

POLICY PAPER
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Fair Trials International
59 Carter Lane
London EC4V 5AQ
United Kingdom

Telephone +44 (0)20 7762 6400
Fax +44 (0)20 7762 6401

www.fairtrials.net

FAIR TRIALS INTERNATIONAL'S STATEMENT ON THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM (ECRIS)

1. Fair Trials International (FTI) is a registered charity, based in the UK, which works to secure fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. We provide legal advice, support and other assistance to hundreds of European Union (EU) citizens each year. We have a keen interest in EU Justice and Home Affairs policy, and through our expert casework practice we are uniquely placed to provide evidence on how policy initiatives affect defendants throughout the EU.
2. Transmission of information on previous convictions across Europe and legislation about their effect is necessary, but access to this highly sensitive information should not and need not result in downgrading citizens' data protection and defence rights.
3. In that respect, FTI would like to voice its grave concerns regarding the current proposal on the establishment of the European Criminal Records Information System (ECRIS), especially with regard to the inadequacy of the proposed system of "tick" boxes and, more generally, the lack of proper safeguards on data protection.
4. Inadequacy of the proposed system: risk of inaccuracies and lack of mutual understanding:
 - i. The proposed "tick" boxes will indeed not define the elements of the crimes, which may be different amongst member states, thereby allowing confusion as to the exact nature of the offence. Additionally, this system will not provide an accurate reflection of the charges and the sentence.
 - ii. As a prerequisite to the adoption of ECRIS, it is imperative to make sure that member states collect sufficient information on criminal charges and convictions. Such information would ensure a proper mutual understanding about the information contained in the criminal records across Europe.
 - iii. In that sense, all member states should be required to record a set of minimum data within their own systems. Such information should include -in addition to the defendant's full name and date of birth- the exact nature of the charge, any mitigating or aggravating circumstances, references to the national provisions that were violated and any penalties incurred by the defendant.
 - iv. Moreover, the proposed ECRIS system is very likely to result in errors, when compiling these data as well as when translating the information.
5. Lack of proper safeguards on data protection:

- i. At the outset, FTI believes that no steps should be taken with a view to develop and facilitate the exchange of information extracted from criminal records until EU member states adopt a general framework decision on data protection.
- ii. FTI acknowledges that there are some data protection provisions in the decision on the organisation and content of the exchange of information. Those provisions limit the use of the information collected to the originally requested purpose.
- iii. However, the benefit of these provisions is wiped out by an exception that allows a requesting state to use the information received outside the scope of the request in order to prevent an immediate and serious threat. This exception is overly broad and may lead to an abuse of discretion and the unnecessary release of personal information to third parties.
- iv. In that context, FTI is deeply concerned that these provisions are not accompanied by an obligation to inform the individuals of all requests for information that concern them.
- v. Releasing criminal records without the defendant's knowledge can be incredibly damaging in the case of inaccurate information. . The court's reliance on such information can indeed have a severely detrimental effect on the outcome of the proceedings.
- vi. It is therefore imperative that the defendant be aware of all records that have been released so that he has an opportunity to defend himself in the event of inaccuracy. FTI urges the Parliament to amend this proposal and add a procedural safeguard requiring that the defendant be notified of any transfer of information and receive a copy of his records.

6. FTI is very hopeful that the Parliament, and especially the LIBE Committee, will endeavour to prevent the adoption of the ECRIS proposal unless these issues are properly dealt with.

For more information, please contact Priscillia de Corson by email: priscillia.decorson@fairtrials.net, or call the office: 00.44.20.7762.6400.

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international standards of justice
and defend the rights of those
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than their own.

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