other than to prevent 'an immediate and serious threat to public security'.⁴⁵ This restriction on use was raised as an issue only by the UK. This may be because the central authority is provided by the police, which also own the information on the criminal registers which is used for a variety of policing purposes. Information received in response to requests would be useful for public protection purposes and intelligence led policing, which may be why this issue appears to be so important to the UK.

⁴⁵ Framework Decision, Article 9(3).

Conclusion

ECRIS/NJR

MS are looking forward to the implementation of ECRIS and are positive about the benefits it will bring. Where concerns have been raised, at this stage these are speculative. To ensure any problems or challenges arising out of ECRIS can be resolved a review of its operation will need to be conducted once it has been implemented and in operation for an appropriate period.⁴⁶

To assist with the challenge identified relating to the increase in volumes with ECRIS MS may wish to consider making bilateral agreements with MS with which they expect a significant increase in exchanged information to occur, to provide this information in stages to ensure it is managed appropriately. For example, the UK has agreed with Italy that a build-up of notifications relating to UK nationals will not be sent all at once but rather in stages with mutually agreed volumes.

Understanding the rules/processes of other jurisdictions

All of the issues raised under the heading of understanding the rules/processes of other jurisdictions and discussed above support the findings elsewhere in the research and detailed in the relevant sections that much could be done to improve the mutual understanding of criminal records information if the central authorities had access to explanations of the procedural law, processes and practices of other MS. The web-based resource suggested and described elsewhere in this report could also be a possible solution to these types of issue.

In relation to the issue around the final decision the Framework Decision defines a conviction as ‘any final decision of a criminal court against a natural person in respect of a criminal offence.’⁴⁷ However, what is understood as a final decision varies across different jurisdictions.

Lack of information exchanged

The issue raised about some MS not sending any notifications may be resolved with the implementation of ECRIS.

Requests

This situation with the challenges identified around making requests for non-nationals will naturally improve over time as the exchange mechanisms will have been in place for longer, leading to a more complete record in the MS of nationality. In the meantime, it may be helpful if central authorities were aware of the policies of other MS in responding to requests for non-nationals and whether particular MS are experiencing delays in processing

⁴⁶ According to the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Delivering an area of freedom, security and justice for Europe’s citizens – Action Plan Implementing the Stockholm Programme* COM (2010) 171 final of 20.4.2010 a review of ECRIS is planned for 2014.

⁴⁷ Framework Decision, Article 2(a).

notifications or any other reasons why the information would not be available.

It is unlikely that suggestions to amend the Framework Decision to permit the storage of requested information on the requesting MS criminal register would be accepted in other MS. There are likely to be a number of data protection concerns, such as proportionality and data quality. Such issues were discussed in detail when current Framework Decision was negotiated.⁴⁸

⁴⁸ For example the European Parliament submitted a legislative resolution suggesting even more stringent restrictions on the use of requested information, specifically that when the use of the information for a different purpose is required to prevent an immediate and serious threat to public security the requesting MS shall provide a notification to the requested MS setting out 'the fulfilment of the conditions of necessity, proportionality, urgency and seriousness of the threat'. Although this suggestion was not included in the Framework Decision it indicates the seriousness with which data protection concerns are viewed. See European Parliament legislative resolution on 17 June 2008 on the proposal for a *Council framework decision on the organisation and content of the exchange of information extracted from criminal records between Member States* (5968/2008-C6-0067/2008_2005/0267(CNS)).

4.2 UK Stakeholder Findings⁴⁹

4.2.1 Introduction to UK Stakeholders

The previous section discussed the role of central authorities in the exchange of criminal records information. This section of the report concerns authorities which have either a strategic or operational interest in the exchanged criminal records information once it has been processed by the central authority. This is relevant because MS are under a 'minimum obligation' to take into account previous convictions handed down in other MS during the course of new criminal proceedings. Therefore this phase of the research is intended to identify whether there are any specific challenges in understanding exchanged criminal records information when it is being taken into account as per the obligation set out in the Council Framework Decision 2008/675/JHA on taking account of convictions in the MS of the European Union in the course of new criminal proceedings.⁵⁰ Although the research into central authorities included as many MS that wished to contribute, for this section only authorities in the UK provided returns to create a snapshot of the challenges and problems in understanding exchanged criminal records information in one MS.

Strategic and operational policy in relation to the use of EU conviction information within the UK is complex, as it encompasses three jurisdictions with some devolved responsibilities for legislation and policy in relation to recording, use, retention and exchange of criminal records information. Overall responsibility for international negotiation, including the Framework Decision, any future amendments to it and interpretation of the agreement, sits with the Home Office, which consults with Ministers from Northern Ireland and Scotland.

Criminal records policy is a devolved matter for each administration (England and Wales, Northern Ireland and Scotland respectively). Northern Ireland is governed by the Northern Ireland Executive and the Department of Justice Northern Ireland is responsible for criminal justice matters. Other authorities which have a strategic or operational interest in criminal records exchange in Northern Ireland include the PSNI, Northern Ireland Courts and Tribunals Service (NICTS), Public Prosecution Service for Northern Ireland (PPSNI) and the Judiciary.

In Scotland, responsibility for policing is devolved to the Scottish Parliament, and the Scottish Government has maintained a policy and

⁴⁹ Of the two authorities outside of the UK which were invited to participate in this stage of the research, one declined to participate and the other (Eurojust) provided a response which indicated they did not experience any challenges in understanding exchanged criminal records information. Therefore, all data returns in this section relate to UK based authorities.

⁵⁰ Council of the European Union (2008) *Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings* (OJ L 220 of 15.8.2008).

strategic interest throughout the development of the Framework Decision and of NJR and ECRIS. The Scottish Government is also responsible for introducing or amending legislation in Scotland in accordance with the agreement. Other authorities in Scotland with a strategic or operational interest in criminal records exchange which responded to the consultation include the Crown Office and Procurator Fiscal Service (COPFS), the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Court Service (SCS). As some operational responsibilities with respect to the management of exchanged criminal records information are dealt with locally by police forces, Tayside Police also provided a response to cover these issues.

The Association of Chief Police Officers (ACPO) provides a strategic lead on policing matters for England, Wales and Northern Ireland. It also provides and partially funds the UKCA-ECR, which is part of the ACPO Criminal Records Office (ACRO) and is the owner of the Retention Guidelines which stipulate the rules regarding the management of information on the Police National Computer.⁵¹ Other authorities which responded to the consultation include the Crown Prosecution Service (CPS), the National Offender Management Service (NOMS), the Judicial Office for England and Wales and the National Policing Improvement Agency (NPIA). The table on the following page shows which authorities responded to the consultation and which jurisdictions they cover.

Use of EU criminal records information in the United Kingdom

Collectively, the criminal justice systems in each of the three UK jurisdictions receive criminal records information from other MS not only under the Framework Decision but also through a number of other mechanisms including MLA and Article 5 of the Council of Europe Convention on the Transfer of Sentenced Persons, as well as via Interpol and police to police enquiries. Specific uses by the consulted authorities for exchanged criminal records information include making prosecution decisions, opposing bail applications, bad character evidence, sentencing, offender management and probation and extradition.

⁵¹ The ACPO Retention Guidelines are also applied to information held on the Causeway Criminal Record Viewer which is the criminal register in Northern Ireland. Information held on the Scottish Criminal History System (CHS) and Scottish convictions held on the PNC are governed by the Weeding Policy for the Scottish Criminal History System.

Figure 11: UK authorities with a strategic or operational interest in exchanged criminal records information which responded to the consultation

	Government		Judicial System			Police Service	
	Government	Government Services	Judiciary	Prosecutors	Court Services		
England and Wales	UK Government (Home Office)	National Offender Management Service (Ministry of Justice)	Judicial Office for England and Wales	Crown Prosecution Service		Association of Chief Police Officers	National Policing Improvement Agency
Northern Ireland		Northern Ireland Executive (Department of Justice)	Judiciary	Public Prosecution Service for Northern Ireland	Northern Ireland Courts and Tribunals Service		Police Service of Northern Ireland
Scotland		Scottish Government (Police Powers and Public Protection Unit)			Crown Office and Procurator Fiscal Service	Scottish Court Service	Association of Chief Police Officers Scotland

4.2.2 Detailed Findings in Relation to UK Stakeholders

Figure 12 – Challenges identified by UK stakeholder respondents in relation to the key areas.

Challenge Raised	Government				Judicial System						Police Service					
	Home Office	Northern Ireland Executive	Scottish Government	NOMS	Judicial Office for England and Wales	Northern Ireland Judiciary	CPS	PPSNI	COPFS	NICTS	SCS	ACPO	ACPOS	NPIA	PSNI	Tayside Police
Identity		X	X		X			X				X				
Translation				X		X						X				
Understanding offences	X	X		X	X			X	X			X				X
ECRIS codes			X		X					X	X					
Obtaining additional information	X		X	X	X	X	X								X	
Understanding sanctions				X	X	X		X	X							
Requests				X				X	X	X			X			X
Understanding different judicial systems	X	X						X		X	X					
Data quality of the record		X						X		X						
Other issues	X	X	X		X	X				X	X	X		X		

Suggestions made for improving the understanding of exchanged criminal records information

Figure 13 – Suggestions made by UK stakeholders for improvements in key areas

Authority	Suggestion
Verifying identity	
PPSNI	Where there is doubt as to the identity of an individual, access to national fingerprint records databases would be of assistance.
Translation	
NOMS	The translation of offences should not be literal but based on principle of seriousness of offence, victim impact, degrees of pre-meditation.
Understanding offences	
ACPO	It may be critical to consider a pragmatic cost effective way forward, perhaps only identifying the significant and serious offences by way of coding. This should be sufficient for court purposes, all antecedent history is made available to the defendant and can be challenged if deemed inaccurate.
NOMS	It would be helpful if there was a central European wide guidance translating each offence in MS to equivalent in other jurisdictions. This could be web based for ease of access.
NI Executive	Different offences across states would mean they do not map to our data set. Either a set of agreed offences will be required or data needs to be mapped across states.
PPSNI	Accurate translation and availability of an agreed EU wide glossary of terms, which could also link offences to either the exact or closest UK equivalent.
Tayside Police	It would be useful to receive the previous convictions with a fuller offence description.
ECRIS codes	
Judicial Office of England and Wales	Senior Judiciary have expressed a view that they should be involved and provide input for the coding of categories.
Obtaining additional information	
Home Office	Get [the MO] upfront because it will be a hint to people that actually there is a series [of previous offending] of how this [offender] is operating.
CPS	A regulated mechanism for obtaining more detailed information relating to certain offences.... it would be useful if we could return to the relevant central authority and task that authority to obtain the information for us, rather than our having to make a formal MLA request.
Understanding sanctions	
Northern	Stating the sentence in clear English and when they were

Ireland Judiciary	released.
Northern Ireland Judiciary	If each country's central authority produced a list of the sentences that can be passed – glossary of disposals but also the detail of conditions – would be helpful if it was an internet resource.
Requests	
NOMS	There should be a process by which there is ease of access to criminal record search within all MS...[an] automatic process by which such criminal records/information is available to CJ [criminal justice] practitioners and OM [offender managers] in particular, rather than being reliant on enquiries having been made by the Police at the point of arrest.
NOMS	To ensure that EU convictions are recorded on the PNC.
ACPOS	If at all possible, consideration should be given to redressing this stance [that restricts the use of requested information] and at the very least allow all conviction data to be recorded on intelligence systems.
Tayside Police	Knowledge of criminals within our communities for intelligence purposes is...of immense benefit and the criteria for this should be expanded.
Understanding different judicial systems	
NI Executive	Provision of clear definitions and agreed common practices across the different jurisdictions.
PPSNI	A glossary of terms for each jurisdiction.
Home Office	A central repository that everybody has access to [including]...a very short précis of how major parts of our system work.
Data quality of the record	
NI Executive	Data quality is possibly an on-going issue addressed through regular internal review and corrective action by individual jurisdictions.

Analysis of key themes and trends

The three most common issues identified were understanding offences, obtaining additional information and making requests. A less frequent issue was around the data quality of records which was raised by three respondents all from Northern Ireland. Generally, the areas identified corresponded to the key areas identified by central authorities.

The most common suggestion for improving understanding of criminal records information was the provision of glossaries or common definitions of terms, which was suggested in respect of a number a different issues.

There was no notable correlation between the type of authority and the issues they identified.

Discussion

Identity

Confirming the identity of the offender was noted as important by several respondents. In particular, the Scottish Government stated that criminal records are ‘of limited value unless they can be unequivocally linked to an individual.’ No specific examples of persons being incorrectly identified were provided. However, the Judicial Office for England and Wales, the Scottish Government and PPSNI all noted the usefulness of fingerprint information for verifying identity.

Translation

Two respondents which raised translation as an issue specified that the problem is with the literal translations provided via the UKCA-ECR, with one respondent stating that this method results in translations which often appear stilted and theoretical which clouds and obscures the issues.⁵² The other respondent suggested an alternative method of translation, based on articulating the seriousness of offence, victim impact and the degree of pre-meditation. Although this suggestion is on the face of it attractive it would be extremely challenging to achieve for the reasons outlined in the central authority detailed findings on translation on page 36-38.

Understanding offences

A number of respondents identified that offences between MS do not correspond directly to UK offences and can be challenging to convert. This is a problem because if law enforcement or prosecution agencies do not fully understand a previous offence they may not properly consider its gravity when sentencing in the current criminal proceedings or considering how to manage an offender post-conviction. However, it was also noted by the CPS and the COPFS that while they need to understand the meaning of an offence, it is not necessary for them to convert or match it precisely to a UK offence. They would conduct research, for example consulting academic texts from the relevant jurisdiction or contacting the European Judicial Network for clarification on the legal aspects of, for example, the component parts of a particular offence. It may be necessary to obtain additional information from the convicting court to fully understand the context of the conviction.

There are some occasions when the offence will need to be converted into a UK equivalent. For example, in England and Wales repeat offenders committing certain types of offences such as domestic burglary or offences relating to Class A drugs may be subjected to a minimum sentence on their third conviction. Previous convictions for the same offence handed down in other MS would be relevant and therefore it would be necessary to have sufficient information to establish whether, for example, the previous conviction related to a domestic burglary or a particular type of narcotic.⁵³

⁵² As described in the central authority detailed findings the method used by the translators on behalf of the UKCA-ECR is designed to prevent translators who may not have legal expertise from transposing legal meanings from one jurisdiction to another. See pages 37-38.

⁵³ Sections 110 and 111, Powers of Criminal Courts (Sentencing) Act 2000. <http://www.legislation.gov.uk/ukpga/2000/6/part/V/chapter/III>

ECRIS codes

The respondents will not be direct users of ECRIS however the information exchanged via ECRIS will be used by these authorities. There was acknowledgement from several respondents that ECRIS and using offence and sanction codes will go some way to streamlining the process of criminal records exchange, reduce the requirements for translation and enhance mutual understanding of criminal records. However, it was also noted that standardising offence codes and categories of information might be challenging especially as organisations are seeking more and more information.

Obtaining additional information

A number of authorities stated that they sometimes need to obtain additional information to that which is routinely exchanged via the central authorities under the Framework Decision. For example, the CPS commented that while the exchanged information is helpful, because it will alert the prosecutor to a matter which could be of great relevance to their proceedings, it is invariably insufficient for court purposes. In contrast to the mandatory 10 day response period for information requested under the Framework Decision, several authorities noted that delays in criminal proceedings of up to several months could result when additional information was needed and had to be requested via MLA. Both the CPS and COPFS noted that once an authenticated copy of the sentencing document, which usually contains the offence, the conviction, the sentence, and the essential circumstances of the offence including aggravating and mitigating factors, has been obtained this is often sufficient for their purposes.

The Home Office stated that because of the time delays and other challenges in obtaining additional information that consideration should be given as to whether the additional information will actually be relevant. For example, in the case of sexual offences background information about the circumstances of the crime and the age of the victim are important criteria and so the information should be obtained if possible, whereas for a previous shoplifting offence, the sentencing remarks may not add any value to the case.

The Scottish Government asked the question as to whether there are sufficient EU and international agreements in place to allow for the exchange of criminality information and if so are they being used effectively. The Home Office suggested that the best way to open up further exchange is to work within existing agreements such as the Framework Decision. The CPS suggested that there should be a regulated mechanism for obtaining more detailed information relating to certain offences for example where information exchanged under the Framework Decision indicates a previous conviction which may be of relevance to the new proceedings, it would be helpful to be able to obtain that information via the central authority rather than having to make a formal request via MLA.

Understanding sanctions

Similarly to offences, it was noted by some respondents that there is variation in the types of sanctions imposed across MS and therefore it is sometimes

difficult to understand what the equivalent UK sanction would be. This is important because the severity of the sanction could indicate to the criminal justice professional the seriousness of the offence that had previously been committed and to flag up any patterns of behaviour which could indicate a risk of recidivism. This could also be relevant to establishing bad character, informing what sentence is passed for the current case and the management of offenders post-conviction. For example, some MS certificates of conviction specify both a fine and a period of imprisonment. However, in many of these cases the fine is intended to be the primary penalty and the imprisonment applies where the fine is unpaid. If this distinction is not clear and therefore it is not fully understood that the sentence was not imprisonment a previous conviction could be treated as having been much more serious than it was.

One suggestion for improving understanding of sanctions was the provision of a glossary by each MS that lists the sentences that can be passed and any conditions which can be imposed but with an explanation of their meaning. It would be helpful if the glossary was available on the internet for ease and speed of access. This suggestion links to similar suggestions which were made by central authorities around the provision of central information resources and which are discussed in the relevant sections in further detail.

Requests

There were two distinct issues raised in relation to requests. The first was around the process of requesting criminal record information. One respondent highlighted that there is no automatic process for requesting this information and it is currently reliant on the police making enquiries during the investigation or during the court proceedings. They also noted that access to criminal records from other MS is further hampered by only being able to access one MS at a time. A suggestion to overcome this was to develop an automatic process allowing access to search criminal records information across all MS. This suggestion seems similar to the idea of a centralised European Criminal Record, which has been considered but was rejected in favour of the current decentralised approach as discussed earlier in this report.

The other issue raised by several authorities in relation to requests was the restrictions on the use of criminal records information obtained as a result of a request which may only be used for the purposes of the specific criminal proceedings for which it was requested. This is seen as a potential risk to public safety because the information cannot be stored on UK police systems for future use, either on criminal registers or intelligence databases. As policing is intelligence led not being able to utilise this information which may be significant in assessing the risk posed by a person and therefore better protecting the public and law enforcement personnel who might come across the person in the future is frustrating. It was strongly suggested by several respondents that this position needs to be reconsidered for reasons of public safety. It should be noted that this issue was raised by all three jurisdictions of the UK during the central authority structured interviews as outlined in the detailed findings on central authorities.

Understanding different judicial systems

A number of authorities raised issues which can be attributed to not fully understanding the judicial systems in operation in other MS. There was some overlap between issues raised for example such as understanding offences and sanctions which also relate to the understanding of different judicial systems. Where possible issues have been grouped into the specific areas as discussed above. Any other issues relating to the understanding of different judicial systems are discussed here, for example, the deletion/retention rules for convictions and how these are administered in each MS or how cases under appeal can be identified. Other issues identified include a respondent from Scotland who stated that criminal records information from common law jurisdictions can be challenging to understand when shared with other jurisdictions. This can apply even within the separate common law jurisdictions of the UK as the offences, sanctions and practices in England and Wales, Northern Ireland and Scotland may be very different to each other and therefore challenging to understand by those unfamiliar with the specific jurisdiction.

Suggestions for improvement in this area could also be useful in other areas for example the provision of clear definitions, agreed common practices and a glossary of terms across the different jurisdictions. One particular suggestion made was an online repository of information which would enable MS to not only explain their judicial system and how it differs from other MS judicial systems, but also to specify particular areas that are important to them, for example in England and Wales knowing whether a burglary was in relation to a dwelling or the age and gender of a victim of a sexual offence. Not only will this suggestion improve MS understanding of the general judicial systems, it may also help with understanding of specific areas for example understanding offences or charging practices.

Data quality of the record

This issue was specifically raised by three authorities from Northern Ireland citing concerns over duplication and error handling across a number of jurisdictions and how to take appeal periods into account. Although this issue was only raised by authorities in Northern Ireland, it is likely that it applies equally in all jurisdictions. It was suggested by respondents that this issue could be managed by regular internal review and corrective action by individual jurisdictions.

Other issues

The 'other issues' category covers information raised by 9 of the 16 authorities which responded to the consultation. Collectively these issues (such as technical issues and affordability of information exchange) cover some areas which are not included in the remit of the project to enhance understanding of criminal records and therefore have not been included in the returns. Issues raised which do fall within the understanding criminal records information remit include:

- the resource implications regarding queries raised in relation to foreign convictions shown on employment certificates

- regularly changing criminal codes in other MS meaning ‘offence equivalency must necessarily be fluid’, and
- the risk of a court challenge to the whole system of taking into consideration foreign convictions

In relation to the risk of challenge to the system, it was suggested by the Home Office that it is necessary for the Senior Judiciary to have confidence in the system of criminal record exchange operated by the central authority. Achieving this confidence could evolve into the certificate of conviction obtained by the central authority being sufficient evidence in court in the majority of cases.

Conclusion

Overall, it seems that the majority of issues raised were in relation to requested information (about foreign nationals) as opposed to notified information (about UK nationals). This may be because many of the responding authorities have involvement in the criminal proceedings process and therefore they often need to request previous convictions from other MS so this is an important area for them. However, it was surprising to the research team that no specific issues were raised in relation to previously notified convictions of UK nationals entered onto the criminal register, which would be relevant if that UK national was subject to further criminal proceedings in the UK. The reason for this is not fully known. One respondent involved in court proceedings stated that they had never, to their knowledge, seen a previously notified conviction on a court print obtained from the criminal register.

In terms of suggestions for improvement of understanding, a popular suggestion was the development of an online resource providing information around the key areas. This is similar to suggestions made by some central authorities and therefore the development of such a resource would be likely to be valued not only by central authorities but also by other authorities making use of exchanged criminal records information.

Another suggestion was in relation to obtaining additional information, which the prosecution agencies highlighted they needed to do frequently, and whether a more efficient structured process via central authorities could be developed to avoid the need for a request via MLA. This would be a positive step forward but may be challenging to implement because as detailed in the findings on central authorities, in many MS this type of information is not held by or available to central authorities. A more easily achievable development which could go some way to resolving this issue could be the suggestion discussed in the section on central authorities to publish guidance for each MS on the most efficient route to obtain additional information, which may mean a request via MLA could be avoided.

Generally, there was low awareness among UK authorities of the problems and challenges faced by other MS in understanding UK criminal records information. Where authorities could provide examples, it was usually an acknowledgement that the UK could improve their own systems and

processes for providing additional information. Additionally, the suggestion that MS should, via an online resource, be able to specify particular areas that are important or challenging to them would also go some way to improving awareness. As already discussed in relation to central authorities, having background information on the judicial system of another MS makes it easier to understand their problems and mutually seek solutions.

4.3 Offence Matching Review

4.3.1 Introduction to Offence Matching Review

As detailed in the methodology section, the University of Northumbria at Newcastle Law School was commissioned to conduct a review of the offence matching process undertaken by the UKCA-ECR. It was agreed that the team from Northumbria Law School which consisted of three principal or senior lecturers who are also barristers would review a set of German criminal offences, the majority of which had been previously notified to and therefore matched by the UKCA-ECR.⁵⁴ The Law School was asked to match the German statute to the relevant English statute. It is important to note that this is a simplified process to that which is conducted by the UKCA-ECR, where, once a match has been made to the statute, there is a requirement to break it down further into specific offence wordings to enable entry onto the PNC using codes.⁵⁵ The Law School did not have to conduct the second stage of this process.

The report provided by the Law School of their findings is reproduced in full below, followed by further commentary and conclusion from the MUCRI research team.

4.3.2 Detailed Findings on Offence Matching

Offence matching report from the Northumbria University at Newcastle Law School

Mutual Understanding of Criminal Records Information (MUCRI) Report on the offence matching process

Offence matching is carried out for a number of reasons. Firstly, where a person has been convicted of an offence in another EU country, the police may need to be aware of that conviction for intelligence purposes and for the purposes of domestic criminal investigations. There is therefore a need for overseas convictions to be recorded against a person's name in a manner that enables the police to accurately identify the type and nature of any previous offences committed.

Secondly, employers or other organisations may carry out criminal record checks with the Criminal Records Bureau (CRB). If an overseas conviction is recorded against a person's name in a way that is inaccurate or misleading, this could prejudice that person's prospects of securing employment and/or damage their reputation. Alternatively, if an offence is not recorded properly this could lead to an inappropriate person being employed because the offence recorded is of a less serious nature or does not reflect the true nature of the offence committed.

⁵⁴ Some additional offences were included for completeness of chapters within the German criminal code.

⁵⁵ See Figure 28 which describes the process for adding convictions to criminal register in the UK, Appendix E on page 109.

Thirdly, overseas convictions may be admissible in criminal proceedings in the courts of England and Wales as evidence of bad character and/or may be taken into account by a judge/magistrates at the sentencing stage. It is therefore imperative that offences are matched accurately. If an offence committed overseas is going to be recorded as constituting an offence under the law of England and Wales, the conduct involved in that particular offence must be conduct that would necessarily give rise to the matching English and Welsh offence. If the match is not appropriate or accurate, this will potentially violate Article 6 of the European Convention on Human Rights, as the trial and/or subsequent detention of the person may be unfair.

Our task

We were invited to conduct an offence matching exercise, which involved attempting to match various German offences with a corresponding English and Welsh offence. Some of the German offences that we were asked to consider had already been matched to English offences and we were asked to comment upon whether the existing match was appropriate. In other cases, a match had been suggested and, again, we were asked to comment on whether that match was appropriate and to suggest alternatives where possible. The aim of this report is to set out some of the key difficulties we came across when conducting this exercise and to make recommendations for the future where possible.

Constraints of the current exercise

Our work involved looking solely at a translation (or sometimes two translations) of various German offences. We did not examine any extraneous material. It may be that some of the concerns raised below could be obviated with access to other material concerning the interpretation of German criminal law. However, even if this were possible, we consider it essential that German lawyers/academics with expertise in the field should collaborate to ensure appropriate offence matching. It is our view having carried out this exercise that there are risks in asking lawyers/academics with expertise solely in the law of their own country to attempt to match offences without some input from those with expertise in the law of the country in respect of which offences are to be matched.

We did not consider any defences under German law. In particular, we are unaware of whether defences may exist in case law or other statutory provisions in Germany rather than in the Criminal Code itself. There are various general defences under the law of England and Wales and many offences also have specific defences. It is possible that a while a base offence may be a close match for an offence in England and Wales, no conviction would have resulted in this country because a defence would be available to the defendant which was not available in Germany.

In addition to this, the work we have completed unfortunately had a very tight timescale. Many of the areas of law are very complex. We believe that if we had had more time to complete the matrices a greater number of potential issues could have been explored in greater detail. The timescale involved in the project also did not allow for collaborative work between colleagues. If

any large scale offence matching process was to be carried out we believe an opportunity for more than one academic/practitioner to consider the most problematic or difficult offences would significantly increase the accuracy and reliability of the matrix.

Finally, offences covered outside of the German criminal code did not have an official translation. The English translation for these offences often lacked clarity. This clearly has the potential to undermine the reliability of the matrix. Examples include section 21(2)(2) of the Road Traffic Act. The alternative translation read as follows: 'Intentionally or negligently performs a motor vehicle, although the required driver's license taken in accordance with § 94 of the Criminal Procedure Code in custody, secured or seized, or'. In addition many sections were referred to which we did not have access to. Notwithstanding that the English translation in section 21(2)(2) does not seem to be complete, without access to a translation of section 94 of the Criminal Procedure Code a full offence matching exercise cannot be said to have been completed.

Elements of Offences

It is a fundamental principle of English criminal law that a person cannot be liable for a criminal offence unless both the *actus reus* and *mens rea* of the offence have been proved by the prosecution beyond reasonable doubt. The burden is also usually on the prosecution to disprove any relevant defences. Loosely translated, '*mens rea*' means 'the guilty mind'. *Mens rea* is the mental element of the offence; it refers to the blameworthy state of mind, or the fault that is required for the offence. While there are some English offences that do not require *mens rea*, most serious criminal offences have at least one *mens rea* element. The *mens rea* varies with each offence. Examples of common forms of *mens rea* under English law include intention; recklessness; dishonesty; and knowledge or belief. Intention is commonly required for the most serious offences.

According to section 15 of the German Criminal Code,

Unless the law expressly provides for criminal liability based on negligence, only intentional conduct shall attract criminal liability.

On the face of it this appears to be a straightforward concept and, given that the criminal law of England and Wales rarely recognises negligence as sufficient *mens rea* for an offence, it is often easy to identify German criminal offences committed negligently as having no corresponding match in the law of England and Wales.

The German criminal code does not provide a definition for the term intention, nor does it appear to recognise the English and Welsh concept of recklessness (where a defendant knowingly takes an unjustified risk) which can be sufficient *mens rea* for a large number of offences in England and Wales.

If it were the case that the German concept of intention matched that of England and Wales then for the purposes of translating German offences into an English and Welsh match there would be very little problem. (Note that the

reverse would not be true, i.e. if the German courts had established the requisite intention on the part of the convicted person then recklessness for the purposes of the English and Welsh offence would always be satisfied but German courts considering an offence committed in England and Wales would experience difficulties where the *mens rea* for the offence was established by recklessness.)

However it is not the case that the German concept of intention is the same as in England and Wales. According to Greg Taylor in his article Concepts of Intention in German Criminal Law⁵⁶:

Within intention there are three sub categories... intention 'properly' so called, the perpetrator's aim; the consequences of which are not part of the accused's aim, but which he knows are inevitably going to be the result of his actions; and, finally what is know as conditional intention.. or... *dolus eventualis*... constituted by knowledge of a possible (as distinct from inevitable) outcome of ones actions combined with a positive mental or emotional disposition towards it, which the Court expressed as approval of or reconciling oneself to the possible outcome.

The third sub-category of the German concept of intention is not recognised in English and Welsh law. It is more akin to the English and Welsh concept of recklessness but that concept does not require, as the German seems to, the perpetrator to have a 'positive mental or emotional disposition towards' the commission of the offence. This is an alien concept to English and Welsh law.

Potentially this could create problems matching offences both from and to German criminal law. A problem that may present itself when finding an English and Welsh match to a German offence is that it must be established that a sufficient 'level' of intention has been proved. An example of this would be a person convicted of the German equivalent offence of causing grievous bodily harm where the German court had found the person to have intended to cause that level of harm. This would potentially amount to the UK offence under section 18 of the Offences Against the Person Act 1861 (maximum sentence life imprisonment). However if the German courts established that intent by using their principle of 'conditional intention' this would be more akin to recklessness, would not be sufficient *mens rea* for the section 18 offence and would be more suitably matched with the less serious offence created by section 20 Offences Against the Person Act 1861 (maximum sentence of five years imprisonment).

A second problem that we encountered concerning the *mens rea* of offences is that many of the definitions of German criminal offences did not contain any further *mens rea* requirements beyond that contained in s.15 of the German Code. Thus, many offences did not contain all of the elements required for the closest corresponding English offence. For example, the offence of theft is defined under s.242 of the German Code as follows:

(1) Whosoever takes chattels belonging to another away from another

⁵⁶ Oxford Journal of Legal Studies, Volume 24, No 1 (2004), pp. 99 – 127

with the **intention of unlawfully appropriating them** for himself or a third person shall be liable to imprisonment of not more than five years or a fine [our emphasis]

In English law, s.1(1) Theft Act 1968 provides that a person is guilty of theft if he **dishonestly** appropriates property belonging to another with **intention to permanently deprive** the other of his property [our emphasis]. Unless both dishonesty and intention to permanently deprive are proved to the required standard, the offence is not made out. An intention to unlawfully appropriate property would not be sufficient and it is therefore possible to conceive of circumstances in which a person would be liable for theft under German law but would not be liable for theft under English law (for example, if a person took a chattel from its owner but intended to return it later in the same condition).

A third problem arises if the language used to describe the required mental state by the two jurisdictions is not identical. For example s.222 of the German code creates the offence of negligent manslaughter. This appears to be a close match to our common law offence of manslaughter by gross negligence. However, with no further clarification as to the meaning of the term ‘negligent’, it is impossible to truly match this to the English and Welsh definition of ‘gross negligence’. It would appear from the wording that the German offence is wider than our offence. In addition to this, even if the full facts of the case were known, the question of whether an act or omission can be properly categorised as ‘gross negligence’ is a complex one which would be for the jury to determine after hearing all of the evidence. In matching the offence administratively, we have a single person potentially making a decision on whether the English offence is made out on the basis of a summary of the facts alone.

The above concerns relate to the *mens rea* of offences. German offences also often lacked key elements of the actus reus of English and Welsh offences. For example, sexual offences in England and Wales require the relevant sexual activity to be carried out without the consent of the victim (unless the victim is a child or a person suffering from a mental disorder impeding choice). The German Code criminalises sexual activity with various categories of person whether or not consent is absent. See, for example, s.174a.

Defining key terms

German offences often contain terms which have a particular meaning when used in English law. Without knowing whether the meaning is the same in German law, it is impossible to say with certainty that offences truly match.

For example, a number of German sexual offences criminalise ‘sexual activity’. The term ‘sexual’ is defined in English law in s.78 Sexual Offences Act 2003 as follows:

- activity is sexual if a reasonable person would consider that–
- (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
 - (b) because of its nature it may be sexual and because of its

circumstances or the purpose of any person in relation to it (or both) it is sexual.

We do not know whether or not the definition of 'sexual' under German law is the same.

Differences in approach

The difficulties raised above concern differing definitions of offences and the difficulty in interpreting key terms. There is also a fundamental difficulty in matching offences which is caused by the different approaches that German law and English law take in relation to the creating and defining criminal offences. The German Code is brief and uses generic terms, an example being 'sexual activity' discussed above. English law, in contrast is much more detailed and specific, certainly as far as statutory offences are concerned. Indeed, the English courts have been critical of the quantity and quality of legislation in recent years:

'It is more than a decade since the late Lord Taylor of Gosforth CJ called for a reduction in the torrent of legislation affecting criminal justice. Regrettably, that call has gone unheeded by successive governments. Indeed, the quantity of such legislation has increased and its quality has, if anything, diminished.'⁵⁷

This creates serious problems for offence matching. The usual problem that we came across was that German offences were drafted more widely than English offences. Thus, it was possible in almost all cases to conceive of conduct that would constitute an offence under the relevant section of the German Code but would not constitute an offence under the closest corresponding English statutory or common law provision. Again, without knowing precisely the facts of the particular offence, it would therefore be impossible to say with certainty that the 'matching' English offence was made out in all cases.

For example, three sections of the German code cover insolvency offences (although there are a number of subsections to each of these). In contrast there are 69 criminal offences contained in the Insolvency Act 1986 alone. This makes the task of offence matching very complicated with a number of possible offences covering a single subsection of the German code.

Particular problems arose when attempting to match sexual offences. In English law, the Sexual Offences Act 2003 separates sexual activity according to the nature of that activity. For example, there are four key sexual offences against adults under the 2003 Act, namely rape, assault by penetration, sexual assault and causing a person to engage in sexual activity. Under the s.177 of the German Code, rape would include assault by penetration. Section 177 of the German Code also fails to separate sexual assault and causing a person to engage in sexual activity. Thus, without knowing precisely what activity took place in any particular case, it is not possible to say which of our

⁵⁷ (per Rose VP in *R v Bradley* [2005] EWCA Crim 20)

four offences is the most appropriate match.

This problem is compounded in relation to sexual offences involving child victims. The English law governing sexual offences against children and offences in breach of trust is exceedingly complicated and it is simply impossible to match a single offence under the German Code to a single offence under the 2003 Act.

The German Code also criminalises sexual activity in relation to certain categories of person, such as those entrusted to the offender for counselling, treatment or care because of a mental illness or disability including an addiction, or because of a physical illness or disability (s.174c). Such activity would not necessarily be an offence under English law. If the victim had a mental disorder impeding choice, it is likely that there would be an offence. In all other situations, it would depend upon whether the victim consented to the activity or not. This turns on the question of whether the victim 'agreed by choice and had the freedom and capacity to make that choice'. This is usually a question of fact for the jury to determine after hearing all of the evidence in the case. It would not be satisfactory for someone to make a determination about this issue in hindsight on the basis of a summary of the case provided by the German courts. It is therefore difficult to see how offences like these can be properly matched.

Offences with no match

We have discussed above a number of situations in which the question of whether an English offence has been committed will depend upon the facts of the German offence. In addition, we came across the problem that the German Code criminalises various activities that would not be crimes at all under English law. Examples include section 186 of the German Code which covers criminal defamation which does not exist in England and Wales; s.306d of the German Code, which criminalises negligent arson; and s.323c, which creates a general offence of pure omission.

Matching offence seriousness

At times there is disparity in the way in which our two criminal justice systems view certain criminal acts. Germany, for example, has a more liberal approach to mercy killing than England and Wales. Section 126 - killing at the request of the victim - carries a penalty of 6 months to 5 years imprisonment. The technically closest match in England and Wales would be murder. Although we do have an offence under section 2 Suicide Act 1961 – criminal liability for complicity in another's suicide – if the act of the defendant actually ended the life of the victim, this would be murder. It could be said to be unfair to the defendant to endorse his criminal record with the offence of murder when the country in which he committed the offence did not view it as such. In addition to this it is also impossible to retrospectively consider whether a particular defence in England and Wales would have been available or successful if it had been raised.

The need for the full facts of the conviction

What did become very clear was that the facts behind almost all convictions

will be necessary in order to be in any way confident of properly matching offences. Our understanding is that this is not something which is currently routinely done and would significantly increase the cost and delay involved in notifying the country of citizenship of the conviction. However, without these facts, in the vast majority of cases it would be impossible to say with certainty that the closest matching English offence would apply.

Even with a summary of the facts, there is a fundamental problem where there is disparity between the *mens rea* of offences (as there is in the vast majority of cases). This is because the question of whether a person acted with the required *mens rea* for an English offence is an issue for the jury to decide after hearing and seeing witnesses give evidence. Such witnesses will often include the defendant himself. It is difficult to see how it can be fair for someone to decide what was in the defendant's mind at the time the offence was committed on the basis of what will inevitably be a brief summary of the factual circumstances in which the offence was committed.

Conclusion

Having conducted a sample offence matching exercise, we are not convinced that offence matching is a valid approach. Indeed, we are unsure whether there is any authority permitting the recording of such matches. We are not aware, for example, of any legislation that permits a German offence to be recorded on a person's antecedents as if it were an offence in England and Wales. For this reason, and for the reasons set out above, we consider that there are dangers in suggesting that a criminal offence committed in Germany would inevitably have resulted in a conviction under English law. We are therefore of the view that a better and fairer approach would be for a foreign conviction to be recorded in this country using the name of the German offence. The record should make it clear that the conviction was a conviction of a German court. A copy of the translated definition of the German offence should then be annexed to the record so that judges and practitioners may refer to it and have the opportunity to raise any arguments or concerns over the extent to which the conduct involved would amount to an offence under the law of England and Wales.

We recognise that this approach is less satisfactory insofar as CRB checks are concerned. An employer or an individual who is the subject of a CRB check is unlikely to have the legal expertise to be able to determine whether the German conviction would be an offence under English law. However, we feel that to present employers with a certificate suggesting that a person has a conviction for a particular English offence is misleading in any event and that, given the difficulties in providing a matching offence, this would be the safest course of action.

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MUCRI research team additional findings

In addition to the findings of the research team from the Law School, the MUCRI researchers also identified the following information raised by the UKCA-ECR analysts in a focus group conducted in the early stages of the research:

- ‘Assault a public servant’ – this covers a variety of occupations whereas the UK has a number of offences which are specific to each occupation.
- Assaults - a number of MS grade the seriousness of an assault on different factors to English and Welsh offences and this can make them difficult to match.
- German weapons law – does not specifically state key factors for example the type of weapon in the offence title. The notification says ‘infringement of weapons law’ and further research into the law is required which is complicated and difficult.
- Sexual offences – the level of detail required to match an EU offence to an English and Welsh offence is often not contained on the notification. For example rape in some MS covers acts which in England and Wales would constitute a different offence.
- Negligent offences – England and Wales does not have an equivalent to ‘negligent injury’ or ‘negligent bodily harm’.
- Coercion – coercion is challenging because it is a general term which may have many slightly different meanings across different MS.
- Burglary – burglary offences available on the national criminal register are quite specific and therefore more detail is required to match it to a specific offence from what is normally provided.
- Drug offences – it is important to know the type of drug to enable the correct offence to be identified.
- Explosive offences – covers a large range of devices and it is not always easy to tell the specific offence.

Discussion

The Law School and the UKCA-ECR raised some similar examples of where matching notified offences to UK legislation is challenging, such as sexual offences and assaults. As previously noted the process undertaken by the Law School was in fact a simplified version of the routine procedure used in the UKCA-ECR. For example, the Law School was required to match only statute to statute for example whether Section 242 German criminal code ‘Theft’ matches to Section 1 Theft Act 1968 from English law. In the UKCA-ECR an additional step is undertaken because to enable the offence to be added onto the PNC a predefined code must be selected and these codes relate to various offence wordings which may fall under one section of an Act. For example, Section 1 of the Theft Act is broken down on the PNC into at least 12 further offence wordings which specify the way in which the offence was committed for example theft by employee, theft – shoplifting, theft from meter, theft from person, theft from dwelling, theft of cycle, theft of vehicle. Therefore, even if the statute to statute match can be made, there are often some challenges in selecting a particular offence wording if this information is not specified in the notification.

The Law School report notes that in some cases they were required to assess two different translations of the German criminal code. Both of these were official German translations into English of the German criminal code, with one being more recent than the other.⁵⁸ The MUCRI research team noted some differences in the two translations and therefore asked the Law School to comment on whether the different translations would have any impact on the matching of offences. For example, the German offence under § 123 '*Hausfriedensbruch*' was in the earlier translation, given as 'Breach of the Peace of the Home,' whereas in the more recent translation it is given as 'Burglary.' There were minor differences in the translation of the offence wording, such as substituting 'intrudes' with 'enters.' A German native speaker working in the UKCA-ECR advised that a common day to day translation of '*Hausfriedensbruch*' would be 'trespassing.' Based on the wording of the offence, it had previously been matched by the UKCA-ECR to an offence of 'Adverse occupation of residential premises'.⁵⁹ The Law School agreed that this was the closest matching offence and suggested that it should be made clear this was not an offence which matches the English definition of burglary despite the translation.⁶⁰

Generally, there were not found to be many such discrepancies relating to the different translations as the differences were minor and overall it was usually possible to understand the general behaviour that would constitute the offence. However, the Law School did note in relation to a particular section that the translation, which was not an official translation, was unclear and it was therefore difficult to understand.

A key problem noted by both the Law School and the UKCA-ECR is that the information routinely exchanged is not always sufficient to enable very specific matching of offences to take place. The Law School, in fact, suggested that this additional information would be required in the vast majority of cases. As discussed in the findings on central authorities and UK stakeholders, obtaining this additional information can be challenging and therefore the UKCA-ECR are unable to do this as often as suggested by the Law School.

The Law School also raised the issue as to how it is possible to make a determination about a person's guilt in the context of English law based on a summary of the case as provided by the German courts, when in fact there are many issues to consider such as available defences, whether the definition of intent is the same for each jurisdiction and facts of law that would be considered by the jury. The exchange of criminal records under the Framework Decision is based on the principle of mutual recognition of the decisions made in court in other MS and therefore it could be argued that it is

⁵⁸ The two alternative translations of the German criminal code (Strafgesetzbuch, StGB) are available < <http://www.iuscomp.org/gla/statutes/StGB.htm> > and < http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl > [both most recently accessed 15 December 2011]

⁵⁹ Section 7 Criminal Law Act 1977 as amended by the Criminal Justice and Public Order Act 1994 and Schedules 7 and 17, part 2 of the Serious Organised Crime and Police Act 2005

⁶⁰ It should be noted that each notification received by the UKCA-ECR is translated individually.

not necessary to in effect try every case again as if it were being brought before a British court. However, MS are required under the 2008 Framework Decision to treat EU convictions in the same way as previous domestic convictions would be taken into consideration for example in new criminal proceedings. To do this, it is necessary to understand EU convictions in the context of UK law.

As discussed in the detailed findings on central authorities, the UKCA-ECR must conduct quite specific offence matching to enable notified offences to be input onto the criminal register using predefined codes which are linked to UK offences. However, as also detailed in the findings from UK stakeholders, prosecutors using conviction information from the EU do not necessarily need to match them specifically to a UK offence although they do often require additional information to attain a level of understanding necessary for the previous offence to be considered appropriately in the new proceedings.

The Law School concluded that the current process used by UKCA-ECR is problematical because in their opinion it is almost impossible based on the information routinely provided to match foreign offences to UK ones. They also questioned who had the authority to make such matches and whether it was lawful to enter them onto the criminal register in this format as they were not aware of any legislation which permitted this. The UKCA-ECR is the central authority as designated by the Home Office which is responsible for conviction exchange under the Framework Decision and therefore for adding notified convictions to the criminal register. The Framework Decision does not stipulate the format in which notified convictions should be entered onto the criminal register and this is a matter for MS. As detailed above, because of the format of the national criminal register entries can only be made using the predefined offence codes. Under data protection rules, the central authority is under an obligation to ensure the information held about individuals is accurate. It should be noted that alongside the matched English and Welsh offence, a translation of the information on the notification is also entered into a free-text field so looking at the record as a whole it is possible to see the original notified information (in its translated form) and the English and Welsh offence to which it has been matched. The free-text information, however, would not be included on any disclosure print that was created from the record but because the name of the convicting court would be included, it should be clear that this is a foreign offence.

There is no doubt that it is difficult and resource intensive to routinely match notified offences to English and Welsh offences as specifically as is currently the practice. There are a number of alternative options for adding notified convictions to the criminal register which may require a less specific form of offence matching.

As suggested by the Law School, offences could merely be added as a translation into English of the original offence from the notification. As detailed in the findings on central authorities this is the method used by a number of MS including Germany and Belgium. Although there are advantages to this method, such as the record being a more accurate

reflection of the original offence or conviction (notwithstanding any issues relating to the translation) there are also disadvantages. For example, if Section 123 of the German Criminal Code, which is discussed above, was translated as burglary and added to the criminal record in that format this would be misleading as the behaviour leading to the conviction in Germany does not constitute an offence of burglary in English law. Although this method seems to be effective in other MS, in the UK as the criminal register can be accessed by various authorities, the staff of which may not be legal experts, they may not fully understand the offence. If the offences were misunderstood, they could be deemed to be more serious than they were, which could be detrimental to a person seeking employment, or conversely the seriousness of an offence may not be appreciated, which could create a risk to public safety.

With regards to the Law School's comment that by annexing a copy of the notified offence to the record it would enable criminal justice professions to consider the information in more detail, currently all the information on the notification is added to the criminal register and the notification itself is stored by the central authority on a separate database. In practice it is likely that if further detail is required in relation to a foreign offence appearing on the criminal register it would be requested by the police or courts through MLA.

The current system of matching notified offences to English offences has disadvantages as already discussed. However, it also has advantages, for example, the interpretation and understanding of offences is done centrally by experienced analysts who present the information onto the criminal register in a format which is then understandable to other users who may not have that level of expertise. Because of the complexity of different offences across the MS it would not be realistic to expect police officers or other users of the criminal register to have the knowledge required to fully understand the information. For example, a police officer conducting a stop and search needs to be able to make a quick decision about whether the person is a risk and having this information in a familiar format as an English offence means this can be achieved very easily.

Suggested method for entering notified convictions onto the national criminal register in the UK

Based on the findings of the offence matching review, the challenges identified with the current approach and the information gathered from central authorities in other MS, the UK central authority may wish to consider if the current method of recording notified convictions on the criminal register is the most effective or whether an alternative approach should be considered. There are a variety of other methods that could be considered including the suggestion made by the Law School and detailed above. However, based on the results of our research, the MUCRI research team believes that a more flexible approach depending on the nature of the conviction should be considered, for example such as the procedure suggested below:

Serious offences or offences which require a specific match

For a defined list of especially serious offences or offences where it is necessary to know the UK equivalent – for example offences where a convicted person is automatically barred from working with children and/or vulnerable adults (autobar offences), where minimum sentences are imposed on third-time offenders as already detailed in this report and sexual offences for the purposes of sexual offender management. It could be considered that offences which have attracted a prison sentence over a specified threshold could also be included.

In these cases, it is suggested that the closest equivalent UK offence is identified in a way similar to that which is currently done. Ideally, the record would show both the original offence from the notification (translated into English) and the English offence to which it has been matched, with both appearing on any disclosure print.

All other offences

The research conducted to enable matching of less serious notified offences may not be the most efficient use of resources. It is suggested that in all offences not covered by a defined list of serious offences, matching should not be done to very specific levels. A set of generic offence codes on the criminal register to cover the majority of less serious foreign offences (e.g. theft, fraud, minor assaults) could be created to enable more loosely matched offences to be entered without having to match to the specific English offence. By following this procedure, the risk identified by the Law School of matching to the incorrect offence is reduced but the information is still in a format that would be understandable to authorities having access to the criminal register. The option to display the original foreign offence in its translated format could also be considered. The MUCRI research team recognises that some research would have to be conducted to establish whether notified offences should be treated as serious offences or added as generic offences. However, this will be limited and use less resources than the current method.

In addition to the procedure suggested above, there may be other equally valid approaches. Based on the research conducted, there are advantages and disadvantages of every method used and therefore a detailed independent review of the process may be appropriate to consider fully all other options or maintaining the status quo.

Conclusion

The offence matching review represents only a snapshot of the issues arising out of the process of matching some offences from one MS onto UK national law, which may not be representative of offence matching challenges experienced in or between other jurisdictions. Any conclusions drawn in respect of this exercise should be considered with this limitation in mind. Because of the significant challenges identified in the process of very specific offence matching, the level of resources required and the potential for challenge the UK may wish review its current processes with a view to ensuring the most appropriate processes is used.

5. Conclusions and Recommendations

It was notable to the research team that despite the number of different jurisdictions, legal systems, information technology (IT) and manual processes, and political environments involved, the results obtained are remarkably cohesive in terms of the broad problems and challenges experienced in interpreting and understanding criminal records information exchanged between MS. Although contributors may differ in their interpretation of the fine points and their suggested resolutions for the challenges they encounter generally speaking they were in agreement as to the most significant areas where understanding could be improved.

One of the most significant issues raised by respondents, primarily from central authorities but also by other authorities, related to challenges around the verification of the identity of the convicted person. This is significant, because a criminal record, however perfectly understood and interpreted, is of no use if it cannot be definitively attached to the correct person. Some MS are unable to process significant numbers of notifications or provide responses to requests, and this undermines the whole process of conviction exchange because the criminal record in the MS of nationality may not be complete if notified offences cannot be added to the correct record.

The key issue in relation to identification was the provision of insufficient information to enable the MS of nationality to verify identity. The reason for this is that the required information varies significantly across the MS regardless of whether it is obligatory in the Framework Decision and it is therefore difficult for criminal justice professionals to ensure they collect the appropriate information from the convicted person. In addition MS have a limited understanding of the reasons why certain information is required by other MS which can make it more difficult to resolve queries.

One of the ways to resolve this challenge is to provide training to the relevant criminal justice professionals to ensure that the identification information required for each MS is captured at the appropriate stage of the criminal proceedings. Essential and useful information sets for each MS should be collated within a training document (possibly electronic, for ease of updating), including examples of identity documents, and each MS should be responsible for providing the necessary training to the relevant staff.

Recommendation 1

The information required for verifying identity in each MS to be collated into a central, updatable document and each MS to consider providing training to the relevant criminal justice professionals to ensure the required information is captured.

Ultimately the long term solution to some of the challenges in relation to identification would be for less variation of the requirements for verifying identity across MS. This would be extremely challenging to implement due to

the differing systems currently in operation. However due to the importance of the issue and the potential for significant numbers of previous convictions not to be available to the authorities because the identity of the convicted person cannot be confirmed it should still be considered. It is hoped that this will simplify the process for obtaining information for the verification of identity because the same information would be required regardless of the MS of nationality. In turn this would reduce the instances of insufficient information being obtained and ensure that criminal record exchange functions effectively.

Recommendation 2

The European Commission to work with MS to develop a standard set of acceptable identification information.

Another key area of challenge identified by the respondents was translation. While some central authorities routinely obtain translations for all incoming notifications, others translate information on a less systematic basis, depending on their resources or the personal knowledge of central authority staff of particular languages. In some cases MS find the NJR/ECRIS codes sufficient to obtain the required level of understanding which eliminates the need for translation. Where translation is conducted, the methods used vary across MS leading to a potentially inconsistent approach which could impact on the understanding of criminal records information. Regardless of the method used it is very challenging to translate legal terminology between jurisdictions because of the very specific meanings that can be attached to words in a legal context. Literal translation of the words from one language to another does not guarantee that the full meaning of the conviction will be understood in legal terms.

Recommendation 3

The European Commission to work with MS to develop a standard methodology for the translation of criminal records which incorporates the specific legal meanings of words to ensure full understanding of the criminal record.

A frequent issue raised not only by central authorities but also by other authorities using exchanged criminal records information is that the offences contained on notifications and responses to requests sent via the central authority can be difficult to understand. Often insufficient information is provided to enable the MS receiving the information to understand it to the required level. The Framework Decision states that obligatory information in relation to the offence is:

Information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions).⁶¹

⁶¹ Framework Decision, Article 11 Paragraph 1(a)(iii)

However it was noted by the research team that not all of this information is always provided, in particular it is often the case that either the offence wording or the legal provision is provided and not both together which makes it more challenging for some MS to understand the offence to the required level. The standardisation which will be introduced by ECRIS may resolve this issue but if not then consideration should be given to how this information can be included on notifications if not already done.

Recommendation 4

All MS to comply with the Framework Decision by supplying the offence name or legal classification as well as the applied legal provisions on conviction certificates.

MS that identified particular challenges with understanding offences seemed to be those which conducted more specific offence matching in contrast to MS which took a more pragmatic approach. While the researchers acknowledge that all obligatory information specified in the Framework Decision is not routinely provided it is also true that even if it were provided it would not be sufficient for the purposes of some MS in terms of understanding offences. This is highlighted by the report from the Northumbria University at Newcastle Law School which concluded that the UK process of offence matching to a very specific level is in most cases impossible to achieve based on the level of information exchanged under the Framework Decision. MS which conduct similarly detailed offence matching and may require additional information to enable them to do this often encounter difficulties and delays in obtaining such information. The majority of MS generally find the level of information specified by the Framework Decision in relation to offences sufficient to enable them to understand the offence to the appropriate level required by their process. MS that have a process which requires a much higher level of understanding of offences on a routine basis may wish to consider reviewing their approaches so that the information specified in the Framework Decision is sufficient for their purposes.

Recommendation 5

MS that find the information specified in the Framework Decision in relation to offences insufficient because of their requirement for a very specific level of offence matching should consider reviewing their processes so that they can effectively process notifications based on the obligatory information that is routinely provided.

Many contributors to the research working outside of central authorities noted significant delays in terms of information that must currently be formally requested via MLA by means of an International Letter of Request (ILOR). Central authorities reported that they are constantly asked for information to which they do not have access or a legal framework to provide but which should be obtained via MLA. In cases when additional information is essential

for example in court cases it would be helpful if there was a structured request process for obtaining this information that would avoid the need for ILOR and the subsequent delays these cause. This should be subject to mandatory time frames for responses and should be done via a designated central authority which may or may not be the same central authority designated to deal with criminal record exchange under the Framework Decision. A defined list of information which would be available via this route would need to be agreed between MS, for example it could be limited to MOs and sentencing remarks.

Recommendation 6

The European Commission to work with MS to scope the possibility of setting up a framework for the exchange of some additional information in relation to exchanged criminal records which is more structured and regulated than the current arrangements under Mutual Legal Assistance.

Key among the challenges identified is that a lack of understanding of the legal systems and processes of other MS is detrimental to mutual understanding of criminal records information as, naturally, it can be difficult to comprehend a problem or challenge and therefore assist with solving it without understanding the context in which it has arisen. Also significant is communication between central authorities although this was not raised as a significant issue in the consultation it was noted by the research team that many other problems could be solved if the central authorities had a better communication system.

Contributors generally also noted that it was sometimes difficult to research the meaning of criminal records information from other jurisdictions because the resources were not available to them or were not in a user-friendly format, which could result in repeated requests for assistance, delays and pressure on limited resources. While central authorities tended to suggest that many of these challenges could be solved with one-off explanations or generally improved communication between central authorities, those authorities operating in other contexts were in favour of the creation of a central repository of information, preferably web-based and easily updatable, that would give them easy access to all the information they needed. The suggested information to be contained in such a resource varied according to the particular challenges being experienced but could include general information about the legal system and processes of each MS, specific information about problem areas where legislation or systems differ significantly, a glossary of terms, explanations of types of sanctions and conditions which may be applied, a summary of frequently asked questions and the process for obtaining additional information. It may also be desirable to include a forum where registered participants may discuss issues and offer advice. Each MS would be responsible for producing and maintaining information about its own jurisdiction. The research team acknowledge that the ECRIS non-binding manual for practitioners may assist in some of these areas. However there is a requirement for a much more comprehensive resource which is easily accessible and updatable. The research team is aware of recent work completed by the ECRIS Support Programme (ESP) to

create a similar resource and fully supports this innovation. However it is key that there is consistency among MS as to the type of information provided to ensure it is mutually beneficial to all MS.

Recommendation 7

Develop a web-based repository of information relevant to the mutual understanding of criminal records information between EU MS, including, for each MS, information on legal systems, offences, sanctions, identification requirements, frequently asked questions, contact details and advice on how to obtain additional information.

Although the research has identified a number of problems in the area of understanding exchanged criminal records information and the research team has made recommendations for improvements, criminal record exchange under the Framework Decision is a relatively recent development and therefore it is to be expected that challenges will arise and future enhancements will be required. Since the implementation of the Framework Decision a more structured and systematic exchange of criminal records information has taken place leading to the MS of nationality holding a more comprehensive record of convictions than may have been possible before the framework was put in place. Based on the observations of the research team, the exchange of criminal records is generally functioning effectively and there is routine and timely exchange of criminal records information across the majority of MS. The experts consulted were enthusiastic about engaging with the research so that further enhancements could be achieved. Developments such as ECRIS are ongoing and the findings of the MUCRI research should be considered within the context of ECRIS, and other ongoing work intended to improve the criminal record exchange process.

The research did not uncover any fundamental flaws in the process of exchanging information. However, as detailed in the findings and conclusion, the criminal records information is not always fully understood once it has been exchanged and therefore these recommendations aim to facilitate improvements in this area specifically. If the recommendations are implemented the mutual understanding of criminal records information between MS will be improved, which in turn will enhance public safety, uphold data protection principles and support the area of freedom, security and justice for citizens of the EU.

APPENDIX A – Example Questionnaires

Figure 14 – Initial questionnaire to central authorities

Q1. Country		Q2. Name of Authority	
Q3. Name of person completing questionnaire			
Q4. Position of person completing questionnaire			
Q5. Contact details (Address/Telephone/Email)			
Q6. Do you experience any problems or challenges in interpreting criminal record information provided to your authority by the United Kingdom Central Authority for the Exchange of Criminal Records (UKCA-ECR)		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Q7. If yes, please indicate which main areas of the conviction notification have presented particular challenges. <i>Please check all that apply.</i>	<input type="checkbox"/> Offence <input type="checkbox"/> Disposal/Sentence <input type="checkbox"/> Identity of offender <input type="checkbox"/> Translation <input type="checkbox"/> Other(s) (<i>Please Specify</i>) _____		
Q8. Also please indicate if there are any specific types of offences that have presented particular challenges. <i>Please check all that apply.</i>	<input type="checkbox"/> Road traffic offences(driving) <input type="checkbox"/> Offences against property <input type="checkbox"/> Fraud <input type="checkbox"/> People trafficking <input type="checkbox"/> Offences against the person <input type="checkbox"/> Negligent offences <input type="checkbox"/> Firearms/explosives <input type="checkbox"/> Terrorism <input type="checkbox"/> Sexual offences <input type="checkbox"/> Police/courts/prison offence <input type="checkbox"/> Drug offences <input type="checkbox"/> Immigration offences <input type="checkbox"/> Offences against the state <input type="checkbox"/> Public disorder offences <input type="checkbox"/> Other(s) (<i>Please Specify</i>) _____		
Q9. What would assist you in resolving the issues you have identified? <i>Please check all that apply.</i>	<input type="checkbox"/> MO (Modus Operandi – information about the circumstances of the crime) <input type="checkbox"/> Better communication with the UKCA-ECR <input type="checkbox"/> Different layout of information <input type="checkbox"/> One off explanation of specific queries <input type="checkbox"/> Access to UK laws <input type="checkbox"/> NJR/ECRIS <input type="checkbox"/> Other(s) (<i>Please Specify</i>) _____		
Q10. If there are any other EU member states which you encounter significant problems or challenges in interpreting criminal record information please specify the 3 most challenging countries.	Country	Reason	
	1.		
	2.		
	3.		
Q11. Would you be willing to engage further with the	Yes	No	

<p>project team to explore the issues you have identified and seek possible solutions?</p> <p>This could take the form of more detailed questionnaires and/or interviews (by telephone or in person).</p>	<p style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></p>
<p>Q12. If yes, please select whether you require an interpreter for further engagement or if you are able to engage in English.</p>	<p style="text-align: center;">English Interpreter</p> <p style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/></p>
<p>Q13. If you have any further comments in relation to any area of this questionnaire or the MUCRI project in general please use this space.</p>	

Figure 15 – Detailed questionnaire to central authorities

<p>1. When you receive a conviction notification of a XXX national convicted in another EU member state do you get this document translated into XXX? If so please specify any challenges you encounter with this.</p>
<p>YES <input type="checkbox"/> NO <input type="checkbox"/> Comments</p>
<p>2. Please explain how convictions received from other EU member states of XXX nationals are entered onto your criminal record system?</p>
<p>3. Does your criminal record system require the offence and disposal sent on a conviction notification to be matched to an offence or disposal in your national law? If so please explain how this is done.</p>
<p>YES <input type="checkbox"/> NO <input type="checkbox"/> Comments</p>
<p>4. What are the essential personal details you require to be able to match a person on your criminal record system?</p>
<p>5. If there any additional details which are useful to you when trying to match a person on your criminal record system please list them?</p>
<p>6. Do you ever receive any notifications from another EU member state which contain offences or disposals which you do not understand? If so please provide examples.</p>

Figure 16 – Stakeholder questionnaire

<u>Mutual Understanding of Criminal Records Information Project – Stakeholder Questionnaire (UK)</u>	
<p>Please complete the questions in as much detail as you can and where possible include specific examples. The input fields will expand to allow for as much text as you wish to include. If a question is not relevant to your organisation or authority please state this.</p> <p>We may request to follow up completion of the questionnaire with a meeting to discuss the issues you have raised in more detail, which would be arranged at your convenience.</p> <p>Please return the completed questionnaire to xxxxxxxxxxxxxxxxxxxxxxxxx</p> <p>Many thanks for your time and cooperation.</p>	
Name of authority	
Name of person(s) completing questionnaire	
Position of person(s) completing questionnaire	
Contact details (Address/Telephone/Email)	
<p>1. Please explain in detail what strategic interest or operational involvement your authority has in the criminal record exchange currently operating under EU Council decision 2009/315/JHA.</p>	
<p>2. If your authority has a strategic interest or operational involvement in EU criminal record exchange outside of EU Council Decision 2009/315/JHA please explain under what decision, legislation, framework or other agreement you receive or provide such information (e.g Mutual Legal Assistance).</p>	
<p>3. What do you consider are the main challenges or restrictions faced in the UK in interpreting/understanding criminal records information provided by other EU Member States? (If the challenges you identify relate specifically to Scotland, Northern Ireland or England & Wales only please specify the nature of the challenge and why it relates to this jurisdiction).</p>	

4. Are there any challenges that you feel directly affect your authority in relation to the interpretation/understanding of criminal records information provided by other EU Member States?

5. Are you aware of any problems faced specifically in relation to the interpretation of offences and sanctions? If so, please explain what these are and indicate, if relevant, how your authority would try to overcome them. (For example, if interpretation of sexual offences caused difficulty at court would this be addressed by providing a literal translation of the foreign offence wording or by attempting to transpose the foreign legislation onto a UK offence or by some other means?) If there is no current adequate solution to a problem or challenge you have identified, please state this.

6. Are you aware of any challenges experienced by other EU Member States when interpreting criminal record information received from the UK? Please provide examples where possible.

7. If you could, what would you like to change to make the criminal record exchange more effective?

8. Please use the space below to include any additional information you feel is relevant which is not covered by the above questions.

APPENDIX B - Central Authorities: Detailed Data Returns in the Area of Verifying Identity

Figure 17 – Comparison of methods for verifying identity in relation to notifications for MS with and without centralised population registers

MS	Central population /identity database	Verification of identity a key challenge	Method for verification when processing notifications
BE	Population Register	Y	A search is made against the population register – if identity cannot be verified the conviction is not added to the criminal register.
LT	Population Register	Y	
PL	PESEL ⁶²	Y	
RO	Evidence of Population Register	Y	
DE	N ⁶³	N	Information provided is compared to information contained on the criminal register. If no possible match is found a new record will be created. If a possible record identified but not verified, the conviction is added provisionally and enquiries are then conducted with municipal authorities to verify identity.
ES	Police identity database	Y	If identity cannot be verified based on the details provided, a check of the police identity database can be made. If still no success, the information is not stored.
UK	N	N	Information provided is compared to information contained on the national criminal register. If identity verified convictions added to existing record. If possible record identified but not verified, convictions added to a new record and linked to existing record. If person does not exist on the criminal register, a new record is created. Convictions forwarded to Scotland are entered on the Scottish Intelligence

⁶² Powszechny Elektroniczny System Ewidencji Ludności (Universal Electronic System for Registration of the Population)

⁶³ Germany does not have a central population register. However, data is maintained by municipal authorities.

MS	Central population /identity database	Verification of identity a key challenge	Method for verification when processing notifications
			Database (SID) and initially treated as intelligence. Convictions are only added to the Scottish criminal register when the identity of the convicted person has been forensically or operationally verified.

Figure 18 - Summary of information relating to identity disputes reported by interviewed MS

MS	Comments
BE	Staff in the central authority had no knowledge of any disputes relating to identity.
DE	No specific examples provided. If a person wishes to dispute information which has been added to the criminal register in relation to them, they must provide evidence, for example that they were not in the relevant MS at the time of the offence.
ES	Disputes in relation to identity are not common and it is more frequent that challenges are encountered when a person has two identities which they cannot confirm and join the two criminal records together.
LT	Two examples where the person disputed that the conviction related to them. The central authority was able to see that their passports had been stolen during the period in which the crime took place by viewing the history of documents which is held on the identity register. They were satisfied this was a case of identity theft and deleted the convictions.
PL	A person disputed that a conviction from the UK related to him. Fingerprints were provided by the UK for checking against the police fingerprint database. As the person was not known to the police, his fingerprints were not on record so could not be compared and the dispute could not be resolved.
RO	Various examples of persons who have committed offences abroad and provided false identities to the authorities often using the names of famous Romanian people or authority figures such as local priests or police officers.
UK	The central authority is aware of a number of examples where a dispute has been received in relation to identity. In some cases this has been where a passport has been stolen and used by a convicted person to provide a false identity.

Figure 19 - Fingerprint exchange status of interviewed MS⁶⁴

MS	Fingerprints owned / held by	Fingerprints linked to criminal record	Exchanging fingerprints	Comments
BE	Police	N	N	Central authority does not currently work with fingerprints. They recognise the potential benefits of developing legal frameworks to utilise fingerprints for criminal record exchange in the future.
DE	Police	N	N	No plans to link in the future.
ES	Police	N	N	A link is being developed between the Ministry of Justice and the Department of Interior to be able to work with fingerprints in the future.
LT	Ministry of the Interior	Linked via a Unique Record Number	With UK	Fingerprints can assist with resolving identity problems for requests and notifications.
PL	Police	N	N	The national criminal register has no tools to work with fingerprints. ⁶⁵
RO	Police	Y	With UK	Can be useful for confirming identity. Currently hard copies are exchanged as they are in the process of converting paper records onto the electronic system.
UK	Police ⁶⁶	Y	With IE, EL, CY, LV, LT, MT, NL, PT, RO	Useful for: <ul style="list-style-type: none"> • confirming the identity when a person uses different personal details; • identify persons wanted by European

⁶⁴ Some information in this table was provided by the FEEU Project.

⁶⁵ Since this information was collected, a pilot exchange of fingerprints between the UK and Poland has been implemented and is ongoing.

MS	Fingerprints owned / held by	Fingerprints linked to criminal record	Exchanging fingerprints	Comments
				<p>Arrest Warrants (EAWs);</p> <ul style="list-style-type: none"> • prevent the recording of convictions against innocent persons; • assist in securing convictions of serious offenders; • improve the integrity of criminal record exchange; • improves the correct identification of convicted persons

Figure 20 – Challenges raised by interviewed MS in the area of verifying identity

MS	Challenge
BE	When the person cannot be identified on the Population Register the notification cannot be added to the criminal register.
LT	Identity disputes can be challenging to deal with as often no additional information relating to the identity can be supplied by the convicting country, in which case the conviction may have to be removed from the record.
LT	When fingerprints confirm that a Lithuanian person convicted in the UK was using a name different to that recorded on the Lithuanian Population Register, the Lithuanian central authority requires the conviction notification to be resubmitted in the name as recorded on the Population Register. However, the practice in the UK is for the record to remain in the original name with the 'new' verified name added only as an alias.
PL	Data provided is often not sufficient to match to a Polish national in the PESEL database which means the conviction cannot be added to the register.
PL	ECRIS will not solve the problem of incomplete personal data.
RO	Important information in relation to verifying identity is optional and therefore not always supplied by the convicting country. This creates problems in identifying the person on the population register and the conviction cannot be added to the record.
UK	The specification of mandatory information in relation to the identification of a person is of limited value if the authorities do not

⁶⁶ The National Fingerprint Database (IDENT1) is managed on behalf of the police service by the National Policing Improvement Agency, for police forces in England, Wales and Scotland. In Northern Ireland the fingerprint database is managed by the PSNI.

MS	Challenge
	have the powers to require persons to provide this information. ⁶⁷
UK	Anecdotal evidence indicates that EU nationals are becoming aware that the provision of personal details aids police in identifying previous offending in their home country and are not assisting. ⁶⁸

Figure 21 - Suggestions for improvement by interviewed MS in the area of verifying identity

MS	Suggestion
BE	All MS to work with standardised reference tables in ECRIS to help with identification for example by including drop-down lists for place of birth to ensure a valid place is selected and correct spelling used. ⁶⁹
RO	Change Article 11 of the Framework Decision so that personal data currently listed as optional becomes mandatory.
UK	Education around what identification information is required by each MS, for example a list of identity requirements in each MS, particularly where MS have mandatory ID cards/numbers. This would assist convicting/requesting MS to ensure they collect the required information.

⁶⁷ Raised by both Northern Ireland and Scotland.

⁶⁸ Raised by Scotland.

⁶⁹ Subsequent to interview Belgium confirmed that they are content with the list of towns and cities provided in the common reference tables for the ECRIS Reference Implementation and therefore this is no longer an issue.

Figure 22 - Matrix of identification information required by MS

E - Essential H - Helpful

MS	Forename(s)/given name(s)	Surname(s)/family name(s)	Birth name/name before marriage	Generic name (females)	Mother's name	Father's name	Spouse's name (if female & married)	Date of birth	Place/town of birth	Alias/alternative names	Alias/alternative dates of birth	Personal identification number/code	Birth number	Identity documents	Address	Nationality	Gender	Photograph	Fingerprints	Notes
BE	E ¹	E						E	E	H	H									¹ All first names required
BG	E	E			E	E		E	E			E								
CZ	E	E						E	E			H	H							
DE	E	E	E		H ²			E	E						H	H				² Birth name of mother
EE	E	E						H	H			H ³		H ⁴	E	H	H			³ If personal code absent then date of birth required ⁴ Certificate of Identity - number and type required
EL	E	E			E	E	E	E	E											

	Notes
Fingerprints	
Photograph	
Gender	
Nationality	
Address	
Identity documents	H ⁶
Birth number	
Personal identification number/code	
Alias/alternative dates of birth	
Alias/alternative names	
Place/town of birth	E E
Date of birth	E E
Spouse's name (if female & married)	
Father's name	H H
Mother's name	H
Generic name (females)	
Birth name/name before marriage	
Surname(s)/family name(s)	E ⁵ E
Forename(s)/given name(s)	E E
MS	
ES	
FR	
IT	E ⁸ H ⁹
CY	E ¹⁰ H ¹¹

⁵Two surnames required
⁶ID card number or tax number
⁷Arrondissement required for Paris, Lyon and Marseille
⁸Fiscal code, which is similar to a social card number
⁹Name and surname of mother
¹⁰The father's surname (name before marriage)
¹¹Passport number as alternative to personal identification number

	Notes
Fingerprints	H
Photograph	H
Gender	
Nationality	
Address	
Identity documents	H ¹⁴
Birth number	
Personal identification number/code	E ¹²
Alias/alternative dates of birth	
Alias/alternative names	H
Place/town of birth	H
Date of birth	H
Spouse's name (if female & married)	
Father's name	H
Mother's name	
Generic name (females)	
Birth name/name before marriage	
Surname(s)/family name(s)	E
Forename(s)/given name(s)	E
MS	
LV	E
LT	E ¹³
MT	E
NL	E
PL	E
RO	E
	¹² Identity number based on format of date of birth and birth serial number
	¹³ As a block of three can be used as an alternative to personal identification code ¹⁴ Numbers of identity documents
	Town of birth not helpful because nearly everybody is born in the same hospital in Malta
	¹⁵ PESEL – personal identification number

Notes		
Fingerprints		H ¹⁹
Photograph		
Gender	E	
Nationality		
Address	H ¹⁸	H
Identity documents		
Birth number		
Personal identification number/code	H	
Alias/alternative dates of birth		
Alias/alternative names		
Place/town of birth	E ¹⁷	H
Date of birth	E	E
Spouse's name (if female & married)		
Father's name	H	
Mother's name	H ¹⁶	
Generic name (females)		
Birth name/name before marriage	E	
Surname(s)/family name(s)	E	E
Forename(s)/given name(s)	E	
MS	SK	UK

¹⁶ Mother's maiden surname as well as forename and surname
¹⁷ State of birth & state membership
¹⁸ Permanent residence
¹⁹ Fingerprints extremely useful

APPENDIX C - Central Authorities: Detailed Data Returns in the Area of Understanding Translations

Figure 23 –Methods for translating notifications for MS which responded to the detailed questionnaire.

MS	Issue identified / comments
BG	In the beginning all the notifications have been sent to external translators. However it did not last long because it turned out to be too expensive. Since then no translations have been done. We only extract the names from the conviction notifications, transliterate and store them electronically and in paper. In the event of receiving [a] request from another authority, after identifying the person concerned we send a copy of his/her conviction notification stamped true-to-original. So the translation if needed should then be done by the requesting authority.
CZ	The procedure depends on the language of a conviction notification. We do not translate notifications if we are able to understand them as it is the case with the notifications from e.g. the UK. If we receive notifications from e.g. Bulgaria, we always have to ask an interpreter for the translation as we do not understand anything and cannot proceed further.
EE	Ministry of Justice of Estonia does not translate the conviction notifications and the Punishment Register Bureau does not translate the notifications. They are simply stored without translation. The Punishment Register Bureau has no means to translate the notifications into Estonian.
EL	We always send the notifications to the Ministry of Foreign Affairs for translation due to the various languages.
ES	The offences are always translated, even though the countries that aren't part of the NJR sphere require a more extensive translation of its notifications. The main problems we have are especially with the identification of the penalties. Offences, for those countries that are part of the NJR sphere, are classified into different families, and each family have an agreed translation. For the rest of the countries we find some problems sometimes. It is also problematic for us the identification of the person because in Spain we work with two family names, besides we have a specific character, the 'ñ' that complicates the identification even more. Sometimes too, the place of birth has been phonetically transcribed and that's also a problem.
FR	The translation is made within the police record itself for the German, Spanish, English and Italian files. For other languages such as Polish, Czech or Bulgarian, the translation is carried out by sworn translators. The difficulty is in providing the best possible translation in order to avoid anything that does not make sense, and to be able to classify the offences as a crime, major offence or contravention. Regularly updated glossaries have been produced by some countries, combining all the breaches with translations and their equivalent in

MS	Issue identified / comments
	French law.
IT	We receive foreign notifications in the convicting MS language. We get translations in our department or sending them to translators depending on the language.
CY	When we receive notifications in English, we then insert them in our system [in] this language, as we have a good knowledge of English. In the case that we receive notifications in other languages (for example German, French) then we send them to another Governmental Office which is expert in translations. So, by this way, we can correctly understand the type of the offence and sentence. The only difficulty that can exist by this way is the delay that might [occur] until we receive the notifications translated.
LT	We store all notifications received from EU MS in their original language. For a while our regulations of the Criminal Records System do not establish an obligation to translate all notifications gained from foreign countries before storing them into our Institutional Register of Suspected, Accused and Convicted Persons. For a while this part of notifications received from foreign countries for Lithuanian nationals, which is in understandable language for us, is revised and the titles of offences is matched with analogous titles of offences of the Criminal Code of the Republic of Lithuania. Another part of notifications (not of understandable language) is put to the database of our Institutional Register of Suspected, Accused and Convicted Persons. In other words saying, we are only mediators and the right of translation is left for the national data gainers.
MT	Notifications are translated into English.

Figure 24 –Methods for translating notifications by interviewed MS.

MS	Translation process
BE	Some languages are translated by a staff member within the department ⁷⁰ with other languages not understood not being translated. The staff Member who completes translations signs the document and takes responsibility for the content. Priority given to knowledge of language however knowledge of the law also important.
DE	English language is translated by a staff member if possible, other languages are translated either by a freelance translator or the Ministry of Justice translation unit. The translators are certified for use by all courts in Germany and have expertise of the law as well as language by study and experience by working for the courts.
ES	Translations are completed by the Ministry of Justice translation department who use translators that are qualified having taken an exam in the foreign affairs of the Ministry. Translators will have knowledge of law and qualified in the language as both are important factors. All translations are literal and in the future an automatic translation function will be incorporated into their database.

⁷⁰ French, Dutch or English

MS	Translation process
LT	Documents are not translated by the central authority as this is the responsibility of the data gainers. In the future when the law allows foreign offences to have consequences in Lithuania translation will be necessary. No decision has been made as to how this will be managed in the future but the central authority's opinion is that it should be the responsibility of competent specialists of the law. All notifications sent from Lithuania to another EU MS are sent in the English language.
PL	Completed by either a Ministry of Justice translator or an external translation company. The translations are certified and stamped with priority given to knowledge of the language. The legal specialists in the central authority then review the translations.
RO	Documents in Romania are translated by a translation unit within the department for some languages ⁷¹ and a translation agency for the others. The translators would have studied in a police academy and have knowledge of the language.
UK	Translations for the UK are completed centrally by the UKCA-ECR by an external translation company which are accredited and qualified in the language. No knowledge of the law is required as a literal translation is requested. An automatic translation function has also been built into their database.

Figure 25 - Challenges raised by interviewed MS in the area of understanding translations

MS	Challenge
BE	Belgium has no facility to translate information which is received in a language that no member of staff understands. This means that information received in one of these languages which does not have a NJR code can not be entered onto the register.
PL	MS which translate notified offences into their official language may in the event of a request choose to retransmit those offences in the translated format as stored rather than the original format and language as notified. If a MS chooses to retransmit a translated version of an original document, then any further translations would not be based on the original document and therefore the original meaning could be lost or altered.
UK	Translations are orientated to English and Welsh legislation despite there being other jurisdictions in the UK. For example an offence translated as 'burglary' would in Scotland be known as 'house breaking'. ⁷²

⁷¹ English, Spanish, French, Italian and German

⁷² Raised by Scotland.

Figure 26 - Suggestions for improvement made by interviewed MS in the area of understanding translations

MS	Suggestion
LT	All MS to use a common working language, preferably English.
PL	Convictions should be retransmitted in their original format and language.

APPENDIX D - Central Authorities: Detailed Data Returns in the Area of Information On and Layout Of the Conviction Certificate

Figure 27 - Challenges raised by interviewed MS in the area of information on and layout of the conviction certificate

MS	Challenge
BE	The introduction of NJR has changed the format of information for some MS, specifically in relation to the matching of offences and sanctions when there are multiple offences. In these cases it was sometimes easier to understand the paper notifications.
ES	On NJR, when an update to previously notified information is sent, some MS send the updated information as a new notification rather than an update. In some cases, new notifications are sent as updates.
ES	With notifications from the UK, the Spanish central authority has difficulty matching the offences with the relevant disposal when there are numerous offences as all disposals appear in one section.
PL	Conviction notifications contain abbreviations which they do not understand.
PL	Court case numbers are not always included.
UK	With NJR, the format in which information is received from some MS has changed which can be challenging to deal with.
UK	A number of countries do not provide the Penal Code article. This makes it difficult to match notified offences to equivalent UK offences. The Penal Code article number is important as it enables the analyst to look up the offence wording which is often more detailed than the offence title.

APPENDIX E - Central Authorities: Detailed Data Returns in the Area of Understanding Offences

Figure 28 - Processes used to add notified convictions to the criminal register

MS	Process
BE	Entered into the system in Dutch and French.
BG	Bulgaria has no available national register for convictions. The NJR system is used to enter the data of the Bulgarian citizens, convicted in foreign states – members or not of the NJR [project]. Only the personal data of the individual is entered into the NJR system.
CZ	The double criminality requirement has to be fulfilled, otherwise a foreign conviction cannot be entered into the Czech Criminal Register. The decision is made by the Supreme Court. When the Supreme Court decides a conviction should be entered on the criminal register, it notifies the central authority and the conviction is added in the same manner as a conviction from a Czech court.
DE	The storage of record information requires the comparability of the foreign legal norm to a German legal norm. The exact denotation of the committed offence and the legal norm applied is entered onto the register.
EE	The notifications are not inserted into the Punishment Register's information system.
EL	This is important under the framework of judicial cooperation on the occasion of a new judicial decision. But judges are aware of and the judicial file could help for such occasions. But such problems won't occur in the ECRIS if implementing article 5 of the 316/2009/JHA Decision of the Council at the date of ECRIS 'go live'. The offence is entered manually by recording the exact translation of the offence.
ES	When we record the criminal records, we have the option of saving those records as 'non-visible', therefore if a conduct is not an offence in Spain we can incorporate it and if any other country requests those records we would send it and they would see that it is recorded but that it is not an offence in Spain. Entry onto the register for NJR notifications is practically automatic but in some other cases it is completely manual.
FR	As far as possible, we try to find correspondence to a French breach and sentence, otherwise we record the breach with a literal translation on the basis of its description in the file received. Offences are added to the register using suitable software. A clear input screen helps to update as soon as possible what is mentioned on the file.
IT	We are using the NJR tables of offences where a common code is agreed among the countries involved in the NJR project. Offences are added automatically in the NJR database. If something goes wrong our IT system alerts us to manually resolve any mistake.
CY	We try to match the offence according to our national law. When this is not possible, then it is entered under an open category.
LV	At the moment there is no collation with Latvian laws. Information is

MS	Process
	incorporated directly from a notification of conviction.
LT	Currently there is no national legal basement, which establishes an obligation to match offences included on a conviction notification to the offences in our national law. Notifications are scanned and attached to the criminal record in their original form. When Article 97 of the Lithuanian Criminal Code is enacted, to enable convictions from other EU MS to be taken into account, the committed criminal act must be a crime according to Lithuanian national law.
MT	Offences which have an equivalent in Maltese national law are recorded on computer. Offences which do not match Maltese national law are recorded in a book.
NL	Data is entered manually.
PL	According to the principle of dual criminality only acts considered to be offences in Poland are entered onto Polish Criminal Register. The dual criminality is examined on the basis of information provided on the notifications (this is why the legal basis of the conviction or detailed description is so important). Offences are added manually, by the end of 2011 notifications will be automatically transferred to the national database using xml files sent via NJR or ECRIS.
SK	Offences are written to the system without change as they come.
UK	Convictions which match to an equivalent criminal offence in English and Welsh law are entered onto the national register as the English/Welsh offence using codes. In Northern Ireland, the offence is added to the criminal register using free text to match the information already added to the national criminal register e.g. the English/Welsh offence already selected by the UKCA-ECR. In Scotland, offences are added to the criminal register using a table value. Foreign convictions are given a particular code to differentiate them from Scottish offences.

Figure 29 – Process used for establishing dual criminality (if done) by interviewed MS

MS	Detailed process
BE	Only offences which are also an offence in Belgium will be added to the register. For notifications received via NJR the NJR code is used to match the foreign offence to a Belgian equivalent. This match is made by the personal knowledge of the central authority staff and if there is an offence which they are unsure about a legal expert will be consulted who will use their personal knowledge as well as the Penal Codes of other MS. Offences are added to the register manually as free text.

MS	Detailed process
DE	Establishing if the notification relates to a crime according to the German Criminal Code is completed using the knowledge of the central authority staff but if needed can search the ANITA database. ⁷³ The offence is added to the register as a literal German translation of the offence wording taken from the notification.
ES	The central authority staff are responsible for matching the notified offence to a code ready for entry onto the register. The penal code of the convicting country is used where available to assist. Offences are added to the register using codes and an open category is available when the offence cannot be matched to a specific code.
LT	Foreign convictions do not currently have any legal consequence in Lithuania and the law does not make institutions take foreign convictions into consideration and therefore they are not disclosed or do not appear on the certificate of convictions. There are a small number of exceptions for example the Law on Elections and Law of Citizenship which specifically mention foreign convictions. Therefore the notification is scanned and attached to the record.
PL	Notifications will be examined by one of the legal specialists who use their knowledge of Polish law to establish dual criminality by reviewing the legal basis (the act, section or law) of the conviction. They sometimes use verified websites to assist. The offence is added to the register in free text using the exact wording as translated into Polish that is contained on the notification.
RO	Can only register the notification if offence is a crime in Romania but do not have to match the offence to a specific offence in Romanian law. It is enough to know that that type of activity would be a criminal offence in Romania for example any offences in relation to abortion would not be registered as this is not an offence in Romania. Offences to be registered are recorded on a paper standard card and the convicted person has a marker added to the Evidence of Population Register to notify users that they have been convicted of a crime.
UK	The analysts use the article number of the foreign penal code to look up the offence wording to try and match it to a UK equivalent. A variety of resources are used to assist such as the convicting country's penal code, legal books and databases. Difficult cases are reviewed at a monthly meeting where managers and analysts make a joint decision. Decisions are documented for future reference.

⁷³ANITA is a project being conducted by the central authority which aims to compare all Member States offences with German offences. Law students conduct research on commonly notified offences using sources including the Max Planck Institute for International Law at Freiburg University, libraries and online resources such as 'legislationline', and suggest matches to German offences which are then reviewed by a legal consultant/public prosecutor. The results are recorded in a searchable database (ANITA - Anwenderfreundliche Normenvergleichsdatenbank durch inhaltliche und technische Aktualisierung - user-friendly legal norm database for comparison with regards to content and technical actualisation) showing the offence by MS and the equivalent offence in German law.

Figure 30 – Challenges raised by interviewed MS in the area of understanding offences

MS	Challenge
LT	Insufficient information to establish whether a notified offence is a criminal offence or an administrative offence in Lithuania, for example in cases of shoplifting, drugs or smuggling offences, the value stolen or amount possessed/smuggled is a determining factor in whether the offence is criminal or administrative.
LT	When it becomes legal to take into account foreign convictions, they will face problems with understanding offences and matching them to equivalent Lithuanian offences.
PL	Challenging to establish dual criminality when legal basis of conviction is missing.
PL	Vague offence descriptions cause problems when trying to establish dual criminality.
PL	Insufficient information provided to establish whether a notified conviction is a minor offence (not registered) or a criminal offence (registered).
UK	Age and gender of victims and MO for sexual offences is often needed to be able to establish a match to a specific UK offence and this is not usually provided.
UK	The process of matching a foreign offence to a UK offence is challenging due to the vast amount of UK offences available to match to, which often requires greater detail than is provided on the notification to select a specific offence wording for entry on the register.
UK	Appears to be a lack of understanding on how aggravators and modifiers are utilised and applied in Scotland....The use of aggravators and modifiers...is central to Scottish judicial practices....A person may be convicted of assault, but a Sexual aggravator added which... completely changes the complexion of a simple assault conviction....The use of modifiers qualifies the conviction in respect of what kind of drug [or...] weapon was involved...This information needs to be sent to the Home Country so that convictions are competent and reflect the reality. ⁷⁴
UK	Offences added to the national criminal register are always matched to English and Welsh offences by the UK central authority even if the convicted person comes from another jurisdiction in the UK. ⁷⁵
UK	The practice of entering the EU conviction onto the criminal register as an English/Welsh offence rather than entering the convicting MS offence/statute is open to challenge. ⁷⁶
UK	The process of mapping offences to NJR/ECRIS codes was subjective, which could lead to potential appeals in the future. ⁷⁷

⁷⁴ More information on aggravators and modifiers can be found at <http://www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/iscjjs/publications/las-sras/iscjjs-website/modifiers-aggravators/Q/editmode/on/forceupdate/on>

⁷⁵ Raised by Scotland.

⁷⁶ Raised by Northern Ireland.

⁷⁷ Raised by Northern Ireland.

Figure 31 – Suggestions for improvement made by interviewed MS in the area of understanding offences

MS	Suggestion
UK	Central authority should have access to legal advice for establishing dual criminality and selecting the appropriate English/Welsh offence. ⁷⁸
UK	Would like all MS to provide both the offence wording and the penal code article on ECRIS notifications.

⁷⁸ Suggested on 25 January 2011 during the UKCA-ECR Focus Group.

APPENDIX F - Central Authorities: Detailed Data Returns in the Area of Understanding Sanctions

Figure 32 – Challenges raised by MS in response to the detailed questionnaire in the area of understanding sanctions

MS	Issue identified / comments
BE	What does 'driving licence is endorsed' mean because Belgium doesn't use this expression. Prison sentence less than 12 months 22 weeks suspended for 18 months it is not very clear which of the 2 convictions is the right one
CZ	Sanctions are a particular area of challenge [for] the Czech Republic central authority and a large number of examples were provided. [These can be found in the Appendix J as examples of where the research team have provided guidance and explanations.]
DE	Some sanctions are not known in Germany, for example 'imprisonment xx weeks suspended imprisonment xx months consecutive'
EE	Sometimes notifications are received which contain offences or disposals they do not understand.
EL	The sanction is important for the preservation of the criminal record.
ES	Problems regarding the sanctions regarding driving licences in particular when the licence has been 'endorsed', they do not know if the person has been disqualified from driving or if points have been removed. The UK sanction of 'community order' is complicated.
LV	If the central authority receives sanctions which they do not understand they request a meaning of the sanction from colleagues in other MS central authorities. Some examples were provided: <ul style="list-style-type: none"> • Imprisonment 15 mths – less 113 days spent on remand (UK); • Drug rehabilitation requirement 6 months non-res drug/alcohol treatment (UK); • A.R non-renseigné (FR); • Bound over in the sum of £500 for 2 years (UK); • Fourniture de fraud renseignements sur les conditions de travail-transport routier (FR); The main reasons for this is firstly because the abbreviations and secondly, each MS has it's own laws and terms and therefore it is difficult to match to the laws in other MS.
NL	Due to the differing national systems it may occur that sanctions (e.g. fines) are interpreted differently by MS.
PL	The use of sanction codes in Belgium and Spain is difficult and the legal institutions are unknown in the majority of MS which is a problem.
RO	UK sends notifications containing sanctions the content of which when translated into Romanian do not appear logical. ⁷⁹

⁷⁹ This is a summary of a longer response that contained some examples. However, since the examples were given in Romanian, which had to be translated back into English for the

Figure 33 – Suggestions made by MS in response to the detailed questionnaire in the area of understanding sanctions

MS	Suggestion
DE	Need to know the detailed information about the legal norm that the sentence is based on to compare the decision with the German penal code.
NL	This will be resolved by ECRIS as all MS will have to use the same method of recording decisions.
SK	ECRIS should involve common reference tables as to make understanding the sentences better.

Figure 34 – Challenges raised by interviewed MS in the area of understanding sanctions

MS	Challenge
ES	Further information was provided about the example given in the detailed questionnaire. The sanction of ‘driving licence endorsed’ from the UK was recorded as ‘disqualified from driving’ as the meaning of ‘endorsed’ was not properly understood, which led to a dispute from the convicted person.
PL	Unknown legal institutions.
UK	Joint sentences from some jurisdictions (because of multiple offences on a single bill of indictment) can be problematic in the case of sexual offences as it is necessary to distinguish the exact sentence given for the sexual offence before a person can be required to register as a sexual offender. ⁸⁰

Figure 35 – Suggestions made by interviewed MS in the area of understanding sanctions

MS	Suggestion
ES	Sanction codes will be introduced with ECRIS which will assist with understanding.

research team, it was difficult when reading the response in English to identify the exact nature of the confusion.

⁸⁰ Raised by Northern Ireland.

APPENDIX G - Central Authorities: Detailed Data Returns in the Area of Obtaining/Requiring Additional Information

Figure 36 – Responses from interviewed MS in relation to requesting additional information in the form of the MO

MS	MO requested	Comments
BE	No	Not needed but helpful in matching notified offences to national law
DE	Exceptionally	Title of the crime is usually enough to establish dual criminality but if this is not possible they will request the conviction. Helpful to have the age of victims for sexual offences.
ES	No	Only record the infractions and the sanctions so they have no need to ask for MO.
LT	For disputes	They request the convicting country to send a copy of the judgment which is problematic. The information is useful and in the future they will require many more judgments.
PL	Yes	Would request MO via central authorities. Requested when more detailed information is required to establish if a notified offence was a minor or criminal offence.
RO	No	Only a court can request the whole sentence as provided for in the Framework Decision.
UK	Yes	MO requested for serious offences such as violent or sexual offences or to assist with establishing closest English offence.

Figure 37 – Responses from interviewed MS in relation to the process for obtaining additional information in the form of the MO

MS	Process for obtaining MO information
BE	Not held by central authority and should be obtained from the court.
DE	Must request it from the court as not stored by central authority. Can assist with finding the correct court.
ES	Central authority cannot provide any additional details to those already provided on the notification document. The most effective route for obtaining further information is to go direct to the convicting court.
LT	Institutional Register of Criminal Acts holds detailed pre-trial information. Managed by a department of the Ministry of the Interior.
PL	Not held by the central authority. Can request from the court via the central authority but may be quicker to request via MLA direct to the court.
RO	Central authority does not store this kind of information.
UK	Some very limited information may be stored on criminal register. Detailed information would need to be requested via MLA or direct from

MS	Process for obtaining MO information
	the court.

Figure 38 - Challenges raised by interviewed MS in the area of obtaining/ requiring additional information

MS	Challenge
DE	Difficult to know which court to contact when trying to obtain the full conviction. For example Barcelona has 9 different courts so difficult to know which one to contact.
LT	Requesting a copy of the judgement from the convicting country can be problematic.
UK	Difficult to know which authority to contact in each MS to obtain additional information as each MS has a different structure.

Figure 39 - Suggestions made by interviewed MS for improvement in the area of obtaining/requiring additional information

MS	Suggestion
LT	Include procedure for obtaining copies of the judgements from other MS in the ECRIS non-binding manual for practitioners.
UK	Compile a list of who can be contacted in each MS to obtain MO information. In MS where courts should be contacted directly, a list of courts and their contact details should be provided.

APPENDIX H - Central Authorities: Detailed Data Returns in the Area of Communication Between Central Authorities

Figure 40 – Comments made by interviewed MS in the area of communication between central authorities.

MS	Comment
BE	<ul style="list-style-type: none"> • Communication preference - email/phone • Queries out – sent using general remarks in NJR (often get no response) • Queries in – answering these can be resource intensive • Good communication with some MS
DE	<ul style="list-style-type: none"> • Receive queries in and sends queries out • Communication good with Austria, Luxembourg and Switzerland due to speaking same language
ES	<ul style="list-style-type: none"> • Communication preference – email • Method of communication varies depending on MS • Queries in – answering these is resource intensive • Better understanding should reduce queries
LT	<ul style="list-style-type: none"> • Communication preference – email (fax unreliable, post causes delays) • Queries in – only from UK • No contact with some MS
PL	<ul style="list-style-type: none"> • Communication preference – email • Receive queries in and send queries out • Good communication with those MS with which they exchange highest volumes • Communication generally effective
RO	<ul style="list-style-type: none"> • Method of communication varies depending on MS (email, fax, post) • Emails with UK effective • Queries out sent • Queries in received from UK only
UK	<ul style="list-style-type: none"> • Communication preference – email • Ability to send queries via NJR would be useful • Send more queries out than receive in • Better communication with MS with which they exchange highest volumes

Figure 41 - Challenges raised by interviewed MS in the area of communication between central authorities

MS	Challenge
BE	When notifications/requests are rejected by another MS via NJR the reason for this is not always specified. Or if more information is required what information is not specified.

MS	Challenge
BE	Different judicial systems of each MS can be challenging to understand and this effects the way in which information is understood.
DE	Not having a specific contact person for queries in each MS.
ES	Numerous individuals from the same MS making the same queries as have been made before.
ES	They get asked for information on wanted persons that they do not hold.
LT	Receive notifications and other communications in languages they do not understand.
LT	Email addresses contained in the Manual of Procedure are no longer valid or the mailbox is permanently full.
UK	The differences between the set-ups of central authorities and not knowing what information they have available to them.

Figure 42 - Suggestions made by interviewed MS for improvement in the area of communication between central authorities

MS	Suggestion
DE	Have a few named contacts in each central authority to contact for help.
ES	To have only one contact person in each central authority who deals with queries and questions.
LT	All communications should be in the English language.
LT	Manual of Procedure should be updated to show current email addresses.
PL	A series of week long exchange visits between MS central authorities to better understand each others systems.
UK	Set up a communication strategy which will improve the way central authorities can communicate with each other. For example a quarterly EU conference call with central authorities and possibly legal representation so they can discuss queries and issues encountered. ⁸¹
UK	Information to be supplied by each MS as to what information they have available, what happens to convictions sent to them by the UKCA-ECR and explanation of their Criminal Justice system in general. ⁸²
UK	With ECRIS there should be a way of sending a query within the system rather than having to use email.

⁸¹ Suggested on 25 January 2011 during the UKCA-ECR Focus Group.

⁸² Suggested on 25 January 2011 during the UKCA-ECR Focus Group.

APPENDIX I - Central Authorities: Detailed Data Returns on Other Issues

Figure 43 – Comments made by interviewed MS in relation to NJR/ECRIS

MS	Comment
DE	Expect an increase in the number of notifications as some countries have not sent any notifications for a number of years and they may begin doing so with ECRIS.
ES	After the introduction of ECRIS the main problem that will be outstanding is around the management of third country nationals and being able to communicate these convictions.
PL	With ECRIS there will be an increase in exchange and therefore an increase in translation obligations
RO	Standard reference tables - because each country supplied a table in their own format based on the way the information is stored rather than the standard format in which it will be sent they are not standard.
UK	ECRIS will result in an increase in the volume of exchange which will need to be dealt with accordingly.
UK	ECRIS will improve consistency of information exchange, but will also increase volumes. ⁸³

Figure 44 - Challenges raised by interviewed MS in the area of requests

MS	Challenge
ES	MS are making requests to Spain for EU nationals other than Spanish but they should be making that request to the country of nationality as they should hold all notified convictions for their nationals. On some occasions Spain are responding to these but if the country of nationality have exchanged convictions with Spain for many years the requests will be rejected as they should have previously been notified of them.
PL	When making a request to another EU MS for criminal records the time they sometimes have to wait to receive this information back is too long and therefore causes delays in the criminal proceedings.
UK	Some MS are only accepting requests for their own nationals, UK nationals or third country nationals but no other EU nationals. It is inconsistent as to which countries provide a response and which countries reject the requests.
UK	The restrictions under Article 9 of the Framework Decision mean that information about criminality received in response to a request which could be of relevance for policing purposes and public protection cannot be stored on police systems.
UK	Lack of information about how long from the date of conviction it takes the convicting MS to add the conviction to the national criminal register. Without this knowledge it is impossible to know whether a response to a request contains the full record.

⁸³ Raised by Northern Ireland.

Figure 45 - Suggestions made by interviewed MS for improvement in the area of requests

MS	Suggestion
UK	ECRIS may resolve the inconsistency in MS responses to requests in respect of non-nationals, as raised by the UK and noted in the above table.
UK	Amend the Framework Decision to enable conviction information obtained in response to a request to be stored either on the criminal register or on intelligence databases.
UK	Information to be supplied by each MS as to how long in each country's conviction information takes to be entered onto the criminal register.

APPENDIX J - Examples of Issues Solved by the Research Team

During the course of the project where challenges have been raised or questions have been asked by MS central authorities that the project team can assist with they have been solved along the way. Below are some examples of where the team have provided explanations or a definition to other MS to help them understand the meaning of an offence or disposal.

In addition to this the project team passed a number of comments onto the UKCA-ECR where issues raised by other MS could possibly be resolved by the UKCA-ECR.

Figure 46 – Information provided by the research team in response to queries raised by other MS

Query/question	Definition or explanation provided by the research team
Consecutive/ Concurrent Sentences	<p>Concurrent – Sentences that are concurrent means they are running at the same time. For example if a subject was sentenced to imprisonment 3 months for one offence and then for another offence was also sentenced to imprisonment 3 months if these sentences were <u>concurrent</u> he would serve a <u>total of 3 months imprisonment</u>.</p> <p>Consecutive – Sentences that run one after the other. For example as above if the subject was sentenced to 3 months imprisonment on two offences but this time they are <u>consecutive</u> so he would serve one sentence and then the other. In <u>total</u> they would serve <u>6 months imprisonment</u>.</p> <p>Generally if a sentence is consecutive it will always state this. If not specified assume it is concurrent.</p>
Remand on unconditional bail	A person remanded on unconditional bail is required to return to court on a specific day at a specific time, but apart from this requirement there are no other conditions attached to their bail.
Remand on conditional bail	A person remanded on conditional bail is required to return to court on a specific day at a specific time, as well as other conditions attached to their bail (for example, they may have to sleep at a specified address, have no contact with named individuals or obey a curfew).
Driving licence endorsed	In the UK drivers start with no points and points are added to the licence (e.g. the licence is 'endorsed') with the number of points being greater for more serious offences. Once a total of 12 points has been accrued, then usually the driver would be disqualified. The following link may help: http://www.direct.gov.uk/en/Motoring/DriverLicensing/EndorsementsAndDisqualifications/DG_4022550
1 sentence postponed	Sentence postponed means the subject has been found guilty and will be given a sentence/punishment at a later date
1 remittal for	This disposal should be accompanied by either conditional

Query/question	Definition or explanation provided by the research team
sentence	bail, unconditional bail or in custody (For example 'Remittal for sentence – in custody'). 'Remittal' on its own does not exist as a disposal on our system.
Difference between 'sentence postponed' and 'conditional discharge'	Sentence postponed means the subject has been found guilty and will be given a sentence/punishment at a later date whereas conditional discharge means that although the subject has been found guilty they have been given no immediate punishment, providing he does not commit an offence in a specified period.
Order to continue	This would usually appear when a person has previously been subject to an 'order' (for example a 'probation order' or 'community order') and the decision of the court is that this order should continue.
Sex offender notice served a sex register notice	A person found guilty of a sexual offence has become subject to notification requirements – in other words they must register as a sex offender.
Absolute discharge	When a subject has been found guilty and therefore convicted of an offence but no sentence/punishment is given.
No action on breach	The subject has breached a previous order put onto them but no action has been taken on that breach.
Detention in court house until court rises	The person is detained at court until the court 'rises' (closes for the day). This usually happens when the person has disrupted the court proceedings or insulted an officer of the court in some way.
Remand in custody – there is no length of the limitation of the freedom of a person	When a person is remanded in custody it means that they will be detained in a prison until a later date when a trial or sentencing hearing will take place.
Referral order	A Referral Order is given to a young person who pleads guilty to an offence when it is his/her first time in court. When a young person is given a Referral Order, he/she is required to attend a youth offender panel. The panel, with the young person, their parents/carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is to repair the harm caused by the offence and address the causes of the offending behaviour. The conviction is 'spent' once the contract has been successfully completed.
1 commit to crown court for sentence – in custody	The subject has been found guilty (normally at a Magistrate's court) and they have been committed to a crown court (higher court) to be sentenced. 'In custody' means he is kept in custody during the period between being conviction and appearing at the crown court for sentencing.
Suspended imprisonment 12mths wholly	12 months imprisonment which have been suspended for a period of 24 months. When a court imposes a custodial sentence of between 14

Query/question	Definition or explanation provided by the research team
suspended 24mths	days and one year (or six months in the magistrates' court), the court may choose to suspend the sentence for up to two years. This means that the offender does not go to prison but must comply with one or more requirements set by the court.
No separate penalty (when no other sanctions are stipulated)	This should always be accompanied by another offence which does have a disposal specified.
What is disposal date?	Disposal date is the date in which the subject was given a sentence/punishment for the offence. Often this will be the same as the appearance date but sometimes these are different when the sentence/punishment was given at a separate court appearance.
Discharges	<p>Discharges are the most lenient sentencing option available to a court. They are often given for less serious offences such as minor thefts or criminal damage offences where the court decides not to impose a punishment because the experience of going to court has been punishment enough.</p> <p>The types of discharge are:</p> <ul style="list-style-type: none"> • Absolute discharge – an offender is released without punishment and no further action is taken • Conditional discharge – an offender is released without punishment on the condition that they must not commit another offence within a specified period (up to three years). If the offender commits another crime within the specified period, the court may impose a sentence for the original offence as well as the new offence • Unconditional discharge – an offender is released without punishment
Offence of having article with blade or point in public place.	<p>Section 139(1) of the Criminal Justice Act 1988 – Offence of having article with blade or point in public place</p> <p>1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.</p> <p>2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.</p> <p>3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.</p> <p>4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.</p> <p>5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—</p> <p>(a) for use at work;</p> <p>(b) for religious reasons; or</p>

Query/question	Definition or explanation provided by the research team
	<p>(c) as part of any national costume.</p> <p>6) A person guilty of an offence under subsection (1) above shall be liable-</p> <p>(a) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;</p> <p>(b) on conviction on indictment, to imprisonment for a term not exceeding four years, or a fine, or both.</p> <p>7) In this section 'public place' includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.</p> <p>Note This section applies to any article which has a blade or is sharply pointed except a folding pocket-knife (with a blade 7.62cm or less (three inches) long - a longer bladed pocket knife is not exempt from this legislation). 'Blade' means the sharp blade of a knife, sword, etc. It is not intended to include the blunt blade of a screwdriver, oar, cricket bat or other item, which common sense tells us was not intended to be covered by this section</p>
<p>What is the process when somebody dies</p>	<p>When somebody in the UK who has a criminal record dies their convictions are retained and kept according to the normal retention rules (until the subjects 100th birthday in England, Wales and Northern Ireland). The convictions are not deleted from the criminal record system.</p> <p>The criminal record system will only be updated with the death of that subject if the police have been involved in the investigation into their death for example a sudden death or a victim of a murder. In these cases a marker is added to the criminal record system to say the subject had died. In all other cases where the subject dies and the police are not involved in any way the criminal record system is not updated with this information.</p> <p>The criminal record system would not send an update to any other MS when a subject has died.</p>
<p>What are the Scottish Weeding Rules?</p>	<p>The Weeding Policy for the Scottish Criminal History System can be found on the below link: http://www.disclosurescotland.co.uk/publications/documents/WEEDINGPOLICYrevised111007.doc</p>
<p>Drink Drive limits</p>	<p>UK drink driving limit is 0.08%. 35 micrograms of alcohol in 100 millilitres of breath; or 80 milligrams of alcohol per 100 millilitres of blood; or 107 milligrams of alcohol per 100 millilitres of urine.</p>
<p>Imprisonment 15 mths – less 113 days spent on remand</p>	<p>Subject has been sentenced to 15 months imprisonment but because they have already spent 113 days in prison while on remand (time spent in prison waiting for a trial) this is to be deducted from the sentence. The total time to be served is 15 months minus 113 days.</p>

Query/question	Definition or explanation provided by the research team
Drug rehabilitation requirement 6 months non-res drug/alcohol treatment	6 months non-residential rehabilitation requirement for drugs/alcohol
Bound over in the sum of £500 for 2 years	The court can bind an individual over to keep the peace. The order is designed to prevent future misconduct and requires the individual to promise to pay a specified sum if the terms of the order are breached within a certain time period.
<ul style="list-style-type: none"> •What happens if the community order by a delinquent is not fulfilled? •Is there a possibility to be sentenced to a 'community order' again in that 'second trial' or does the delinquent gets this chance only once? •What are the consequences for a delinquent if he/she fulfils the 'community order'? 	<p>If the person fails to comply with one or more of the requirements of the community order they may be given a warning by their Probation Officer, or proceedings for the breach may be commenced against them. When proceedings for a breach are commenced, the court has two options:</p> <p>(1) Increase the severity of the existing order - for example to impose a more severe community order (such as adding a curfew to the original requirements)</p> <p>(2) Revoke the community order and proceed as though sentencing for the original offence. Depending on the nature and circumstances of the original offence and previous offending history, this could include imprisonment or it could be a fine or a suspended prison sentence.</p> <p>Imprisonment would be a last resort, only in response to deliberate and repeated breaches of a community order. Once the person has fulfilled the requirements of the community order then the criminal proceedings would be considered to be completed. (Obviously, if they committed a further offence and were found guilty then their previous criminal history would be taken into consideration next time they are sentenced).</p>
It would be very useful to know the types of penalties, the limits of imposing sentences, the kinds of correctional institutions.	<p>Basic information: http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Sentencingprisonandprobation/Sentencingandcriminalrecords/index.htm</p> <p>Detailed information: http://sentencingcouncil.judiciary.gov.uk/docs/web_new_sentences_guideline1.pdf</p> <p>Correctional institutions: The types of correctional institutes in England and Wales are 'Prisons' (for adults over 21) and 'Young Offender Institutions' (for young adults aged 18-20). These may be 'open' or 'closed depending on the 'category' of the prisoners held there. All prisoners are assigned a security category from A (the highest) to D, depending on how likely they are to try to escape and the risk they could cause harm to the public or prison staff. Further information about security</p>

Query/question	Definition or explanation provided by the research team
	<p>categories and open/closed prisons can be found below: http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Sentencingprisonandprobation/Goingtoprison/DG_196234 There is also 'secure accommodation' available for young people 15-17 years old who have been given a custodial sentence. The prison systems in Northern Ireland and Scotland are very similar.</p>
<p>Does the size of separate penalty have an influence for the term of previous conviction (weeding term)?</p>	<p>No, the size of a separate penalty does not influence the term of a previous conviction. In England and Wales, all convictions will remain on the Police National Computer until the offender's 100th birthday – convictions are not weeded. (There used to be a system similar to weeding referred to as 'Step-Down' and under these rules, a later conviction could result in a previous conviction not being weeded but this system no longer operates.)</p>
<p>Does the form of guilt influence the qualification of the offence (separate branches of law) in your country and for the term of previous conviction ('stepped-down')?</p>	<p>Each offence has 'points to prove' within which it is defined what would need to be proved for a 'guilty' verdict (e.g. intent, negligence, recklessness as to consequences of action etc) which varies from offence to offence. However, there is no distinction in branches of law that is equivalent to the Lithuanian concept of 'criminal' and 'administrative' offences, so this would have no influence on the qualification of an offence in the way that you describe. However, offences are categorised into 'recordable' (where a conviction for the offence would be entered onto the national criminal register) and 'non-recordable' (where the conviction is not required to be entered onto the national register). The distinction between 'recordable' and 'non-recordable' offences is that for 'recordable' offences imprisonment must be available as a punishment if the person is found guilty (imprisonment need not necessarily be imposed, it just has to be an option) – there are a few other offences classed as recordable even though a person wouldn't be sent to prison for them, which are specified in legislation (these are listed in the National Police Records (Recordable Offences) Regulations 2000 – available at the following link: http://www.legislation.gov.uk/ukxi/2000/1139/schedule/made) . A non-recordable offence would not usually be entered onto the Police National Computer unless it was commissioned at the same time as a recordable offence The numbers of 'non-recordable' offences sent to the Lithuanian Central Authority by the UKCA-ECR would therefore be very low and only if attached to a 'recordable' offence. As already mentioned, 'Step-Down' is no longer in operation.</p>
<p>Drug offences: its interesting to</p>	<p>The below website lists the categories of drugs which are currently prohibited.</p>

Query/question	Definition or explanation provided by the research team
know the sorts of drugs and other psychotropic substances that the criminal liability is foreseen in the handling of it.	http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/drug-licences/controlled-drugs-list?view=Binary)
Immigration Offences: for example in the Criminal Code of the Republic of Lithuania we have one Article, which relates with the immigration crimes – Article 291 Illegal Crossing of the State Border. How many sort of them do You have?	The project team provided a list of around 40 of the most common immigration offences (excluding people trafficking offences) for England and Wales. Further information can be obtained, including the relevant legislation, from the legislation spreadsheet previously provided by the MUCRI research team and at www.legislation.gov.uk .

In addition to the above questions, some case specific queries were resolved where a MS had difficulty understanding a specific notification like the example from Spain provided in the detailed finding regarding information/layout on conviction certificates discussed on page 40.

For general guidance on sanctions the project team directed other MS central authorities to the following websites:

- <http://sentencingcouncil.judiciary.gov.uk/> - Link to the sentencing council website which explains some of the main types of sentences.
- <http://www.legislation.gov.uk/ukpga/2003/44/contents> - The Criminal Justice Act 2003

In addition to this due to the number of MS who specified on the initial questionnaire that access to UK laws would help them resolve some of the issues they identified the project team decided to circulate guidance information and resources which may assist. As notifications from England and Wales do not contain the act and section in which offence relates to it is difficult for other MS to find the full offence wordings. Therefore the project team provided a spreadsheet which cross references every offence with the relevant act and section. A link to <http://www.legislation.gov.uk> website was provided which contains all UK legislation and enables the other central authority to search the website to find the legislation for the notified offence.

For one MS the research team provided a list of online penal codes for other MS which had been built up over time by the UKCA-ECR in order to assist the MS with researching offences received from other MS.

The research team referred the specific problem encountered by the Czech Republic and detailed earlier in the report to the UKCA-ECR which agreed to conduct a pilot scheme for a small number of cases for which the UKCA-ECR provided some limited information that was held on the criminal register to ascertain whether this might be sufficient for the Czech Republic's needs and avoid the requirement for additional information from the court.⁸⁴

⁸⁴ The results of this trial are unknown.

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