



Serious offending by Mobile European Criminals  
Improving information exchange and cross-border supervision

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## Offender Management User Guidance Assessment and Management of Serious Mobile

## European Criminals

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Associate Partners:





## Offender Management User Guidance - Assessment and Management of Serious Mobile European Criminals

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# Offender Management User Guidance – Assessment and Management of Serious Mobile European Criminals

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## Offender Management User Guidance

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### Purpose

This guidance for Offender Management/Probation (OM) personnel has been produced following the recommendations of the Serious Offending by Mobile European Criminals (SOMEK) field work study completed in January 2015, accessible at [http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563). Separate guidance is also provided for Law Enforcement (LE) personnel.

Recommendations in the SOMEK Fieldwork Study Report concluded that:

- Guidance should be provided to Law Enforcement and Offender Management personnel (Recommendation 16).
- Joint training and development initiatives are needed at national and European Union (EU) regional levels to improve collaborative working and information exchange on mobile serious violent or sexual offenders (Recommendation 17).

This Guidance provides Offender Management Services with key knowledge and practical resources:

- To develop consistent and effective practice in the supervision of those serious violent or sexual offenders who pose a risk to communities both within their own Home Member State and in other EU Member States (MSs).

- To establish frameworks and practices which will improve the quality, consistency and timeliness of cross-border information exchange and the appropriate transfer of supervision.

## Who is the Guidance for?

The Guidance will be relevant to **practitioners** who work with and supervise serious violent or sexual offenders whether in the community or in custodial settings (including Probation and prison settings and other custodial settings such as designated psychiatric units). It will also be relevant to **service managers** at both local and national levels and to **criminal justice policy-makers** and **others with responsibility for the design of services**. These materials could also provide the basis of information presentations and training events.

## Terminology

Offender Management whilst a term mostly recognised in England and Wales, is the preferred term here to broadly describe statutory services to offenders at court, on supervision, in custody and post custody. In some, but not all Member States, statutory services are delivered by Prison Services, Probation Services, or similar statutory bodies (for example in the UK offenders in Scotland are supervised by Criminal Justice Social Workers).

## How are Serious Violent or Sexual Offenders Defined?

The following definition has been agreed as a starting point in the identification of serious violent or sexual offenders.

Any person who has been convicted of one or more of the following serious sexual or violent offences (as selected by the SOMEK project from the European Criminal Record Information System (ECRIS)).

- Rape
- Aggravated rape other than a minor
- Rape of a minor
- Sexual assault
- Sexual assault of a minor
- Intentional killing
- Aggravated case of intentional killing
- Violence causing death

- Causing grievance bodily injury, disfigurement or permanent disability
- Torture
- Kidnap

**And**, is reasonably suspected to be moving, **or** has moved across EU border(s)

to commit a serious sexual or violent offence,

**or** is reasonably suspected to have committed a serious sexual or violent offence and is highly likely to re-offend in another Member State.

## Navigating the Materials: A Map of the Guidance Contents

The following table provides:

- a. A simple description of the stages of identifying, assessing, managing and working across EU borders to reduce the risk of harm posed to EU communities by serious violent or sexual offenders. This process forms the basic framework for the Guidance.
- b. Details of how each section of the guidance links to the various stages described.
- c. Advice for users on how to select sections which are most appropriate to their roles and responsibilities.

a) Stages in the identification, assessment and management of serious violent or sexual offenders travelling across EU borders	b) Guidance Sections and relevant content	c) Who needs to read this? Roles and responsibilities
<b>Stage 1: Recognising the importance of SOME C</b>	<b>1. The Introduction:</b> 1.1 The SOME C project 1.2 The permissive EU Framework for Information Exchange 1.3 Defensible Decisionmaking	<ul style="list-style-type: none"> <li>■ National policy-makers</li> <li>■ Local strategic managers</li> <li>■ Operational Managers</li> <li>■ Practitioners working with high risk violent or sexual offenders</li> </ul> <p>Sections 1.1, 1.2 and 1.3 can also be used as briefing handouts.</p>



<p><b>Stage 2: Initial Identification, risk assessment and risk management</b></p> <ul style="list-style-type: none"> <li>■ <b>Initial Identification</b></li> </ul>	<p><b>2. Identifying and Assessing serious violent and sexual offenders</b></p> <p>2.1 Introduction</p> <p>2.2 Accessing and using the European Criminal Record Information System (ECRIS): initial identification as the starting-point for assessment</p>	<ul style="list-style-type: none"> <li>■ Local strategic managers who oversee the design of services</li> <li>■ Operational Managers who oversee service delivery and supervise front-line staff</li> <li>■ Practitioners working with high risk violent or sexual offenders</li> </ul> <p>This section supports the development of common practice in assessing and intervening to reduce the risk</p>
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		posed by serious violent and sexual offenders.
<ul style="list-style-type: none"> <li>■ <b>Risk assessment and risk management</b></li> </ul>	<p>2.3 A Structured Approach to work with Individuals</p> <p>2.3.1 An Overview of Risk posed by individuals</p> <p>2.3.2 Risk Assessment and Decision-making</p> <p>2.3.3 From assessment to action 2.3.4 Review</p>	

<p><b>Stage 3: Making decisions to exchange information or transfer supervision across EU borders</b></p> <ul style="list-style-type: none"> <li>■ <b>Establishing frameworks for effective inter-agency communication</b></li> </ul>	<p><b>3. Creating frameworks for collaborative working and effective information exchange</b></p> <p>3.1 Introduction</p> <p>3.2 Effective Communication</p> <p>3.3 Developing Frameworks and formal arrangements</p> <p>3.3.1 Developing collaborative partnerships</p> <p>3.3.2 Developing protocols and Memoranda of Understanding</p> <p>3.4 Multi-agency working</p> <p>3.4.1 Case Conferences</p> <p>3.4.2 Multi-agency teams</p>	<ul style="list-style-type: none"> <li>■ National policy-makers responsible for developing relationships and protocols with EU partners in the field of criminal justice</li> <li>■ National and Local strategic managers who lead on the development of multiagency initiatives</li> <li>■ Operational Managers who may develop local policy and practice as well as helping staff to work effectively in a multi-agency context</li> <li>■ Practitioners working with high risk violent or sexual offenders</li> </ul> <p>Section 3 is concerned with establishing systems and developing formal relationships which support effective, consistent and defensible inter-agency communication both at local, national and cross-border levels</p>
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<p><b>Stage 4: Exchanging Information and/or transferring supervision across EU Member States</b></p> <ul style="list-style-type: none"> <li>■ <b>Identifying the ‘critical few’</b></li> </ul>	<p><b>4. Exchanging information or transferring supervision</b></p> <p>4.1 Introduction and EU context</p> <p>4.2 Identifying the ‘critical few’</p> <p>4.2.1 When risk and mobility interact</p>	<ul style="list-style-type: none"> <li>■ Practitioners who are supervising individuals who may meet the definition of the SOMECS ‘critical few’.</li> <li>■ Operational managers who supervise practice and guide decision-making.</li> </ul>
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<ul style="list-style-type: none"> <li>■ <b>Selecting the appropriate option for exchanging information</b></li> </ul>	<p>4.3 Choosing the best route for communication</p> <p>4.3.1 The importance of protocols</p> <p>4.3.2 Existing mechanisms and their suitability</p>	<ul style="list-style-type: none"> <li>■ Strategic Managers responsible for service design and considering establishing SPOC (as recommended by the SOMEc project)- 4.7.1 will be relevant to their decisionmaking.</li> </ul>
<ul style="list-style-type: none"> <li>■ <b>Exchanging information or transferring supervision</b></li> </ul>	<p>4.4 Transferring supervision</p> <p>4.4.1 Other channels of communication: Single Points of Contact, International Desks</p> <p>4.5 Defensible Disclosure</p> <p>4.6. Passing on the Risk: What to disclose and why</p> <p>4.6.1 Who is passing on the risk</p> <p>4.6.2 The content of what is communicated</p>	
<ul style="list-style-type: none"> <li>■ <b>Responding to information</b></li> </ul>	<p>4.7 Using information received to manage risk affectively</p>	
<ul style="list-style-type: none"> <li>■ <b>Collaborating to manage the risk</b></li> </ul>	<p>4.7.1 Setting up SPOCs</p> <p>4.7.2 Responding and taking action</p>	
<p><b>Stage 5: Review and governance</b></p>	<p><b>5. Section 5 – Review and Governance</b></p> <p>5.1 Introduction</p> <p>5.2 Ongoing risk assessment and risk management decisions</p>	<ul style="list-style-type: none"> <li>■ Practitioners who need to undertake ongoing risk assessments and review their decision-making.</li> <li>■ Strategic and Operational Managers responsible for the overall development and</li> </ul>
	<p>5.3 Quality Assurance</p> <p>5.4 Mechanisms for data collection, management and storage</p>	
		<p>regulation of both internal processes and services and for the quality of the collaborative work with other MSs</p>

## Use of this guidance

You may use all or some of this guidance in your Member State (MS). Checklists, hand-outs and templates are provided. It is important that we can track the impact of the SOMECE project, and how and where this guidance is used. Please:

Always reference the guidance accurately if you refer to it, or use any part of it, by citing the authors, title and web link clearly: Kemshall, H, Kelly, G, Wilkinson, B and Hilder, S (2015) *Offender Management User Guidance, Assessment and Management of Serious Mobile European Criminals*. Available at:  
[http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563)

Please leave the author names and guidance title on hand-outs, templates and checklists.

Provide us with feedback on the use of this guidance to: [kemshall@dmu.ac.uk](mailto:kemshall@dmu.ac.uk)

## Section 1 - Introduction to the Guidance

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### 1.1 The SOMEK Project

The SOMEK project was co-funded by the European Commission Directorate-General for Home Affairs - HOME/2011/AG/4000002521 30-CE-0519712/00-87 investigating processes for cross border information exchange and procedures to manage the harm posed by serious violent or sexual offenders travelling across the European Union (EU). The field work report culminates by identifying ways of improving systems for information exchange and the management of these offenders across the EU community for the prevention of serious crime and the protection of EU citizens. A total of seventeen recommendations were made (see full report section 8) requiring action at both EU and Member State levels.

The field work study, offender management user guidance and law enforcement guidance documents are also supported by:

- A literature based report mapping existing EU information exchange mechanisms, and current issues and challenges presented by information exchange on serious mobile sexual and violent offenders, available at:  
[http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563)
- A literature review of effective responses to sexual offenders available at:  
[http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- A short overview of 'what works' in work with violent offenders, available at:  
[http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

The SOMEK Project had three main objectives:

- To assess the threat posed to European citizens when serious violent or sexual offenders travel between EU Member States.
- To identify the methods and effectiveness of mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across borders.
- To explore critical success factors and provide recommendations to facilitate the improved exchange of information for the prevention of crime.

Primarily concerned with objectives two and three the field work study identified that both law enforcement and offender management personnel would benefit from further guidance on

processes for exchanging information on serious violent or sexual offenders who were mobile across the EU. This includes an understanding of:

- The permissive EU legislative framework which enables such exchanges to occur.
- The collaborative work required at a national level to be ready to exchange, including minimum standards of assessment.
- The mechanisms for exchanging information across EU borders.
- How to ensure exchanges are useful, via standardised packages of information, to enable receiving Member States to respond appropriately.
- The collaborative work required at a national Member State level to respond appropriately to information on serious violent or sexual offenders arriving from other EU Member States.
- Review and governance procedures which ensure that information exchanges adhere to EU data protection protocols for data transfer and are fair, lawful, accurate, adequate, relevant and not excessive to the legitimate purpose for which they are required (FD 2008/977/JHA)<sup>1</sup>

## 1.2 The Permissive EU Framework for Information Exchange

The SOMEK field work research highlighted that cross border information exchanges were well established between law enforcement personnel in different EU Member States in relation to such concerns as terrorism, human trafficking and organised crime. However the interpretation and implementation of existing EU frameworks which enable the proactive/preventative exchange of information between Member States on serious violent or sexual offenders to prevent future crimes was inconsistent.

The Hague Programme<sup>2</sup> sought to maximise law enforcement cooperation between Member States to achieve optimum levels of protection in the areas of freedom, security and justice. Within this, the Principle of Availability implemented by the Swedish Framework Decision

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<sup>1</sup> Council Framework Decision [2008/977/JHA](#) of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

<sup>2</sup> Communication from the Commission to the Council and the European Parliament of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM (2005) 184 final – Official Journal C 236 of 24.9.2005]. Includes “Striking the balance between privacy and security when sharing information, an integrated management of external borders, sharing responsibility and solidarity across the EU”, with particular attention being given to issues of discrimination and oppression, Xenophobia, children’s rights and ending violence against women.

2006/960/JHA<sup>3</sup> sought to simplify the exchange of information and intelligence between law enforcement agencies across the EU community. Exchanges made under this framework as stipulated in section 2.2.1 of the Hague programme should adhere to the concept of equivalent access, which seeks to ensure that the conditions for providing information to the requesting Member State are not made any more stringent than they would be at a national level and should not be hindered by unnecessary formal procedures, administrative structures and legal obstacles.

The Swedish Framework Decision 2006/960/JHA, Council Framework Decision 2008/615/JHA<sup>4</sup> and supplementary guidance for Interpol, Europol and Schengen Information System II (SIS II)<sup>5</sup> exchange processes all contain facility for the proactive exchange of information between Member States for the prevention of a serious criminal offence, including scenarios where the subject is not currently subject to any formal sanction. [Appendix 1](#) charts the full range of existing mechanisms for exchanging information. A Single Point of Contact (SPOC) for all forms of criminality information exchange, where all mechanisms may be housed and managed has been presented as a model of good practice. Further work is already being undertaken to continue to develop the functioning of SPOCs in all Member States.<sup>6</sup> It is important that Offender Management personnel contribute to this development.

The appropriate scrutiny of all cross border information exchanges to ensure that civil liberties, data protection and privacy rights are observed is vital. Each formal EU exchange mechanism adopts the core principles of EU Data Protection rules<sup>7</sup> in its processes of review and governance and similar principles apply to the wider geographical remit of Interpol notices and diffusions (see section 5).

This guidance supports:

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<sup>3</sup> Council Framework Decision [2006/960/JHA](#) on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ("Swedish Framework Decision")

<sup>4</sup> Council Decision [2008/615/JHA](#) of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

<sup>5</sup> For a full overview of existing mechanisms for information exchange, see the *SOMEc report 2, Part One EU Information Exchange Mechanisms A Mapping Report of Existing Frameworks*. Accessed at [http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563)

<sup>6</sup> Council of the European Union DAPIX 75, ENFOPOL 157, Draft Guidelines for a Single Point of Contact (SPOC) for International law enforcement exchange- International law enforcement cooperation structures in each Member State. Brussels, 23 June 2014

<sup>7</sup> Council Framework Decision [2008/977/JHA](#) of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

- An approach where the data subject's rights are protected.
- Assessments of the level of information exchange to be exchanged which are evidence based and proportionate to the level of harm posed.
- The need for an adequate quality of information to be provided to ensure that an appropriate response to that information can be made by the receiving Member State.
- The recognition of the fundamental rights of victims and the protection of all EU citizens with a stronger focus on:

“.. the prevention of criminal acts ... before they take place to help reduce the consequent human or psychological damage which is often irreparable” (EU 2010 5842/2/10 REV).<sup>8</sup>

The actual method of EU information exchange will vary depending on the nature of the individual case circumstances and travel details.

This guidance can be applied to formal transfer of supervision processes such as those encompassed by FD 2008 JHA 947.<sup>9</sup> However it also draws upon **examples of good practice in cross border information exchange and the adoption of key principles which should apply to all forms of national and cross border inter agency collaboration in the effective identification, assessment, information exchange and management of serious violent or sexual offenders who travel across EU borders.**

### 1.3 Defensible Decision-making

The principles of proportionality, accountability, transparency and the rights of individuals are central to judicial decision-making across the EU and embodied in the legislative frameworks described above. It is therefore important that decision-making is defensible and justifiable. The principles of defensible decision-making are fundamental to the effective management of risk both within Member States and in their external cross-border relationships. Evidence of such an approach is also likely to encourage confidence between Member States. The guidance which follows, therefore, seeks to encourage the effective risk assessment and

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<sup>8</sup> For further detail see Council of the EU (2010) Draft Internal Security Strategy for the EU: “Towards a European Security Model” 5842/2/10 REV2.

<sup>9</sup> Framework Decision 2008 JHA 947 on the mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.



management of serious violent or sexual offenders, promoting decision-making that is defensible.

A decision is defensible if it can be demonstrated that all reasonable steps have been taken in the assessment and management of an individual's risk to others and that the decision will stand up to scrutiny in this respect.<sup>10</sup>

A lack of defensibility can undermine the credibility of Member States and their judicial systems to their EU partners. A lack of defensibility may also result in poor decision making and communication, increasing the potential for serious harm to occur.

In making defensible decisions those responsible will:

- Ensure decisions are grounded in the best available evidence.
- Use reliable risk assessment tools or methods.
- Collect, verify and thoroughly evaluate information.
- Record and account for their decision making.
- Communicate with relevant others, seek information they do not have.
- Stay within agency policies and procedures.
- Take all reasonable steps.
- Match risk management interventions to situational and individual factors relevant to risk.
- Maintain contact with the offender at a level proportionate to the level of risk of harm.
- Respond to escalating risk, deteriorating behaviour, and non-compliance. Kemshall (2009)<sup>11</sup>

The quality of defensible decisions is also dependant on the quality of practice, including:

- The skills and knowledge of practitioners
- The use of appropriate techniques and methods for gathering information from individual offenders

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<sup>10</sup> Kemshall, H. (2009) 'Working with sex offenders in a climate of public blame and anxiety: How to make defensible decisions for risk.', *Journal of Sexual Aggression*, 15 (3) 331-343. <sup>11</sup> As ref 10.

- Effective information exchange, liaison and co-ordination with other agencies and professionals

The table below is provided to help individuals and organisations review the defensibility of their decision making and suggests aspects of this guidance that may help to improve this.

### 1.3.1 Achieving Defensibility by using the Guidance

Characteristics of Defensible Decisions	This can involve...	Helpful Sections of the Guidance
Appropriate levels of knowledge and skill have been applied	<ul style="list-style-type: none"> <li>■ Ensuring that staff who are responsible for assessing and managing risk receive relevant training and then ongoing support and guidance from their managers</li> <li>■ Providing either appropriate Risk Assessment tools or clear guidance about what is expected</li> </ul>	Section 2.3.2 Detailed Risk Assessment and Decision-making
Reliable assessment methods grounded in evidence have been used	<ul style="list-style-type: none"> <li>■ The development and use of Risk Assessment tools</li> <li>■ Guidance about how practitioners are expected to undertake and then evidence their assessments</li> </ul>	<p>Section 2.3.2 Detailed Risk Assessment and Decision-making</p> <p>Appendix 4: a summary of validated Risk Assessment tools</p> <p>Checklist 1: An Overview of individual risk</p> <p>Checklist 2: Selecting Risk Assessment tools</p>
Relevant information has been collected and thoroughly evaluated	<ul style="list-style-type: none"> <li>■ The assessor obtaining information from a wide range of sources, not just from the individual offender</li> <li>■ Seeing the particular offence within the wider context of the offender's previous behaviour and current circumstances</li> <li>■ Gaps in information are recognised and acknowledged</li> </ul>	Section 2.2 Accessing and using ECRIS: Initial identification and the starting-point for assessment

The assessment process and consequent decisions are clearly recorded	<ul style="list-style-type: none"> <li>■ Developing systematic and standardised ways of recording both the information gathered, how it is interpreted and the decisions made</li> </ul>	Checklist 3: Reviewing Risk Management Plans
Relevant others have been communicated with	<ul style="list-style-type: none"> <li>■ Developing protocols for collaborative working between law enforcement and probation/offender management personnel, and improved information exchange on serious violent or sexual offenders.</li> </ul>	<p>Sections 3 and 4</p> <p>Appendices 6, 7, 8 and 9</p>
Management plans are linked to identified risks and risk levels	<ul style="list-style-type: none"> <li>■ Establishing some clear standards about levels of contact proportionate to level of risk posed</li> <li>■ Developing appropriate programmes of intervention</li> </ul>	Appendix 5: Template for Risk Management plans
Respond to escalating risk, deteriorating behaviour, and noncompliance.	<ul style="list-style-type: none"> <li>■ The systematic review of supervision arrangements</li> <li>■ Effective liaison and coordination with other professionals</li> <li>■ Being clear about when to increase monitoring, implement breach proceedings or inform others</li> </ul>	Sections 3 and 4



## Section 2 - Identifying and Assessing Serious Violent and Sexual Offenders

### 2.1 Introduction to the Content of Section 2

'Member States to adopt minimum standards for the assessment of serious violent or sexual offenders; and have internal processes to identify centrally such offenders' (Recommendation 11)<sup>11</sup>

**This section is concerned with how to identify, assess and manage serious violent and sexual offenders, and those 'critical few' where information exchange across EU borders is appropriate.**

#### **Definition of a serious violent or sexual offender**

Any person who has been convicted of one or more of the following serious sexual or violent offences:

- Rape
- Aggravated rape other than a minor
- Rape of a minor
- Sexual assault
- Sexual assault of a minor
- Intentional killing
- Aggravated case of intentional killing
- Violence causing death
- Causing grievance bodily injury, disfigurement or permanent disability
- Torture
- Kidnap

<sup>11</sup> Kemshall, H., Hilder, S., Kelly, G. and Wilkinson, B. (2014) *Information Exchanges, Monitoring and Management- A Field Work Study of Current Responses by Member States*. (Report Two, Part Two) available at [http://www.somecproject.eu/default.asp?page\\_id=563](http://www.somecproject.eu/default.asp?page_id=563)

.. and, is reasonably suspected to be moving, or has moved across EU border(s) to commit a serious sexual or violent offence, or is reasonably suspected to have committed a serious sexual or violent offence and may re-offend in another Member State.

Confident and robust assessment practice is crucial to appropriate and effective communication to manage the risk posed by this group of individuals.

If a relevant offender is moving to another Member State information exchange will facilitate the effective management of risk in the receiving Member State. This process of information exchange will be made easier if there is confidence in the quality of that information.

There are variations between Member States' offender management systems so this confidence does not result from having identical processes across the whole of the EU, but rather on a **degree of shared understanding about effective work with these serious offenders**. Shared understandings can assist a clarity of communication, informing decisions about when it is necessary to exchange information and about the depth and detail of information included.

Core aspects of a shared understanding that are covered in this section include:

- The principles of defensible decision-making
- The use of European systems and processes to share information; significantly, for those supervising serious offenders this will involve accessing ECRIS. This is covered again in more detail in section 4.
- A structured approach to work with those individuals who pose a risk of serious harm based upon good quality, individualised assessments of risk, informing planned and targeted risk management which is alert to changes in the individual and their circumstances. The level and degree of risk can change over time.

## 2.2 Accessing and Using the European Criminal Record Information System (ECRIS): for Initial Identification and the Starting-Point for Assessment

'The selected ECRIS list is used by Member States to define serious sexual or violent offenders and forms the basis of identifying those offenders on whom information should be exchanged.' (Recommendation 1)

.. Extending the use of ECRIS for conviction data exchanges which progress beyond the statutory notification requirements should be promoted'.  
(Recommendation 12)

### 2.2.1 What is ECRIS

ECRIS supports the exchange of criminal record information between Member States' judicial authorities. This in order that prior convictions acquired in other Member States are taken into account in any new criminal proceedings.

ECRIS is designed to ensure that Home Member States retain an up to date record of any convictions that their national citizens may have acquired elsewhere in the EU. There is a mandatory responsibility for every Member State to advise the Home Member State of a conviction secured by foreign EU national in their country, within ten working days of the judgment having been imposed.

The transmission of information on previous convictions is made electronically, through a standardised format based upon an agreed list of offence categories. These categories are immediately recognisable in any EU Member State, having been mapped against national legal and criminal offence frameworks.<sup>12</sup>

The selected ECRIS codes used by the SOMEK project and agreed via the SOMEK fieldwork study are listed at the beginning of this guidance and again as part of the definition provided at **2.1**. **They serve as a starting point for determining the most serious violent and sexual offenders who may become the subject of an information exchange.**

For more information about the ECRIS see [Appendix 2](#).<sup>13</sup>

### 2.2.2 ECRIS and the Identification and Assessment of Offenders

ECRIS facilities can stretch beyond their primary purpose of notifications to Home Member States and requests for details of convictions secured in other Member States can also be made via the ECRIS system. In this way utilising the ECRIS system can ensure that a more

<sup>12</sup> See Hilder, S. and Kemshall, H. (2015) *SOMEK Report 2, Part One: European Union Information Exchange Mechanisms – A Mapping Report of existing frameworks*, accessed at [http://www.cepprobation.org/default.asp?page\\_id=565&name=Mapping%20Report](http://www.cepprobation.org/default.asp?page_id=565&name=Mapping%20Report)

<sup>13</sup> Also see Hilder, S and Kemshall, H (2014) as above.

comprehensive picture of an individual's pattern of offending can be obtained. Information exchanged via ECRIS can contribute to:

- the initial screening of serious offenders in terms of the risk they pose,
- assessments that may inform judicial decisions, and
- more in depth assessments of offenders (pre- or post-sentence).

It is important that those responsible for undertaking assessments, at whatever stage, are aware of ECRIS, the information that can be obtained and how this can help. [Appendix 2](#) can be reprinted as a briefing-sheet for practitioners.

## 2.3 A Structured Approach to Work with Individuals

The field report recommends that,

'The EU wide position on post custody release, monitoring and supervision for this group of offenders is reviewed with a view to achieving greater consistency and harmonisation across Member States for this critical group of offenders.'  
(Recommendation 3)

**This section will contribute to developing practice in Member States based upon some common principles and understandings of offender assessment and management.**

### 2.3.1 An Overview of the Risk Posed by an Individual

Information shared via ECRIS gives an initial impression of the risks that the individual has posed. **It must be noted that offence-type alone is not sufficient to make judgements about levels of future risk, or to make decisions about effective risk management.** However, for mobile offenders the information available via ECRIS does help to ensure that assessors are starting from an accurate understanding of the individual's offending history.

Assessments of risk will be improved if each Member State has a structured approach to this process for all offenders, not just those who are mobile. Judgments need to be based on individualised but systematic risk assessments drawing on factual, historic data about past behaviour. For offenders who have travelled across EU borders ECRIS will contribute at this



point. This information needs to be combined with a more in depth assessment looking at specific behaviours, rooted in an understanding of the individual and of their lifestyle.

A full assessment will enable decision making to occur about the level of risk of significant harm currently posed by an individual, the likelihood that a serious offence will occur and the identification of interventions that are likely to reduce that risk. Good practice in assessing violent offenders, for example, has focused on the importance of understanding the how and why of offending.<sup>14</sup> It is important to recognise that violent and sexual offenders are not homogenous groups. For example individuals differ in the range of behaviours they engage in, the types of victim they target, their prior histories and their lifestyle issues.

One model which may help practitioners to analyse and summarise the risks posed by an individual is the PSNLII (Pattern, Seriousness, Nature, Likelihood, Impact, and Imminence).<sup>15</sup> The model is promoted by the Scottish Risk Management Authority. It highlights significant aspects of an individual's behaviour and the context in which it occurs and can guide decisions about what information should be gathered and then analysed. A summary of the nature and causes of the risk will then inform risk management. Briefly, the elements of the PSNLII Framework are:

- **Pattern:** this should include patterns of behaviour, as well as patterns of previous convictions. Patterns in the factors which have influenced behaviour or triggered risky incidents are also relevant here, as are patterns of protective factors which can mitigate the risk
- **Seriousness:** this should include consideration of the most serious behaviours or offences that have occurred in the past, any evidence of likely reoccurrence, and whether such behaviours or offences are escalating
- **Nature:** the nature of the behaviours and offending past, present and likely in the future
- **Likelihood:** this should consider the evidence of likelihood of a repetition of the risky behaviour
- **Impact:** this should consider the potential scale and harm of future offending
- **Imminence:** this concerns judgments about 'how soon' risky behaviour might occur

<sup>14</sup> See Kemshall et al (2014) *What Works in work with Violent Offenders* and Kemshall et al (2014) *What Works in work with Sexual offenders*. SOMECE, available at: [http://www.somec-project.eu/default.asp?page\\_id=563](http://www.somec-project.eu/default.asp?page_id=563)

<sup>15</sup> Kemshall, H. (2011a) MAPPA Effective Risk Management, Key note presentation to the NOMS MAPPA Effectiveness National Seminar, November 10th 2011. Risk Management Authority (2007) *Standards and Guidelines for Risk Management (version 1)*. RMA Paisley, available at: [www.RMAScotland.gov.uk](http://www.RMAScotland.gov.uk) (and updated 2013).

A summary based on the above would allow an assessor to make a more informed judgment about how and why harmful behaviour has occurred. They will be able to highlight factors that trigger risky behaviours as well as underlying ongoing factors that cause risk to remain and endure. A checklist ([Checklist 1](#)) based on this framework could be used support this process.

A comprehensive assessment is needed to achieve such a detailed understanding of the risks posed by an individual (see [Section 2.3.2](#)). This will assist the assessor in making a judgment about the level and nature of the risks posed and should lead to a risk management plan which addresses the relevant aspects of an individual's behaviour in context (see [Section 2.3.3](#)).

### 2.3.2 Risk Assessment and Decision Making

**This section provides guidance about best practice in assessment and decision making for all high risk offenders whether or not they are mobile. It will help Member States achieve recommendation 11 of the field work report:**

'Member States to adopt minimum standards for the assessment of serious violent or sexual offenders; and have internal processes to identify centrally such offenders.'

Systematic and robust assessment and decision-making will support the processes of communication summarised in [Section 4](#).

#### Assessment

Assessments based on the PSNLI above will support judgements about of the level of harm posed and the likelihood of further harmful behaviour being repeated. Understanding the range and combination of risk and protective factors (those factors which prevent offending) provides the basis for a risk management plan, identifying steps that can be taken to reduce an individual's risk.

#### Structured Professional Judgment

Applying a process of structured professional judgement is likely to lead to more reliable assessments of risk and therefore improved decisions about risk management. Structured

professional judgements are supported by risk assessment tools discussed below and should be based on a variety of sources of information.

There are two key dimensions to structured assessment, each drawing upon different types of risk factors:

1. The use of information about *risk factors most strongly associated statistically with violent or sexual offending*. This data relates to what is known about groups of violent or sexual offenders. Assessors draw upon a limited range of well-researched information to make an initial estimation about the probability of the harmful behaviour being repeated. Sources of this information will include records of previous convictions. Where the offender has previous convictions in another EU Member State this information can be obtained via ECRIS.
2. A more detailed individual assessment about the potential influences upon an individual's risk. This can include positive or protective factors, the individual's motivation to change and likelihood of complying with any supervision. This involves gathering and evaluating information about *risk factors that are described as dynamic; in that they may change over time or are capable of being changed through interventions*. Relevant information will relate to:
  - the individual's circumstances,
  - lifestyle,
  - their capacity for change
  - attitudes

Historic and factual information also has a bearing here since it is essential to build a detailed picture of previous behaviour, the frequency of the behaviour and whether it has escalated over time. Sources of this information include previous records of supervision, the experiences of agencies working with the person and the offender themselves and sometimes their family. Careful engagement with the offender and effective communication with other professionals will enhance the quality of this dimension of assessment. This element of the structured assessment provides essential information to guide detailed and individualised risk management and interventions to reduce future risk.

## Relevant Risk Factors

Risk factors are factors which research indicates ‘increase the risk of occurrence of events’<sup>16</sup>. As described above, risk factors can be static, largely relating to past behaviour, or dynamic, highly individual and relevant to understanding offending behaviour in context.

The most relevant dynamic risk factors for violent offending and for sexual offending, indicated by research, are found in [Appendix 3](#) and in the SOMECE literature reviews available at:

***Literature review: What Works in work with Sexual Offenders and What Works in work with Violent Offenders, an overview.***

Available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

Knowledge about harmful behaviour will change over time. This may influence the weight or relevance of different risk factors or identify elements not previously seen as important. There is a danger that using lists of risk factors drawn from research that may not always be the most up to date. There is also a danger that lists can lead to routinized assessments. It is important for those completing assessments to understand that the impact of risk factors differs between individuals.

## Protective Factors

Protective factors have been described as factors which reduce, prevent or mediate the risk of offending persisting. Protective factors can include both personal and contextual strengths, such as can be found within a person’s family or community. It is important to identify protective factors as they can be developed as part of the risk management process. They can support the individuals motivation to change and by building on strengths, help them to stop reoffending (a process known as ‘desistance from offending’). See [Appendix 3](#) which also lists protective factors.

When working with serious offenders, research indicates that taking account of and building upon these protective factors can:

- Enhance the individual’s sense of having choice and confidence
- Strengthen their capacity and control

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<sup>16</sup> Farrington, D. (2002) ‘Developmental Criminology and risk-focussed prevention’, in *Oxford Handbook of Criminology*. Oxford: Oxford University Press

- Help them find positive outcomes even in negative events.
- Encourage positive engagement with supervision
- Help them find a place in a positive and non-offending network.<sup>17</sup>

## Assessment Tools, how to select them and how to use them

Structured professional judgments are supported by risk assessment tools. It is important to bear in mind the limitations of any given tool. Those completing assessments need to use a combination of different approaches and to actively use professional judgement, based on the evidence, when making decisions.

Risk Assessment tools can be general in scope and used for a wide range of offenders. These enable the assessor to make a judgment about the likelihood of reoffending. Such tools might involve an initial risk assessment leading to a level of intervention relevant to risk. They may also identify the need for more in-depth assessment, for example a specific assessment of violent or sexual offending.

Specialised risk assessment tools are likely to be particularly relevant for the minority of offenders (including serious violent or sexual offenders as defined by the SOMEK project) who potentially pose a significant risk of harm. For this group of offenders these specialised tools, undertaken by skilled and trained assessors, can form the basis of a targeted response, leading to interventions of an intensity and breadth relevant to different levels of risk.

It is therefore important in choosing a risk assessment tool to be clear what it will be required to help you achieve.

Key points to look for may include:

- That the stated purpose of the tool is clear.

General tools, for example, should enable:

- The identification of the risk factors that need to be addressed, in order to reduce the risk of re-offending;
- The inclusion of strengths/ protective factors;

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<sup>17</sup> Barnett, G. and Mann, R. (2011) 'Good lives and risk assessment: collaborative approaches to risk assessment with sexual offenders', in H. Kemshall and B. Wilkinson (eds) *Good Practice in Assessing Risk: Current Knowledge, Issues and Approaches*, London: Jessica Kingsley.

- The estimation of the likelihood of future offending;
- The directing of the most intensive interventions at those whose risk of reoffending is highest;
- The identification of levels of motivation and any obstacles to engagement that may exist;
- Intervention and risk management plans that derive from the assessment.
- The recording and impact of interventions

More in depth and specialist tools relevant to serious violent and sexual offenders will enable the assessor to make judgments about:

- The individual's capacity to commit an offence causing serious harm;
- Relevant risk factors at the time of the offence, now and in the future;
- The presence or absence of protective factors at the time of the offence, now and in the future;
- The most important elements of risk management including treatment and surveillance measures to lessen risk and any measures that can develop the individual's ability to engage with professionals and supervision.

The theoretical and evidence base on which the tool is based should be explicit.

Cognitive behavioural approaches, with a psychosocial understanding and response to offending behaviour have dominated in this arena. This has been of particular significance in guiding assessment and then programmes of intervention.<sup>18</sup> Current patterns of thinking, behaviour and emotional arousal will be taken into account, including attitudes and beliefs that are relevant to offending. Assessments will also identify other influences that may have led to the development and maintenance of those patterns. By looking at thinking and behaviour in the context of other influences upon the individual, the assessor can then arrive at a summary of risk that captures the complexity of potential targets for intervention. Such assessments can

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<sup>18</sup> Kemshall et al (2014) *Literature Review: What Works in work with Sexual Offenders* : Section 2.1.3; available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

also help shape interventions that can motivate and engage the individual. Interventions can also be influenced by developing thinking about desistance from offending.<sup>19</sup>

## The Limitations of Assessment Tools should be Acknowledged

The literature suggests that women offenders can be assessed using commonly accepted risk assessment tools but it is also clear that further work is needed to refine these approaches.<sup>20</sup> There is, for example, some research into developing tools for the assessment of women sexual offenders based upon a more complex pathways model.<sup>21</sup> There may need to be a separate assessment framework for violent extremists; again this needs further development.<sup>22</sup> There are assessments relevant to violence within intimate relationships that can be used to further support the assessment process.<sup>23</sup>

## Choosing the Most Relevant and Effective Tool

There are some findings to suggest which tools are at present judged to be most effective. A review of a range of tools has been conducted on behalf of the Risk Management Authority in Scotland<sup>24</sup> looking at the validity and reliability of tools and the extent to which they have been evaluated. It provides a useful guide. One review of risk assessment tools for violent offenders in use in a Member State, found that the HCR20 was the most useful tool for assessment, based on quantitative evidence and on practitioner views of usefulness.<sup>25</sup> Recommendations from this review are incorporated in a checklist ([Checklist 2](#)) which will be helpful to Offender Management Services in making the appropriate selection. [Appendix 4](#) summarises key validated risk assessment tools.

Staff skills and knowledge are important to ensure that whilst the tool is regarded as an integral part of the assessment process, its use can only be maximised if the assessors are

<sup>19</sup> Kemshall et al (2014) *Literature Review: What Works with Sexual Offenders* : Section 2.3.2; as at 21.

<sup>20</sup> Kemshall et al (2014) *A short overview of 'what works' with violent offenders*, available at: [http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563)

<sup>21</sup> Kemshall et al (2014), *Literature Review: What Works with Sexual Offenders*, p.36; as at 21

<sup>22</sup> A short overview of 'what works' with violent offenders, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

<sup>23</sup> Section 2.3 in *Protect II – Capacity Building in Risk Assessment and Safety Management to Protect High Risk Vulnerable Victims: A Learning Resource*; available at: [http://wave-network.org/sites/wave.local/files/protectii\(english\)final\(july2012\)\\_opt.pdf](http://wave-network.org/sites/wave.local/files/protectii(english)final(july2012)_opt.pdf)

<sup>24</sup> <http://rated.rmascotland.gov.uk/risk-tools/sexual-violence-risk/>; accessed March 4<sup>th</sup> 2014

<sup>25</sup> Farrington, DP., Jolliffe, D., Johnstone, L. (2008) *Assessing Violence Risk: A Framework for Practice, Final Report*. RMA; available at: <http://www.rmascotland.gov.uk/files/2112/7263/5786/Assessing%20Violence%20Risk%20%20A%20Framework%20for%20Practice.pdf>

knowledgeable and well trained in its use. Staff require appropriate levels of knowledge about particular offender groups, patterns of behaviour, communication, engagement and analytical skills, to ensure that they can:

- Focus on a comprehensive view of each individual, the range of risk and protective factors and the links between them.
- Are able to generate case summaries, pulling all of the information available together and preparing a risk management plan tailored to the needs of the individual (see also the application of PSNLI in [Section 2.3.1](#))
- Regularly review their assessments to re-assess and alter these summaries in the light of changing information.

## Ensuring a Good Standard of Assessment Practice

The quality of assessments remains key to making decisions about how to manage serious violent or sexual offenders effectively, both internally and across EU borders. Alongside the use of the systematic approach supported by assessment tools, managers need to pay attention to monitoring and developing the skills of staff through quality assurance, supervision and appropriate training.

### 2.3.3 From Assessment to Taking Action

Once the assessment is completed and a summary produced, plans based on these processes can be developed that are proportionate to the level of risk posed, transparent to all concerned and relevant to the individual and their circumstances. These plans will inform:

- Risk management and intervention measures in the Member State
- Decisions regarding communications with other Member States on those posing the very highest risk of serious harm, where there is evidence that the individual is likely to travel. (This decision-making process is considered later in the Guidance.)

## Balanced Risk Management

The assessment process described above, should lead to multi-faceted, balanced interventions. Each aspect is important to the long-term management and reduction of risk. Member States, different agencies within those Member States and even individual practitioners may focus upon one element more than others and responsibilities may be shared, for example between the community and prison services. It is important therefore to



be clear who, or which agencies are responsible for which aspects of a balanced approach to managing the risk posed by the serious violent or sexual offender. Balanced plans can be understood as including three elements: monitoring, treatment/interventions and work to support desistance.

## Monitoring

The external management of risk will include:

- 'watching': the monitoring of behaviours, for example, who the individual is associating with, their current use of drugs;
- 'warning': potentially, both the individual under supervision and others. Ensuring that individuals comply with court orders and are aware of their responsibilities. When appropriate, information may also need to be shared with others to manage risks effectively.

Watching and warning may also involve gathering and sharing information across Member States, when relevant offenders are mobile across EU borders.

## Treatment/interventions

Monitoring alone is not likely to be sufficient to reduce risk in the long-term.<sup>26</sup> Balanced interventions include treatments to enable individuals to change risky patterns of behaviour and thinking and to cope with problematic emotions and circumstances. Programmes which apply Cognitive-Behavioural theory and techniques have been the most frequently evaluated and seem to have had a consistently positive impact, especially in relation to high risk offenders.<sup>27</sup> Such programmes are designed to equip individuals to manage and reduce their risk to others. Research into community programmes is more limited.

Recording the content of work undertaken as well as how well the individual has responded or complied is important. Information about the progress an individual has made in treatment may be important to others working with them and again may provide information to be shared across Member States, for mobile offenders. It may help another Member State make decisions about what work to complete with an individual, if their supervision is transferred.

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<sup>26</sup> Kemshall et al (2014) *Literature Review: What Works in work with Sexual Offenders*, Section 3 –Concluding Comments; available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

<sup>27</sup> Kemshall et al (2014) *Literature Review: What Works in work with Sexual Offenders*, Section 2.3.2 - Efficacy of Cognitive Behavioural Treatment Methods; available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

## Supporting Desistance

Risk management is aimed where possible at achieving long term change and stability resulting in desistance from offending. Pathways to desistance are individualised, but they support a view of the offender as an individual who can change and who is enabled to access support in order to secure positive change and reintegration into the community. To date, evidence appears to support both practice and policy initiatives which adopt a desistance approach ([Appendix 3](#) provides a list of protective factors associated with desistance).<sup>28</sup>

A move across EU borders for some offenders can be a positive move aimed at supporting relevant protective factors, for example, stable employment. A balanced approach to risk assessment and management would be able to determine the value of such a move as a perceived protective factor in light of a comprehensive risk assessment of the harm posed by the individual.

## The Content of Risk Management Plans

The structured assessment process will point towards the range and intensity of interventions that are necessary.

Estimates about future risk based upon the static, historic risk factors will be particularly important to decisions about the extent of intervention, to ensure that the amount of interference in an individual's life is proportionate to the level of risk they pose.

Commonly, levels of the risk of harm to others have been defined as follows:

**Very high risk:** There is an imminent risk of serious harm. The potential event is more likely than not to happen imminently, and the impact could be serious.

**High risk:** There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact could be serious.

**Medium risk:** There are identifiable indicators of risk of serious harm. (Name) has the potential to cause harm, but is unlikely to do so unless there is a big change in circumstances.

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<sup>28</sup> See also Kemshall et al (2014) *Literature Review: What Works in work with Sexual Offenders*: Section 2.4 Promoting Desistance and Positive Reintegration ; available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

**Low risk:** Current evidence does not indicate likelihood of causing serious harm.<sup>29</sup>

Assessments of dynamic risk and of protective factors (both susceptible to change over time and in the light of interventions) will be important in influencing the detail of a risk management plan.

Risk management planning should address both of the following areas:

1. **External measures which will include monitoring and surveillance as well as limitations on the individual.** Such measures may include, for example, restricting contacts and / or identifying areas or activities from which the individual is excluded. It is important to be clear how any such measures are linked to an assessment of risk and what they are trying to achieve. For the 'critical few' who are mobile between Member States external measures are likely to vary. There may be other equally effective measures in a different jurisdiction that could achieve the same result.
2. **Interventions aimed at helping individuals to develop the ability and motivation to manage their own risk.** Such interventions may be implemented through cooperation between risk management agencies. They may involve developing the individual offender's thinking and behavioural skills to increase their capacity for self-risk management and their capacity to become integrated law abiding citizens. They may also include contextual changes, for example, where the individual will live and work in order to develop supportive positive, non-offending social contacts and activities.

Again for mobile offenders these interventions will vary across Member States and clarity about what they are attempting to achieve will be essential.

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<sup>29</sup> Scottish MAPPA Guidance. Available at: <http://www.scotland.gov.uk/Publications/2014/06/6359/7>

Risk management plans should be:

- Sufficient and proportionate to manage the risk
- Appropriate to offender and his/her situation
- Relevant to risk factor(s)
- Evidence based and therefore defensible and justifiable
- As least restrictive as possible, balancing justice with safety considerations and individual rights with the security of the public.<sup>31</sup>

A holistic risk management plan should therefore include:

- The nature and extent of monitoring that is necessary
- Plans to reduce identified risk factors through external controls and through selfrisk management
- Plans to support existing protective factors and to develop strengths which support desistance from further offending
- Clarity about the agencies and individuals involved and of the roles and responsibilities of those agencies
- Safety planning if appropriate to protect identified past or potential victims. (An approach to safety planning in the context of domestic abuse has been developed by the Protect II project<sup>32</sup>)

A template for compiling a Risk management plan is provided in [Appendix 5](#).

Some ideas about how to review risk management plans can be found in [Checklist 3](#)

<sup>31</sup> Kemshall, H. (2011) *MAPPA Effective Risk Management*. Key note presentation to the NOMS MAPPA Effectiveness National Seminar, November 10th 2011; and footnote 18.

<sup>32</sup> Section 2.4 in *Protect II – Capacity Building in Risk Assessment and Safety Management to Protect High Risk Vulnerable Victims: A Learning Resource*; available at available at: [http://wavenetwork.org/sites/wave.local/files/protectii\(english\)final\(july2012\)\\_opt.pdf](http://wavenetwork.org/sites/wave.local/files/protectii(english)final(july2012)_opt.pdf)

### **2.3.4 Review**

Throughout planned work with an individual and at the end of any offender management involvement, it is essential that their progress and risk is reviewed and recorded. At any stage a reassessment may be necessary and plans may need to be amended.

Once involvement has come to an end, decisions about next steps and about what is appropriately recorded and potentially shared will also need to be made. At the end of a sanction decisions will need to be made about ongoing monitoring or the exchange of information. They will be informed by the legal parameters within the Member State, together with defensible decisions about risk and proportionality.

### **Recording**

Records need to be sufficient, relevant and accurate providing an ongoing picture of behaviours, progress in treatment and changing risk factors. Records may need to be accessible to others when information is exchanged or supervision transferred.

### **Ongoing Reassessment and Review**

Using a systematic, structured approach, regular reassessments of risk need to be undertaken and where necessary risk management plans changed to reflect changes in the assessed risk (this may increase or decrease). Timescales should be set for routine reviews, but should also occur whenever there is a change in circumstances or a new piece of information.

### **End of Sanction Review**

Many offenders would not expect to have further contact with the justice system once they have completed their sentence. A review at the end of the sanction can, nevertheless, be a positive and reinforcing experience for everyone concerned. It can identify the progress that has been made by an individual. It can also provide an important starting point for another practitioner in the future if the individual commits further offences.

For other high risk, potentially mobile offenders it is important to identify any further interventions or restrictions that might be needed to manage ongoing risks and how they might be facilitated. Such measures could include ongoing monitoring (for example via registration procedures) if this is proportionate and legally justified.



## Section 3 - Creating Frameworks for Collaborative Working and Effective Information Exchange

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### 3.1 Introduction to the content of Section 3

Evidence indicates that collaborative, multi-agency working can be beneficial in managing serious sexual offenders.<sup>30</sup> In these types of cases, different agencies will often be working with the same individual and their effectiveness in managing risk can increase when they cooperate with each other. The Fieldwork study report concludes that:

‘All Member States to develop protocols for collaborative working between law enforcement, offender management/probation and judicial personnel, in order to improve the effectiveness of the national identification and assessment of serious violent or sexual offenders’. (Recommendation 12)

At a national level, multi-agency collaboration can support:

- A multi-disciplinary approach.
- Effective inter-agency communication.
- Co-operation across a range of agencies in the delivery of a risk management plan.<sup>31</sup>

In relation to cross-border collaboration it can support a professional culture that values clear communication, comprehensive information and systematic decision-making.

### 3.2 Effective Communication

Fundamental to collaborative working is effective communication. At the very least it is important to alert other people clearly about a risk that is likely to be shared (internally and across EU borders) and also where possible and appropriate to provide relevant information

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<sup>30</sup> Kemshall et al (2014) *Literature Review: What Works in work with Sexual Offenders*, Section 2.7; available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

<sup>31</sup> RMA (2007) *Standards and Guidelines for Risk Assessment*, Paisley: RMA, available at: <http://www.rmascotland.gov.uk/standardsandguidelines/>; accessed October 27<sup>th</sup> 2014.

to inform any shared management of that risk (for example through the transfer of supervision).

There are three elements in any purposeful communication of information:

- The individual who is initiating the exchange of information and the purpose of that communication
- The type of information to be exchanged, its quality, timeliness and format
- The individual who is to receive the information and their response to it

Frameworks and protocols go some way to ensure that relevant and timely information about the most serious offenders is shared. Establishing such frameworks will be the focus of this section.

It is also important to remember that central to effective communication are well-briefed, welltrained and alert individuals who recognise how vital it is to the safety of national and EU communities to keep others informed about risk, especially when it changes or escalates. The professional skills and tools described in [Section 2](#) are an essential foundation for reliable and consistent communication between criminal justice professionals.

### 3.3 Developing Frameworks and Formal Arrangements

Some Member States have already developed formal arrangements, including multi-agency meetings based upon protocols or legislative frameworks, frameworks for the sharing of information and shared management of high risk offenders and multi-disciplinary teams (See [Sections 3.4.1](#) and [3.4.2](#) below). Formal arrangements can ensure procedural clarity, transparency and consistency.

Other Member States are more reliant upon informal, local relationships, both internally and across EU borders. Both formal and informal arrangements have their benefits. Smaller scale collaborative working is likely to provide benefits in terms of timeliness, responsiveness, simplicity and relatively low cost.<sup>32</sup>

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<sup>32</sup> Kemshall, H., Hilder, S., Kelly, G. and Wilkinson, B. (2014) *Information Exchanges, Monitoring and Management- A Field Work Study of Current Responses by Member States*. (Report Two, Part Two): Section 5.4, available at [http://www.cepprobation.org/default.asp?page\\_id=563](http://www.cepprobation.org/default.asp?page_id=563):



In both instances arrangements are often between neighbouring countries or countries with strong economic links and negotiated individually, or established via practice over time. Their wider pan-European relevance is likely to be limited.<sup>33</sup>

This section of the guidance will help criminal justice professionals to:

- develop or improve their partnerships (formal and informal) with other individuals and agencies ([3.3.1](#))
- establish formal protocols and Memorandums of Understanding ([3.3.2](#))
- contribute to multi-agency case conferences ([3.4.1](#))

As the individuals and agencies working with serious violent and sexual offenders will vary across Member States, this section of the Guidance will be relevant to a range of professionals, working in community or custodial settings, including:

- Law enforcement
- Treatment Providers
- Those tasked with monitoring offenders' behaviour
- Criminal justice and mental health services
- Prisons
- Probation services

This section will also have relevance to policy-makers and strategic managers who have responsibility for establishing frameworks for formal inter-agency collaboration.

### **3.3.1 Developing Collaborative Partnerships**

Multi-agency working is about different services, agencies, teams of professionals and other staff working together to provide the services that fully meet the needs of their service-users and the community.

The characteristics of effective collaborative working,<sup>37</sup> or working in partnership, are:

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<sup>33</sup> See Hilder, S. and Kemshall, H. (2014), *SOMECE Report 2, Part One: European Union Information Exchange Mechanisms – A Mapping Report of existing frameworks*, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

- Partner agencies and individuals have a shared vision, expressed via objectives or statements of purpose.
- There is a clear definition of roles and boundaries. To work successfully on a multiagency basis individuals need to be clear about their role and the roles of others.

<sup>37</sup> RMA (2013) *Standards and Guidelines: Risk Management of Offenders Subject to an Order for Lifelong Restriction. Version 2*. Paisley: RMA, available at: <http://www.rmascotland.gov.uk/standardsandguidelines/>; accessed October 27<sup>th</sup> 2014.

- Communication and cooperation is based on mutual respect; individuals need to be confident about their own standards and targets and respectful of those that apply to other services. Seeking and respecting the knowledge and input others can make can deliver the best outcomes.
- There is effective information exchange which will be supported by the use of clear procedures, frameworks, the use of a common language and terms
- Full participation and accountability by all parties involved in the process.
- Decision-making processes are defined and decisions are defensible.
- Any collaborative interventions are coordinated by an individual with overall oversight of the case.

Underpinning all of these will be:

- Shared understandings of the definitions of risk and the language used to describe and analyse it.
- Shared approaches to the risk assessment process.
- Collaborative working practices to achieve increased effectiveness of risk assessment and risk management.<sup>34</sup>

The guidance helps to achieve shared understandings and approaches in relation to risk and its management (See [Section 2](#)).

<sup>34</sup> RMA (2010) *Applying FRAME: A Structured Approach to Risk - Training Resources and Guide*, Section 5.

A checklist ([Checklist 4](#)) provides a framework for discussions with prospective partners which begin to establish collaborative working practices and draw upon the list of characteristics above. It could be used as the basis of an agenda for initial planning meetings.

### 3.3.2 Developing Protocols and Memorandums of Understanding

Member States have found the use of **Memorandums of Understanding** helpful. They create a legal and permissive framework for the quick exchange of information. They are useful between neighbouring Member States, or those states who experience a regular movement of citizens between them, often for employment reasons.

The benefits of **Memorandums of Understanding** are:

- The quick exchange of information.
- An ability to monitor offenders and persons of concern who cross borders.
- They can enhance the day to day supervision of offenders who reside in one Member State but who may work in another.
- A reduction in the need to make legal applications to exchange information in every presenting case.

For example, there is a Memorandum of Understanding between the Republic of Ireland and Northern Ireland Law Enforcement agencies on information exchange on those sexual offenders who move across their shared land border. This has extended to regular information exchange on cases of concern, and has involved joint training on, and joint adoption of, risk assessment methods.<sup>35</sup> A similar protocol to complement this has been agreed between the two probation services in the Republic of Ireland and Northern Ireland.

This is provided as an example of such Memoranda of Understanding in [Appendix 6](#).

Such agreements tend to:

- Give permission to operational personnel to exchange information within welldefined parameters.
  - Limit the use of information exchange and the use of information obtained.

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<sup>35</sup> For a discussion on how this agreement works see Thomas, T. (2010) European developments in sex offender registration and monitoring in *European Journal of Crime, Criminal Law and Criminal Justice* 18 Eur.j.Crime Crim I. and Crim just.403. See also Department of Justice and Equality for Republic of Ireland, Bilateral Agreement of cooperation between Ireland and Romania in combating serious crime (2013) accessed at: <http://www.justice.ie/en/JELR/Pages/PR13000011>

- Define the limits and boundaries of confidentiality.
- Define clearly the subjects of such information exchange.
- Define the purposes of information exchange.
- Outline the processes, mechanisms, systems and personnel for information exchange.

- Clarify the status of the agreement and relationship to other instruments and legal acts.
- Specify systems and timeline for review of the agreement.
- Are signed and endorsed at a sufficient level of seniority.

## 3.4 Multi-agency Working

### 3.4.1 Case Conferences

**This section focuses on a particular way of co-ordinating agencies to manage serious violent or sexual offenders: the multi-agency case conference and considers best practice for arranging and conducting such conferencing.**

The benefits of multi-agency case conferencing are:

- Prompt and effective information exchange on serious violent or sexual offenders.
- Joint risk assessment utilising a range of information sources.
- Shared risk management planning and collaborative work to deliver a comprehensive risk management plan.
- Clear allocation of roles and responsibilities.
- A clear focus on public protection and victim safety.

- A joint decision on disclosures about offender risk (this can include decisions to disclose information to other jurisdictions).

Good practice in conducting a multi-agency case conference includes:

- Attendance of all relevant agencies at a sufficient level of authority to commit necessary resources to manage the offender safely.
- A clear shared statement of objectives.
- Agreed principles and boundaries, for example on the confidentiality of the meeting and information exchange, but also on the disclosures necessary for protection of victims and the public.
- Well defined role boundaries and professional respect.
- The meeting being facilitated by a person with sufficient authority, skill and competence.
- Risk management plans being co-ordinated and led by one agency, and by an individual with overall oversight of the offender.
- The meeting following a clear agenda, with an accurate written record of the meeting being kept.

A checklist ([Checklist 5](#)) is provided which can be used to inform the planning for a multiagency case conference.<sup>36</sup>

### 3.4.2 Multi-agency teams

Multi-agency teams have a number of strengths they can:

- Allow for the inclusion of research and knowledge from different disciplines to inform interventions

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<sup>36</sup> For further information on the conduct of multi-agency public protection arrangements see:  
<https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa--2>  
<http://www.scotland.gov.uk/Topics/Justice/policies/reducing-reoffending/sex-offender-management/protection>  
<http://www.dmu.ac.uk/documents/health-and-life-sciences-documents/research/rdsolr1207.pdf>

- Allow different professional perspectives to collect data that can be used for audit and for research
- Enhance multi-disciplinary communication and ensure effective case planning
- Enhance the engagement of service users in a programme of interventions
- Help staff learn and try out new ways of working<sup>37</sup>

An example of such multi-agency team arrangements are the 'Safety Houses' (Veiligheidshuis) in the Netherlands. These involve criminal justice organisations cooperating with municipalities and the social and care sectors to better combine and integrate penal and rehabilitative interventions for offenders.<sup>38</sup>

The stated objectives of Safety Houses can include, preventing and reducing recidivism, nuisance and crime through:

- A personalised approach for target groups
- Gaining an insight into the multiple complex problems of clients and by that enhancing the multi-disciplinary care to those clients.
- Coordination of care by timely information exchange between organisations about the personal circumstances of the client and making binding agreements on a coherent and comprehensive approach.
- Ongoing monitoring of agreements and the justification of the activities and achievements via the annual plan, to the city board, affiliated organisations and the citizens.
- Providing assistance for victims
- Providing appropriate (after) care for ex-prisoners<sup>39</sup>

This section has been concerned with creating frameworks for effective communication and collaboration within Member States and also across borders where that is appropriate. Section 4 provides guidance specifically about communicating and collaborating to manage the risk

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<sup>37</sup> From Webster, C. Haque, Q. and Hucker, S. (2014) *Violence Risk Assessment and Management*, 2<sup>nd</sup> Edition, Wiley Blackwell

<sup>38</sup> For further information about these projects see, for example: <http://www.veiligheidshuistilburg.nl>

<sup>39</sup> Wauben, J and Timmermans, S. The Safety House: A Report on the Tilburg Project accessed on January 14<sup>th</sup> 2015 at [http://www.enothe.eu/cop/the\\_safety\\_house.pdf](http://www.enothe.eu/cop/the_safety_house.pdf) A useful practice sheet is provided by the European Forum for Urban Security, accessed at [http://www.cep-probation.org/uploaded\\_files/Efus%20Practice%20-%20Safety%20houses%202014%20.pdf](http://www.cep-probation.org/uploaded_files/Efus%20Practice%20-%20Safety%20houses%202014%20.pdf) This practice-sheet summarises the development of the projects and gives some basic advice about setting up similar projects

posed by serious violent or sexual offenders across the EU as a whole. A supportive infrastructure combined with consistent decision-making and standards of communication will ensure that arrangements for passing on the risk are robust and reliable.

## Section 4 - Exchanging Information or Transferring Supervision across EU Borders

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### 4.1 Introduction to the content of Section 4

Relevant to this section is recommendation 4 of the field work study report:

'An EU wide position is adopted to agree those serious violent or sexual offenders who should be identified for monitoring and tracking across EU borders upon the completion of their sentence/sanction, including those released from custody without conditional release'. (Recommendation 4)

Existing European protocols provide a permissive framework for the legal and ethical exchange of information and transfer of supervision.

The Swedish Framework Decision 2006/960<sup>40</sup> allows for the ethical and pro-active exchange of information where crime is being investigated. It emphasises:

- Member States' common interests in fighting cross-border crime,
- The shared responsibility of Member States for the security of citizens in their own Member States and other European partners,
- The need for closer cooperation between law enforcement authorities in the Member States.

It also reinforces the importance of respect for the principles and rules relating to human rights and fundamental freedoms and provides advice as to the type and quality of information that should be exchanged.<sup>41</sup> Timeliness, the competence of those initiating information exchange, proportionality (in relation to seriousness and urgency), and relevance are all important aspects of effective and fair information exchange. They are also relevant to the exchange of information between offender management/probation services.

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<sup>40</sup> Access Swedish Framework document at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006F0960>

<sup>41</sup> See Hilder, S. and Kemshall, H. (2014) *SOMEK Report 2, Part One: European Union Information Exchange Mechanisms – A Mapping Report of existing frameworks*, available at [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563):



**Framework Decision 2008/947/JHA** (FD 947)<sup>42</sup> provides a framework for the transfer of supervision across Member States. The related ISTEP project (*The Implementation Support for the Transfer of European Probation Sentences*) has produced a handbook and suggested procedures to support this.<sup>43</sup> FD 947 aims to facilitate the social rehabilitation of people convicted within one Member State by transferring them to their home country in the EU to serve a probation measure or alternative sanction.

It is founded upon the need to:

- Develop mutual trust and confidence between EU Member States.
- Support judicial cooperation and mutual recognition of final decisions in criminal matters.
- Support freedom of movement within the EU.

Where risk to potential victims in any Member State is deemed to be high, the consequences of not sharing information or transferring supervision, with due regard to the principles articulated in the Framework Decisions described above, can include, for example:

- Harm to individuals and communities.
- Lack of trust between Member States.
- Diminishing confidence in the judicial system and its ability to protect the public.
- Uncertainty and anxiety for individuals supervising high risk offenders.
- Insecurity for citizens.

**To address the recommendation relating specifically to serious violent or sexual offenders moving across EU borders, the Guidance will draw here upon previous sections in order to help practitioners to:**

- Identify the 'critical few' and ensure that only information which is relevant and proportionate to the ongoing management of this group of individuals is exchanged.
- Make defensible decisions to exchange information.

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<sup>42</sup> Accessed at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0947>

<sup>43</sup> ISTEP European Handbook accessed at [http://www.probation-transfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf)

- Use appropriate systems and processes to transfer information (e.g. where the Member State has implemented FD 947).

A template is provided for the exchange of information (See [Section 4.6.2](#) and [Appendix 7](#)), to be used alongside other existing, appropriate documentation<sup>48</sup> or on its own.

## 4.2 Identifying the ‘Critical Few’

It is important that information exchange and the transfer of potentially intrusive supervision is reserved for a very few, carefully selected individuals who pose a high risk of serious harm to others. It is on the basis of work with and knowledge of the individual that professionals should be in a position to apply the two key tests referred to in the introduction:

- **The risk test:** does this individual pose a risk of significant harm through a threat to life and limb, or through serious psychological trauma? Systematic, evidence-based and ongoing risk assessment is central to addressing this question.
- **The mobility test:** is the individual engaged in or likely to engage in movement across EU borders? Movement can be defined as planned or unplanned changes of residence to another jurisdiction. This may include offenders working or regularly visiting within another jurisdiction, the disappearance of offenders and where there is a reasonable concern they have crossed or are likely to cross into another EU jurisdiction.<sup>49</sup>

For those involved in the supervision of offenders, there will be certain key points at which such tests may need to be applied:

- When contributing to the sentencing process (for example when compiling presentence assessments).
- When post-sentence assessments and intervention/risk management plans are being devised (this might include how to manage deportation).
- At the end of any custodial sentence (again including any necessary transfer of information where the individual is to be deported).

<sup>48</sup> For example The Transfer Certificate and Template for informing of social history and risk provided in ISTEP - Implementation Support for the Transfer of European Probation Sentences: European Handbook: Annexes 3 and 4.

<sup>49</sup> Definition based upon the Information Sharing Protocol Between The Probation Board for Northern Ireland (PBNi) & The Probation Service (Ireland) In respect of The Management of Sex Offenders and Offenders assessed as a Risk of Serious Harm to Others (2014), p.3

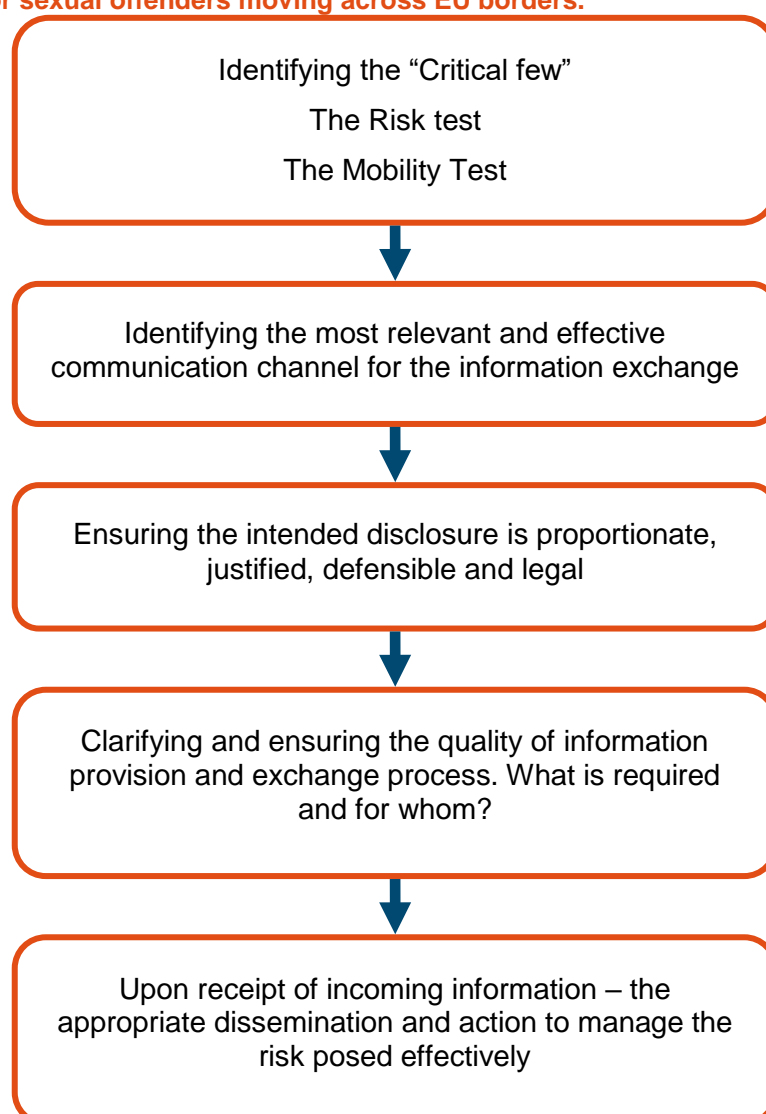
- At the end of the sanction.

In addition, and perhaps more importantly, during the course of the sentence supervisors of serious violent or sexual offenders will need to be alert to aspects of the individual's behaviour which might suggest that:

- The individual's risk to others is escalating ... and ■ That they intend to travel.

Risk assessment is ongoing and practitioners need to be ready to act where they observe significant changes in individual behaviour, attitudes, lifestyle and circumstances.

**Figure 1: This flow diagram highlights the key stages of effective information exchange on serious violent or sexual offenders moving across EU borders.**



## 4.2.1 When Risk and Mobility Interact

The 'critical few' will be those individuals:

- Whose risk of harm to others is considered to be high, often even when they have been the subject of interventions designed to manage and reduce the level of risk. Analysing and summarising that risk can be supported by use of the PSNLI Approach, described in [Section 2](#) and [Checklist 1](#).
- Where there is evidence of a past willingness and/or current intention to move across borders. **ECRIS data** may be useful here, but also **ongoing assessments** of:
  - an individual's lifestyle and its association with their offending behaviour,
  - the nature of their intentions and future plans and/or their social networks,
  - any evidence that they may travel to avoid supervision, regulation or monitoring.

The responsible supervisor will need to review the risk assessment at any time when these individuals may:

- Be subject to an enforced move (e.g. deportation),
- Indicate an intention to move (e.g. for employment,
- Be seeking to access offending opportunities, or avoid supervision);
- Have already moved (e.g. by absconding).

The supervisor should review the initial assessment, consider the more current knowledge, such as the individual's response during sentence, and any intelligence information about their potential mobility.

Assessment using the PSNLI Approach will help supervisors, and [Checklist 6](#) contains additional questions to use. In addition, supervisors working with serious violent or sexual offenders who may be mobile across Europe, should also consider the following:

- The evidence that the individual has been mobile in the past, both within his own Member State and outside its borders.

- How strong are his/her social ties with his/her family or local community? Are these likely to provide any ongoing support and reduce the likelihood of future harm?
- To what extent the individual has complied with interventions designed to reduce the risk.
- What has the individual's response been to previous supervision or other measures (e.g. programmes in custody)?
- What has been the level of his/her compliance with the requirements of their current supervision?
- Have they made any significant changes in their behaviour or lifestyle which suggests a positive investment in the supervision process?
- Does the individual have social links with people in other Member States and how far are these / or could these links be associated with their offending?
- The likelihood that they will move out of their area to commit potentially harmful acts?
- Whether there is evidence that the individual has (and is still) arranging their life to support offending.
- To what extent does the person have the capability and motivation to change and to manage their own risk?
- What is the individual's current attitude towards offending and towards potential victims. Are they committed to self-risk management?
- Are there protective factors that would reduce the risk and is the individual motivated to comply with risk management plans?
- How soon are they likely to move?

**Checklist 6** provides a structured approach to all these additional questions.

#### 4.2.2 Identifying the 'Critical Few'? What happens next?

- Establish the most relevant and effective communication route. ([Section 4.3.2](#))

- Establish that the disclosure is proportionate, justified, defensible and legal. ([Section 4.5](#))
- Identify what information is required and for whom. ([Section 4.6.2](#))

## 4.3 Choosing the Best Route for Communication

‘All relevant law enforcement and offender management personnel should have a comprehensive overview of existing methods of information exchange across EU borders, so informed decisions can be made regarding the most appropriate channel for the communication required. This should extend beyond the staff located in the various forms of international bureau to other relevant levels of operational law enforcement and offender management staff, so they are aware of the resources available to them when a serious violent or sexual offender is moving across EU borders’ (Recommendation 13)

### 4.3.1 The Importance of Protocols

Effective national protocols for information sharing across criminal justice agencies are vital in the first instance. **Those responsible for the assessment, ongoing management and supervision of offenders may not have access to direct links with colleagues in other Member States. They may need to rely upon law enforcement, diplomatic or even immigration channels to pass on information. In the case of serious violent or sexual offenders it should, therefore, be assumed that information exchange is a joint responsibility and that both offender management and law enforcement personnel will be involved in the process.**

It is therefore important that agreed understandings are reached between judicial, offender management and law enforcement agencies nationally as to how international information exchanges on offenders operate under different circumstances. This will ensure that there is no duplication of efforts or conflicts of interest which may undermine strategies to ensure public protection.

There may also be circumstances where a direct exchange of information between offender management organisations in different Member States is also beneficial. Separate arrangements may be established via protocols or Memoranda of Understanding between relevant organisations. (See [Section 3.3.2](#) above)

### 4.3.2 Existing Mechanisms and their Suitability

Accessing or providing information via ECRIS: Identification and assessment (for more detail see also [Section 2](#)).

ECRIS facilitates the exchange of **conviction data**. ECRIS was primarily established as a mandatory process by which Member States were able to keep a national record of offences that their own Home Nationals committed in other Member States. However requests for conviction data can also be made via ECRIS. This is important for assessment purposes, ensuring the full history of an offender is known.

Offender management personnel should be aware that they can request this EU conviction data via the relevant law enforcement or judicial department.

#### Targeted Disseminations: Exchanging Information when the Offender undertakes a Planned Move

Targeted disseminations, where the intended destination or whereabouts of the offender is known can be made via a variety of existing exchange procedures, each of which are favoured variably by Member States (see [Appendix 1](#) for an overview). They include:

- Contact via Central International Bureau and exchanges made under the Swedish Framework decision (used by law enforcement personnel).
- Targeted disseminations via Interpol channels (used by law enforcement personnel).
- The use of Europol Liaison officers and Europol National units (used by law enforcement personnel).
- Bilateral and Multilateral information agreements such as those underpinned by Memoranda of Understanding (used by both probation and law enforcement personnel).
- Use of FD 947 to formally transfer supervision (see [Section 4.4](#) below), (used by probation personnel).

#### General alerts: where the offender is known to be mobile but their whereabouts are unknown

General alerts can be facilitated under:

- The Schengen SIS II, Section 36b alerts (used by law enforcement personnel).
- Interpol Green Notices (used by law enforcement personnel).

**Those responsible for the assessment, ongoing management and supervision of offenders may not have direct access to these information exchange channels. In these circumstances offender management staff should:**

- Communicate their concerns to appropriate law enforcement staff promptly, using for example the Exchanging Information Template at [Appendix 7](#). Local and national arrangements for joint work between Offender Management and Law Enforcement to manage serious violent or sexual offenders are most likely to support such channels (see **Sections 3.3.1, 3.3.2; 3.4**).
- Where a system of Single Points of Contact (SPOCs) for probation and law enforcement have been established communication should pass from an offender management SPOC to a law enforcement SPOC, with a request for urgent action under the most relevant information exchange route. For example, for the tracking of a serious sexual offender where children are clearly at risk an Interpol Green Notice may be the most appropriate route; particularly where final destination may not be known and may ultimately extend beyond the EU Community.

If a practitioner is unsure of the mechanism for exchanging the information they must still act.

- Providing a thorough assessment using [Appendix 7](#) to their SPOC, or Law Enforcement liaison person.
- Requesting action, and an update on the actions subsequently taken.
- Where possible making direct contact with the Offender Management Service in the Member State where they think the offender may go, or may already be residing- again using [Appendix 7](#) to exchange information.

**Offender Management personnel can:**

- Transfer supervision in an appropriate and timely manner (see FD 2008/947.JHA).
- Transfer all relevant information in such cases.
- Transfer information in cases where the offender moves voluntarily, or under informal arrangements, or on transfers that occur outside of FD 947 (for example under bilateral agreements).



- Where national law and relevant EU frameworks permit, transmit information at end of a sanction or sentence.

The next section deals with transfer of supervision.

## 4.4 Transferring Supervision

Framework Decision 2008/947/JHA<sup>44</sup> provides a framework for the transfer of supervision across Member States. It is critical that information on serious violent and sexual offenders is appropriately passed on when such offenders are transferred. The Exchanging Information Template at [Appendix 7\(a\)](#) will enable Member States to provide a comprehensive information package to receiving Member States. The benefits to comprehensive information exchange on supervision transfers are:

- A full assessment of the offender is provided to the receiving Member State.
- The receiving Member State can make appropriate risk management plans for the individual.
- Prompt monitoring and tracking can be put into place.
- Actions to protect known or potential victims can be taken.

The movement of offenders to other Member States whilst under supervision without formal transfer should be discouraged. However it is recognised that some transfers will happen with Member States who do not participate in FD 947. The **Exchanging Information Template at [Appendix 7\(b\)](#) should still be used to ensure that all information is appropriately and promptly provided.**

Member States who are asked to receive supervision of an offender outside of the FD 947 framework should give full consideration to the Exchanging Information Template [Appendix 7](#) they receive. [Appendix 9](#) enables receiving Member States to record the request and action their next steps.

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<sup>44</sup> Accessed at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0947>

## 4.4.1 Other Channels of Communication

### Single Points of Contact

A Single Point of Contact (SPOC) for all forms of law enforcement criminality information exchange, where mechanisms such as Schengen SIS II, Interpol and Europol facilities and where bilateral or multi-lateral regional agreements may be housed and managed is presented as a model of good practice.

Further work is being undertaken to continue to develop the functioning of SPOCs in all Member States.<sup>45</sup> The SOMEc project recommends that offender management and judicial departments are also represented under the National SPOC provisions.

Basic guidance regarding setting up SPOCs is included in [Section 4.7.1](#) and [Appendix 8](#).

### International Desks

Some Member States have International Desks and National Single Points of Contact for Offender Management. Formal and voluntary arrangements for the transfer of supervision are negotiated here.

## 4.5 Defensible Disclosure

Like all decisions relating to the supervision and monitoring of serious offenders, decisions to disclose information to other Member States also need to be defensible. Decisions are made on the basis of the principles that underpin the Swedish Framework Decision, FD 2006/960/JHA,<sup>46</sup> regarding the exchange of information:

- To improve the safety of European citizens.
- To contribute to the detection, prevention and investigation of crime or criminal activity.
- To ensure more efficient law enforcement whilst protecting human rights.

They also need to be:

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<sup>45</sup> Council of the European Union DAPIX 75, ENFOPOL 157, Draft Guidelines for a Single Point of Contact (SPOC) for International law enforcement exchange- International law enforcement cooperation structures in each Member State. Brussels, 23 June 2014 accessed at <http://db.eurocrim.org/db/en/doc/2214.pdf>

<sup>46</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006F0960>

- Proportionate to the level of risk posed by the individual to citizens and communities in other Member States.
- Transparent about the reasons for disclosure and who is responsible for the disclosure.
- Clear about who is to be accountable for any future actions.
- Alert to the rights of individuals, for example, when they have come to the end of sanctions or may be hindered in pursuing future plans.

## Proportionality

When disclosing information it is important to demonstrate that all reasonable steps have been taken to assess risk and then manage it appropriately. It might be helpful to refer back to the Defensibility Checklist at [Section 1.3](#) which is a useful framework against which to judge the defensibility of information to be exchanged. [Checklist 3](#) supports a review of the measures currently being taken to manage the individual's risk.

## Transparency

- It is important to provide information about the existing legal bases for disclosure, especially when sanctions have formally ended.
- Risk does not necessarily end with the completion of a formal sanction. Where the evidence from both ongoing assessments and the response of the individual to supervision suggests that the offender continues to pose a significant risk, consideration needs to be given to sharing information.
- The emphasis will be upon what is permitted within the Member State's current national legislation and any cross-border permissive protocols (e.g. Memorandums of Understanding) or available European frameworks (for example is the Member State implementing FD 947? Is the information exchange permitted under the Swedish Framework decision embedded into national law, policy and practice?).

## Accountability

[Section 2.3.3](#) addresses the need for balanced interventions, that might be needed to manage risk in the future and the most appropriate professionals/agencies to undertake responsibility for the individual's supervision.

- Taking account of the rights of the individual.

It is good practice, where it is appropriate and possible to seek the consent of the individual to the exchange of information or transfer of supervision. Where this is not possible or appropriate it is important to be clear whether the individual is aware that information is being shared, and whether disclosure to the individual is required, appropriate or feasible.

## 4.6 ‘Passing on the Risk’ – what to Communicate and Why

‘Single Points of Contact should be established for both law enforcement and probation/offender management (SPOCs) to exchange information on serious violent or sexual offenders who travel across EU borders utilising a standardised information package. Receiving Member States should review arrangements for receiving information on serious violent or sexual offenders and how such comprehensive information packages will be used to manage such offenders at a national level’. (Recommendation 6)

**The materials here will support the development of frameworks for communication (including SPOCs) and the use of standardised information exchange packages.**

### 4.6.1 Who is Passing on the Information and Why

Information exchange across Member States may be initiated by a range of different professionals. Their role in relation to the individual offender will differ as will the reasons for them wishing to pass on information and what they expect to happen as a result.

It will aid cooperation in the future if individuals and agencies involved in exchanging information or seeking to transfer supervision explain clearly who they are, their roles and responsibilities.<sup>47</sup>

It is important, when communicating with other professionals:

- That professionals provide information on their agency’s
  - Purpose, aims and objectives.
  - Responsibilities, authority and limitations.

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<sup>47</sup> RMA (2010) *Applying FRAME: A Structured Approach to Risk - Training Resources and Guide*, Section 5

- Adoption of cooperation or collaborative work and where it fits with the agency's main objectives/ obligations.

Professional need to be clear about mutual objectives and:

- Explain what they can do, what they can not do and why.
- Enquire what others can do, what they can not do, and why.
- Ensure that communications reach everyone involved.
- Are clear how problems may be addressed

#### 4.6.2 Communication – Good Quality Content

**This section is concerned about the quality and timeliness of the information that is exchanged.**

Given political, legal, cultural, professional and language differences it is important that:

- The legal basis upon which information is being exchanged is clearly stated.
- The information being transferred is rooted in effective monitoring, interventions, and recording, and is understandable across Member States.
- The format whereby information is exchanged is as simple as possible and supports an effective communication process.

A template is provided in [Appendix 7](#) for exchanging information simply and speedily. This could be used in the following circumstances:

- Where a move is planned by an individual and this is a cause for concern because of the level of risk. (e.g. the Member State may wish to prevent an individual travelling and requires evidence to support that decision).

- In the event of an unapproved move during a current sanction which may in turn breach a reporting/residency requirement or sex offender register requirement (if there is one). It may also trigger enforcement proceedings. However it is important to note that courts in many Member States are currently reluctant to issue a European Arrest Warrant for enforcement proceedings regarding breaches of supervision or sex offender register requirements, where the offender has absconded across the EU (due to the latter being a civil law matter). In such instances the move is likely to be imminent and the risk of harm posed by the individual is likely to be high.

- In the event of a planned/approved move during a current sanction and whilst subject to formal supervision. Formal transfer may be sought under FD 947 using ISTEP paperwork,<sup>48</sup> or with the Exchange of Information Template at [Appendix 7](#). This template will also aid information exchange on offenders moving under voluntary arrangements.
- Where a move has already happened (for example there has been a breach of legal requirements, the individual has absconded or disappeared) or there are concerns about likely movement across the EU upon/after the completion of a formal sanction.
- Where the offender is deported back to their home Member State at the end of their custodial sentence.
- A planned, known move upon/after completion of a formal sanction, with no further supervision/requirements.
- Where the Member State has not implemented FD 947 and possible transfer arrangements need to be explored by a receiving Member State.

## 4.7 Using Information Received to Manage Risk Effectively

An important aspect of effective communication is the nature of the audience and how they can be helped to respond appropriately to information received. Recommendation 15 of the SOMEK Field work report states that,

'With the development of quality, standardised packages of transmitted information, the promotion of appropriate responses to incoming information is

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<sup>48</sup> In ISTEP European Handbook accessed at [http://www.probation-transfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf)

required. Responses should seek to **prevent** the commission of further serious crimes and protect EU citizens from harm from serious violent or sexual offenders. This should include measures for the appropriate dissemination of received information at a national and local level.’

#### 4.7.1 Setting up Single Points of Contact (SPOCs)

Arrangements which come within the brief of SPOCs aim to maximise the use of resources, avoid overlaps and make cooperation with other Member States more efficient, expedient and transparent.

Since, in many Member States, Law Enforcement agencies are the most likely route for communicating criminal justice information across borders, it would be beneficial if SPOC arrangements relating to serious violent or sexual offenders integrated Law Enforcement and Offender Management functions.

Some Member States already have International Desks<sup>49</sup> for offender management which fulfil the requirements of a SPOC.<sup>50</sup> However, a Guide to setting up a SPOC is provided in [Appendix 8](#).<sup>51</sup>

#### 4.7.2 Responding and Taking Action

One of the characteristics of a SPOC is the formalising of consistent standards around sending and then responding to information. Even in the absence of a SPOC consistency can be achieved by developing standard forms for exchanging information. [Appendix 7](#) provides a template for sending information. [Appendix 9](#) offers a similar template for a timely and accessible response to incoming information which:

- Recognises national differences and limitations.

<sup>49</sup> For a list of Member States and their Probation Headquarters see <http://www.cep-probation.org/page/73/memberorganisations>.

<sup>50</sup> For example: The International Office of the Dutch Probation Service described in *Reclassering Netherlands, International office - Probation doesn't stop at the border: About the Work of the International Office* accessed on January 14<sup>th</sup> 2015 at [http://www.reclassering.nl/documents/Algemene%20brochure\\_ENG\\_WEB.pdf](http://www.reclassering.nl/documents/Algemene%20brochure_ENG_WEB.pdf)  
The international desks in Northern Ireland ([intdesk.pbni@pbni.gsi.gov.uk](mailto:intdesk.pbni@pbni.gsi.gov.uk)) and The Republic of Ireland ([internationaldesk@probation.ie](mailto:internationaldesk@probation.ie)).

<sup>51</sup> This is based upon the *Draft SPOC Guidelines for cross-border law enforcement information exchange* produced by the Working Group on Information Exchange and Data Protection (DAPIX) accessed at <http://www.statewatch.org/news/2014/mar/eu-council-post-stockholm-guidelines-lea-info-exchange-6721-14.pdf>

- Outlines a range of appropriate responses (from simply recording on local system to more active supervision or surveillance).
- Acknowledges that sometimes no action may be possible.

Improvements in the quality of information received, however, will clearly highlight the responsibilities of the receiving Member State to do everything they can to manage the risk posed by a serious violent or sexual offender arriving, or already resident in their Home Member State.



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## Section 5 - Review and Governance

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### 5.1 Introduction to the content of Section 5

To ensure consistency, defensibility and quality in the development of practice both within and across EU Member States regular monitoring, ongoing review and rules of governance are required. They should adhere to the principles of proportionality, accountability, transparency, with the rights of individuals central to judicial decision-making across the EU community.

**This section suggests important elements of review and governance which may be applied at national and cross EU border levels. Broadly these fall under the following headings:**

- Ongoing risk assessment and risk management ([Section 5.2](#))
- Quality Assurance ([Section 5.3](#))
- Mechanisms for data collection, storage and exchange ([Section 5.4](#))

### 5.2 Ongoing Risk Assessment and Risk Management Decision Making

Assessment and management decisions pertaining to serious violent or sexual offenders must be systematically reviewed. In addition to routine reviews, any new relevant information should also prompt a re-assessment at any stage of the monitoring or supervision process. [Section 2.3.4](#) provides guidance about the review as part of a planned approach to work with individuals. Subsequent reviews and accurately assessed changes in the level of risk posed must be effectively communicated with other Member States where appropriate.

### 5.3 Quality Assurance

Recognising the balance to be had between data protection, privacy laws and the individual rights of the offender, all procedures to assess and manage such offenders at both national and EU levels must also be subject to routine quality assurance processes.

The main dimensions of Quality Assurance processes are:

- Quality assessment – agreeing what quality is. **Sections 2-4** of this Guidance provide the basis for the development of quality practice in identifying, assessing,

intervening, managing and communicating with others about serious violent or sexual offenders. It also provides guidance about how to select assessment tools which will support effective risk assessment (see also [Checklist 2](#) and [Appendix 4](#)).

- Quality improvement – improving practice and problem-solving. As well as the core content of the Guidance there are **Checklists** and more concrete advice and Templates in the **Appendices**. These can ensure that practitioners take a systematic and more standardised approach to this group of offenders. They can also be used by managers and supervisors of practice to review and develop the work of staff
- Quality Management – ongoing oversight. Both Senior and Operational managers have a responsibility for an ongoing review of work with this group of serious offenders. This can be done via systematic staff supervision and routine management scrutiny of high risk cases. Checklists provided (e.g. [Checklist 3 – Reviewing Risk Management Plans](#)) can be used as tools for the ongoing review of work with relevant individuals.
- Quality Control – checking and monitoring. At crucial points in the decision-making process it will be important to monitor the quality of both interventions to manage risk and how information is exchanged about the individual and these interventions. The systematic approach supported by [Appendix 7](#) and [Appendix 9](#) (Templates for transferring and responding to information) should allow managers to gather data and monitor the content and quality of information. Such management information can then be used internally to inform the development of practice and in discussions with other EU Member States. It is advisable that specific managers have the responsibility for this aspect of quality assurance.

## 5.4 Mechanisms for Data Collection, Storage and Exchange

Concerned with the transmission of data for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, the Framework Decision 2008/977/JHA<sup>52</sup> stipulated clear protocols for cross border data transfer, in that it must be fair and lawful, accurate, adequate, relevant and not excessive to the legitimate purpose for which it is required. The Stockholm Programme (OJ 2010 C 115/01),<sup>53</sup> also

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<sup>52</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

<sup>53</sup> See The Stockholm Programme — An open and secure Europe serving and protecting citizens 2010/C 115/01.

stipulated a number of core principles which continue to underpin the EU's approach to data collection, storage and exchange, namely:

- The clear purpose of data collection, storage and exchange.
- Proportionality and legitimacy of processing.
- Limits to storage time.
- An appropriate level of data security and confidentiality.
- Respect for the rights of the individual.
- Data storage and exchanges to be monitored by an independent authority

Existing Mechanisms for the exchange of criminality information between Member States adhere to these core principles within their own governance procedures for example:

- Data Protection for SIS II is governed by Convention 108 and Recommendation No. R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe<sup>8</sup> constitute the current data protection regime applicable to the SIS Convention. Council decision 2007/533/JHA<sup>54</sup> - regulates the criminal law and policing aspects of the Schengen Information System II (SISII). Articles 26 onwards highlight the categories of alerts which can be made on the system, which are then available to all Schengen States. It also stipulates the rules for the length of an alert, confidentiality and security management. There is a general principle that alerts should only be placed on the database in matters where there are serious concerns for the individual's protection or in order to prevent other serious threats. In each Schengen Member State the National Supervisory Authority ensures that an audit of the data processing operation within their national part of the SIS II occurs. Such audits occur at least every four years.
- Every Member State has a central authority responsible for the management of national criminal records and ECRIS transmissions. The General Secretariat of the EU ensures the distribution of this contact information across the EU community. General principles governing the exchange of information and the functioning of the system are regulated in Council Framework Decision 2009/315/JHA.<sup>55</sup>

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<sup>54</sup> Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II) - June 12<sup>th</sup> 2007.

<sup>55</sup> Council Framework Decision [2009/315/JHA](#) of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States

- The Europol Data Protection Officer's (DPO) main task is to ensure lawfulness and compliance with the Europol Council Decision 2009<sup>56</sup> in relation to data protection and information management. The Joint Supervisory Body (JSB) provides additional external control of all communication between Member States via Europol procedures. The JSB consists of representatives from the national data protection authorities of all twenty eight Member States. Inspections occur annually in close conjunction with the DPO's office, with other intermittent checks as deemed appropriate.
- Data exchanges occurring via Interpol are governed by the 2014 Interpol Rules of the Processing of Data (General Assembly of the International Criminal Police Organisation – Interpol 2014).<sup>57</sup> Each National Criminal Bureau for Interpol is responsible for ensuring that notices and diffusions that they have instigated adhere to core principles of lawfulness, quality, transparency, confidentiality and security (Articles 11-15). Articles 46-56 cover issues of data retention periods, updates, re-assessment and deletion.

Whilst utilising one or more of the existing EU information exchange mechanisms will trigger particular rules of governance and external scrutiny there are some common factors here which all Member States should seek to embed within their practice at a national level of collaboration as well as at an EU level. They are also frequently illustrated in the positive examples of effective bi lateral and multi-lateral information exchange agreements between Member States

They include:

- Ensuring exchanges are fair and Lawful under National and EU data protection protocols.
- A Duty of Confidentiality - Information should be disclosed with the knowledge and consent of the subject. Where this may increase levels of risk or consent cannot be obtained the agency must consider whether they have sufficient public interest grounds to override this duty.

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<sup>56</sup> The Europol Convention was been replaced by the Council Decision of 6 April 2009 establishing the European Police Office (EUROPOL) as of 1st of January 2010.

<sup>57</sup> Accessed via Interpol- <http://www.interpol.int/About-INTERPOL/Legal-materials/Data-protection>

- A consideration of Article 8 of the Human Rights Act 1998. The right to respect for a private and family life, home and correspondence, with no interference by a public authority with this right except as in accordance with the law and is necessary in a democratic society in the interests of: a) National Security b) Public Safety c) Economic well-being of the country d) The prevention of crime and disorder e) The protection of health or morals f) The protection of the rights or freedoms of others
- Proportionality - a fair balance must be achieved between the protection of the individual's rights, with the general interests of society. The disclosure of information must be proportionate to the level of harm posed.
- Limited Purposes - The information will not be used for any other purpose than for which it was provided and will not be disclosed to another agency or body without appropriate permissions.
- Quality-Whilst good quality information is required to enable receiving parties to respond effectively, it must be adequate, relevant but not excessive to satisfy the purpose of the exchange.
- Data accuracy - Data discovered to be inaccurate or inadequate for the specified purpose will be brought to the notice of the originating agency, who is responsible for correcting the data and notifying all other recipients of the corrections.
- Retention and Destruction of the Data - The data will be retained for a specified period as relevant to the purpose of the exchange. Its retention must then be reviewed and can only continue if the purpose of doing so is clearly legitimised. Otherwise at the end of a retention period the information must be destroyed securely in keeping with that organisation's retention and disposal policy and in accordance with National Data Retention laws.
- Security - Sending and receiving Member States must ensure appropriate levels of security and access both in the transmission and storage of the exchanged information.
- All parties should be aware that penalties, disciplinary and legal proceedings may occur in relation to any breaches of information exchange and data handling protocols.
- Breaches of data security and failure to adhere to information exchange protocols should be reported to the relevant supervisory body.

The field work study report states that,

'The establishment of a comprehensive national and EU position on serious violent or sexual offenders starts with **consistent and effective methods** across the EU Member States for identifying and assessing those individuals who pose the highest level of harm both during and upon completion of a formal sanction. **Clear accountable lines of responsibility** for the transfer of **a comprehensive package of information** to other Member States when a serious violent or sexual offender is known, or thought to be mobile across the EU should then occur. When information is communicated across EU borders the responsibilities of the receiving Member State to take **appropriate preventative action** should also be clear and realistically achievable.' (p.97)

This guidance has provided Member States with the basis on which to achieve the practice aspirations highlighted above; systematic and principled review and governance at local, national and cross-border levels will ensure the integrity and quality of that practice.

## Useful References

### European documents

- Council Framework Decision [2008/977/JHA](#) of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.
- Council Framework Decision [2006/960/JHA](#) on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ("Swedish Framework Decision")
- Council Decision [2008/615/JHA](#) of 23 June 2008 on the stepping up of crossborder cooperation, particularly in combating terrorism and cross-border crime
- Council Framework Decision 2008 JHA 947 on the mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
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## Appendices

### Appendix 1 – Mechanisms for the Exchange of Criminal Information and their potential for a proactive/preventative approach

Mechanism	Primary purpose	Accessibility/Utilisation across the EU	Challenges/Benefits	Potential for use in Proactive/ exchanges
Interpol Dissemination processes	<p>Interpol National Central Bureaux (ICB)</p> <p>To track down wanted persons, facilitate international information exchanges for the detection and prevention of transnational crimes. Operates I-24/7 and other communication channels.</p>	<p>I 24/7- A restricted access Internet portal for Global police communication.</p> <p>Predates Europol and accessible also for countries bordering, but currently outside of the EU.</p> <p>Other Interpol dissemination channels- Diffusion- an email which can target single states, groups, regions or all of the Interpol members</p>	<p>A vast amount of information is contained on the I-24/7 which authorised personnel can access at a National level, running various types of search for information. 190 Member States, so information placed on the Interpol system by i-link is accessible outside of the EU.</p> <p>Targeted dissemination channels allow for direct communication with other Member States relating to serious violent or sexual offenders. But specific details of an intended destination would be needed, which with “open borders” may lead to wider dissemination</p> <p>There is some reticence in the use of Interpol channels from some EU Member States, advocating Europol as the primary source of exchange (EC 2010). I 24/7 data is accessible outside the EU where data protection rules may vary even further.</p>	<p>Whilst it is the case that I-24/7 is accessible to all States who are Members of Interpol, targeted disseminations can be made to single states/and regions.</p> <p>For this to be of further use to SOMECS - States can actively assess which form of Interpol communication is appropriate depending on the nature of the communication to be made.</p>
Interpol Green Notices	<p>Provides warnings and criminal intelligence information on serious criminals who are likely to reoffend posing a serious threat elsewhere.</p>	<p>Used for a variety of serious offences on offenders who may be travelling extensively so requiring systematic review by Interpol Central Bureaux.</p>	<p>Green notices are reportedly under used for the tracking and monitoring of sexual offenders. Notices are used for a wide range of offenders and the volume of notices issued overall is high (De Poubais Lundin 2010); this can have operational challenges for individual Member States.</p> <p>There is no obligation for action upon receipt of a Green Notice and or an individual who is the subject of a Green Notice and therefore responses can vary.</p>	<p>There is potential for Interpol Green Notices to contribute to the management of serious sexual or violent offenders known to be travelling but there are operational challenges such as volume and individual Member State responses to notices, which are not obligatory.</p>

Europol (liaison officers, Information system)	Investigation of Organised Crime, terrorism and other serious crime affecting two or more Member States. Joint cross border investigations.	Europol is primarily mandated to assist EU member states in combatting serious organised crime. The Europol Information System (EIS) is a database of information supplied by member States on such crimes occurring/linked across EU borders. Member states engage through their Europol National Units (ENU) and since 2011 also other designated law enforcement authorities. SIENA, Europol's secure Information Exchange Network Application provides a secure mechanism for the exchange of information with Europol and between member states. Each member State maintains a liaison bureau in the Europol Headquarters in the Hague. Communication also occurs directly between the Europol liaison officers posted there, each a member of their own ENU. Also via specialist intelligence analysis units, called focal points, who provide strategic and tactical intelligence reports on various areas of organised criminal activity. Analysis work files allow Europol to provide operational analyses to support cross border investigations.	There are European Commission proposals for a significant reform to increase the role of Europol as a central coordination point of all types of information exchange between Member States. "SIENA messages are structured, can handle large data volumes and are exchanged with a high level of security" (EXIM) /*COM/2012/0735 final */  The Europol Council decision 2009 2009/936/JHA sets out the criteria for information sharing across the EU via the Europol network. In addition to Terrorism and organised crime, a further annex list of serious offences which Europol may become involved with are listed.	Some Member States have moved to a more systematic use of Europol channels (EC 2012).  It would need to be established that SOMECE offenders would meet the criteria set out by the annex list 2009/936/JHA for information exchange.  There may be guidance required in terms of the level of detail provided and the concerns identified regarding the imminent commission of a further serious offence. This may be interpreted differently by Member States in relation to SOMECE offenders, where the sharing of such information via Europol may not be commonplace.  Europol's analytical function for these type of offenders may be limited if there is huge inconsistency in utilising this channel for this purpose across the EU.
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SISII SIRENE	SIRENE Bureaux established in all Schengen States. Alerts on persons and objects to maintain security, following the lifting of internal borders.	A large scale system, over 43 million alerts (EXIM) /*COM/2012/0735 final */ accessible on a hit or no hit basis to front line officers. For SIS II, alerts to support police cooperation between police and judicial authorities in criminal matters will be accessible to all EU Member States.	Can be directly accessed on a hit/no hit basis by frontline operational law enforcement officers.  Article 36 alerts. Discreet checks and the seizure of evidence are possible where a serious threat to public security is identified "a) where there is a clear indication that a person intends to commit or is committing a serious criminal offence. b) Where an overall assessment of a person gives reason to suppose that that person will also commit serious criminal offences in the future." For relevant offences see end of table. The limited evidence available suggests that SISII is more likely to be used for serious organised crime rather than the sole transient serious sexual or violent offender.	SOMECS offenders are likely to require an assessment under criterion (b). There is potential to increase the relevance of SISII for SOMECS offenders but this may well require further guidance and agreement on how to operationalise criterion (b).
ECRIS	Conviction data exchange. Establishing a standardised electronic connection of criminal record databases across the EU.	A mandatory procedure across all EU Member States, to notify a Member State of Nationality of any convictions handed down to national from their country in another EU member states.  In many Member States this is a judicial function and the police do not have direct access to such information. Deals with historical, factual information.	A few Member states have yet to link electronically and paper transfers still occur in such cases. Managed by different types of personnel and departments in different states.  Varying national laws as to whether convictions occurring in other member states can be formally noted in the national state of origin.	Not directly relevant in relation to proactive/exchanges without conviction.
PRŮM	Automated access to national databases for the exchange of DNA, finger prints and vehicle registrations. Can be utilised for all forms of crime.	Operates on a hit or no hit basis in the first instance. A supplementary request for information can then be made to the Member State where the data match has occurred.  Again a number of Member States have not yet engaged with PrŮm.	Assists with investigatory work, detection and confirming identities. May have a supplementary role in tracing a mobile serious or violent offender and/or quickly ascertaining their identity when they have come to the attention of another law enforcement authority.	Reactionary rather than preventative, but can assist in identifying patterns of movement across the EU by an offender.

Embassy Liaison Officers	Law Enforcement Officers posted on behalf of their agency in another Member States.	Usually seconded to their country's embassy in the host member state.	The exact role of the liaison officer is subject to national differences and regulations in their host country and can differ between different Member states. They develop and maintain a network of privileged contacts. Can provide an intelligence and support role, facilitate joint investigations and requests for information sharing, arrests, extraditions.	<p>Some Member States may prioritise this connection above other forms of information exchange</p> <p>May be useful for single high risk cases, but generally less systematic in relation to SOMEK.</p> <p>The issue for SOMEK may be more about avoiding miscommunications and/ or a duplication of efforts and ensuring there is clear guidance and protocols on how different issues of criminality are addressed between Member States.</p>
Single Point of Contact (SPOC)	The central National coordination of all forms of EU information exchange on criminality.	Not an exchange mechanism but the central coordination of all channels of communication which brings together the SIRENE Bureau, ENU and Interpol National Central Bureau and contacts for other channels. Whilst there are a number of International Police Cooperation departments only some contain all the mechanisms proposed via a SPOC. It is advocated that it should include all law enforcement agencies (EC 2012).	<p>Places all key mechanisms for exchange together into a single organisational structure. It is thought that this makes it easier to ensure a prompt validation of a request and an appropriate response.</p> <p>Filters what is coming in and what goes out.</p> <p>Needs to improve efficiency rather than add an additional layer of bureaucracy.</p>	<p>A number of Member States already have SPOCs or integrated Bureaux and comment on their effectiveness (EC 2010).</p> <p>There may be resource implications and additional challenges for Member States with multiple jurisdictions. Connectivity between law enforcement and judicial departments may also need to be considered where different responsibilities for data retention are held nationally.</p>

Formal Bilateral	Formal exchange and mutual cooperation agreements between one or more Member States addressing shared interests in particular criminal and judicial matters.	Various examples Nordic, East European, and Memorandum of Understanding between UK and Republic of Ireland on mobile sex offenders.	Mainly addresses specific cross regional issues; or where countries share borders; or have historical and operational experience of mobile offenders across mutual borders. For example, the management of serious sexual offenders across the Northern Irish border with the Republic of Ireland- this is supported by a Memorandum of Understanding between the UK and the Republic of Ireland. However, benefits tend to be local or regional with limited pan European relevance, and in some instances the target group of such formal bilateral and multilateral arrangements is serious organised crime.	Further independent evaluations are required on the successes of such initiatives.  The relevance for SOMECE offenders is also likely to be determined at a political/policy level between Member States where recurring issues regarding travelling violent or sexual offenders are identified. Also where interim measures are agreed between Member States, pending wider pan European initiatives.
Informal regional arrangements	Where policing Units have close border geographical relations	Occurs informally, as part of other regional meetings, ad hoc communication	Informal arrangements are seen to be more expedient by operational law enforcement officers, with personnel retreating back to more centralised formal mechanisms if information then has to be utilised in a particular way for prosecutions etc.  It relies on relationships/good will/- all of which can be lacking in more formal centralised channels of communication where things may be more restricted in terms of sharing as a result. However, there are issues with accountability and audit trails of decision making, particularly in the cases of failure or challenge on human rights grounds.	The lack of formalisation raises concerns regarding consistency and accountability. However the successes to be had in the development of good professional relationships, joint training activities, shared understandings and consultations between key Law Enforcement personnel across EU Member States when implementing new measures are useful considerations for SOMECE.

## Appendix 2 – Using ECRIS

### Why ECRIS?

ECRIS was created to improve the security of citizens within the European area of Freedom, Security and Justice. It is intended to help ensure that offenders do not escape their past

simply by moving between EU Member States. It aims to encourage an interconnection of Member States' criminal records' databases.

## What is ECRIS?

The computerised system ECRIS was established in April 2012. It establishes an electronic interconnection of criminal record databases to ensure that information on convictions is exchanged between EU countries in a standardised, prompt and technically compatible manner.

## What information can be obtained via ECRIS?

ECRIS is a mechanism to gain information about both Foreign Nationals (FNs) in your Member State and about your home nationals who travel and may have committed offences abroad. ECRIS primarily deals with historical, factual information about an individual's previous convictions. The system provides prosecutors and judiciary members with access to comprehensive information on the offending history of any EU citizen, regardless of how many different jurisdictions he or she may have offended in. There are specific ECRIS codes that relate to serious violent and sexual offenders and are for the most part an agreed starting point for determining who the most serious violent and sexual offenders within every Home Member State. These codes are:

### Violent Offences

Intentional Killing

Aggravated case of Intentional Killing

Violence causing death

Causing grievous bodily injury, disfigurement or permanent disability

Torture

### Sexual Offences

Rape

Aggravated Rape other than a minor

Sexual Assault



Rape of a minor

Sexual Assault of a minor

### **What can ECRIS help you do?**

The historic, factual information about previous convictions can provide evidence of patterns of past behaviour and give some basic indication of the level of harm posed.

This information can inform sentencing decisions so that the weight and nature of the sentence is best suited to securing public protection in the future. For professionals (Probation staff or staff with an Offender Management role) responsible for conducting assessments the information available via ECRIS is an important foundation for their work with individuals. It ensures that they are starting from a realistic understanding of the individual's offending history.

### **What might be the consequences if I don't access information via ECRIS?**

Without information about previous offences, which may have been committed in other countries, you may have a misleading impression of the possible patterns of behaviour demonstrated by an individual offender. This might lead you to underestimate the level of harm posed.

### **How do I access information via ECRIS?**

You will need to access ECRIS data when, for example, an offender who has travelled, into or out of the country (foreign or home national), comes before the court or is referred for assessment. You should be able to find out who is responsible in your member state for the management of national criminal records and ECRIS transmissions. It is, therefore, important that there are systems in place so that professionals responsible for the assessment and ongoing supervision of serious offenders have reliable access to information exchanged via ECRIS and are properly informed about how to do this

## **Appendix 3 – Risk and Protective Factors**

Note:

Denial and a lack of empathy are included here as risk factors for sexual offending. However the evidence to support their impact upon individuals is not consistent across current research.

Therefore, whilst denial and a lack of empathy they may be significant for one individual, they are not automatically applicable in every case.

## Some Indicated Significant Risk Factors

### Risk Factors Violence

- Association with criminal peers.
- Anti-social attitudes and pro-criminal beliefs.
- Deficits in social-cognitive skills such as problem solving.
- Poor social perspective taking.
- Impulsivity.
- Intelligence.
- Psychopathy.
- Lack of insight into violent offending.
- Rehearsal of violent thoughts.
- Drug and alcohol abuse.
- Poor management of emotions (particularly anger).

### Risk Factors Sexual Offending

- Sexual preoccupation
- Deviant sexual interest
- Sexual preference for children
- Sexualised violence
- Multiple paraphilia
- Offence supportive attitudes
- Emotional congruence with children
- Lack of emotionally intimate relationships with adults
- Never married
- Conflicts in intimate relationships
- Lifestyle impulsivity/general self-regulation problems

- Impulsivity and recklessness
- Employment instability
- Poor cognitive problem solving
- Resistance to rules and supervision
- Childhood behaviour problems
- Non-compliance with supervision
- Violation of conditional release
- Grievance/hostility
- Negative social influences.

(Kemshall et al (2014), *Literature Review: What Works in work with Sexual Offenders*: p.6)

### **Protective Factors associated with desistance**

General:

- Individual factors e.g. education/employment achievements, constructive leisure activities, friends who are not involved in offending, sense of self-efficacy, having goals and realistic ambitions, resilience, opportunities for turning points, a willingness to discuss problems, willingness to engage with interventions.
- Family factors e.g. positive and stable relationships, family members who model pro-social behaviour.
- Community factors e.g. receiving professional help/support, strong stable relationship with pro-social others outside the family home, involvement in community activities.

Violent Offenders:

Most violent offenders commit a range of other offences and the general protective factors will be relevant to this group of offenders. In addition research has highlighted the following specific considerations relating to violent offending:

- Intact and stable personal relationships are protective, provided those relationships were not with others involved in criminality.
- Involvement in religious activities was a protective factor

Sexual Offenders:

- Parenthood, most notably becoming a father particularly for young male offenders
- Marriage, as a stabilising factor in desistance from crime
- Employment
- Investment in a significant intimate relationship
- Strengthening social relationships
- Positive social capital
- Resilience, particularly to disappointment and failure
- Hope, particularly that one's life can change, and that other non-offending possibilities can be achieved.

(Kemshall et al (2014), *Literature Review: What Works in work with Sexual Offenders*: p.34)

## Appendix 4 – A summary of validated risk assessment tools

### Violence risk assessment tools

The Risk Management Authority presents the following tools as validated:

1. Classification of Violence Risk (COVR).
2. Historical Clinical Risk -20 (HCR-20).
3. Short Term Assessment of Risk and Treatability (START).
4. Violence Risk Appraisal Guide (VRAG).
5. Violence Risk Scales 2nd edition (VRS-2).

A short summary is provided here with more details available at: RMA, <http://rated.rmascotland.gov.uk/risk-tools/violence-risk/>; accessed October 27<sup>th</sup> 2014.

Violence Risk Assessment Tool	What Does it Do?	Validity and contribution to risk practice
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Classification of Violence Risk (COVR).	<p>The tool assesses mentally disordered patients on 44 risk factors in estimating violence risk.</p> <p>It is a software based assessment tool, it aims to structure assessment and eliminate assessor error.</p>	<p>Some limitations and is derived from the MacArthur Violence Risk Study (Monahan et al 2001).</p> <p>Has limited validity and applicability to female offenders and ethnic minority offenders.</p> <p>Its targeted use is for mentally disordered offenders</p>
HCR-20	<p>HCR -20 is a 20 item structured clinical guide for the assessment of violence risk, for use in clinical, forensic and criminal justice settings.</p> <p>Guides clinical judgement.</p>	<p>Has a large research base.</p> <p>Strong validation history.</p> <p>Reasonable applicability to female offenders and ethnic minority offenders.</p> <p>Identifies risk factors for risk management.</p>
Short Term Assessment of Risk and Treatability (START)	<p>Grounded in HCR-20.</p> <p>A short term tool designed to capture dynamic risk factors.</p> <p>Mostly relevant to in-patient and community psychiatric patients.</p>	<p>General predictive ability.</p> <p>Raises practitioner awareness of risk factors.</p> <p>Can identify protective factors.</p>
Violence Risk Appraisal Guide (VRAG)	<p>VRAG is a 12 item actuarial risk assessment tool for the prediction of violent recidivism amongst forensic psychiatric patients.</p>	<p>Large research base.</p> <p>Strong empirical grounding.</p> <p>Reasonable applicability to female offenders and ethnic minority offenders.</p> <p>Raises practitioner awareness of risk and protective factors.</p> <p>Usually used in conjunction with other risk assessment tools.</p>

Violence Risk Scales (VRS) 2nd edition.	<p>VRS is a 26 item actuarial risk assessment tool designed to assess the risk of violent re-offending for incarcerated individuals and forensic psychiatric patients prior to release.</p> <p>It can assess motivation to change.</p>	<p>General predictive accuracy.</p> <p>Limited applicability to female offenders and ethnic minority offenders.</p> <p>Can raise practitioner awareness of risk and protective factors.</p> <p>Some focus on dynamic factors so useful for release decisions.</p> <p>Limited research base, and limited independent evaluations of use.</p>
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(Adapted from: RMA <http://rated.rmascotland.gov.uk/risk-tools/violence-risk/>; accessed October 27<sup>th</sup> 2014)

### Sexual Offending risk assessment tools

1. Rapid Risk Assessment for Sex Offence Recidivism (RRASOR)
2. Risk Matrix 2000 (RM 2000)
3. Sex Offender Risk Appraisal Guide (SORAG)
4. Sexual Violence Risk-20 (SVR-20)
5. Stable 2007 and Acute 2007 (SA07)
6. Static 2002-R

Sexual Offending Risk Assessment Tool	What does it do?	Validity and contribution to risk practice
Rapid Risk Assessment for Sex Offence Recidivism (RRASOR)	<p>It is a 4 item screening tool for sex offender recidivism.</p> <p>Based on the 4 most robust risk factors.</p>	<p>Tested on Canadian and UK prison populations.</p> <p>No evidenced application to female offenders.</p> <p>Limited application to ethnic minority offenders.</p> <p>Raises awareness of static risk factors.</p>

Risk Matrix 2000 (RM 2000)	<p>It is a statistically derived risk assessment tool for use with convicted male offenders.</p> <p>Easy to score.</p> <p>Good for multi-agency use.</p>	<p>Strong empirical grounding.</p> <p>Not intended for female offenders.</p> <p>Limited applicability to ethnic minority offenders.</p> <p>Can raise awareness of static risk factors.</p> <p>Needs to be used with other risk assessment tools to get dynamic risk factors.</p>
Sex Offender Risk Appraisal Guide (SORAG)	<p>It is a 14 item tool designed for assessment of violent recidivism including sexual recidivism.</p> <p>It is an extension of the VRAG.</p>	<p>Not intended for female offenders.</p> <p>Limited applicability to ethnic minority offenders.</p> <p>Provides a brief assessment of risk of sexual recidivism and prompts further analysis and assessment.</p> <p>It cannot alone select treatment targets</p>
Sexual Violence Risk-20 (SVR-20)	<p>A 20 item structure framework for assessing sexual violence and informs risk management.</p>	<p>Reasonable grounding in empirical research.</p> <p>Uses strongest risk factors.</p> <p>Not intended for female offenders.</p> <p>Limited applicability to ethnic minority offenders.</p> <p>Structures clinical assessments.</p> <p>Provides detailed assessments.</p> <p>Contributes to offence analysis.</p>

Stable 2007 and Acute 2007 (SA07)	It is a two part actuarial risk assessment tool designed to assist with the supervision of offenders in the community.	<p>Strong empirical grounding.</p> <p>Not intended for female offenders.</p> <p>Limited applicability to ethnic minority offenders.</p> <p>Priorities areas for intervention.</p> <p>Focuses on motivation.</p> <p>Awareness of dynamic and static risk factors.</p> <p>Informs the level of management and monitoring.</p> <p>Revisions took place in 2012.</p>
Static 2002-R	It is a 14 item actuarial risk measure designed to predict sexual recidivism in adult male offenders.	<p>Strong empirical grounding.</p> <p>Not for use with female offenders.</p> <p>Limited applicability to ethnic minority offenders.</p> <p>Provides a brief scan for risk.</p> <p>Further in-depth risk assessment is required.</p>
Violence Risk Scale: Sexual Offenders (VRS: SO).	The VRS-SO is a 24 item assessment tool derived from the original Violence Risk Scale.	<p>Reasonable empirical grounding.</p> <p>Not intended for female offenders.</p> <p>Limited applicability to ethnic minority offenders.</p> <p>Identifies static and dynamic factors.</p> <p>Identifies treatment needs.</p> <p>Can help to measure change and progress.</p> <p>Helps offence analysis.</p> <p>Aids risk management planning.</p>

(Adapted from: RMA <http://rated.rmscotland.gov.uk/risk-tools/violence-risk/>; accessed October 27<sup>th</sup> 2014).

## Appendix 5 – Risk Management Plans: A Template

The following are examples of useful elements in risk management (Kemshall 2011a, b). They can be used to think about an individual case, or to review the elements available in a particular situation or member state.



	Which of these elements of risk management are available and relevant?	Who would deliver this?
<p><b>Supervision</b></p> <ul style="list-style-type: none"> <li>■ Structured and focused contact, set at a frequency commensurate with risk.</li> <li>■ Intensive supervision-focusing on problematic behaviours, encouraging compliance, strengthening protective factors.</li> <li>■ Supervised accommodation.</li> </ul>		
<p><b>Monitoring</b></p> <ul style="list-style-type: none"> <li>■ Electronic tagging.</li> <li>■ Surveillance.</li> <li>■ Use of local police intelligence about offending networks.</li> <li>■ Documentation of early warning signs.</li> <li>■ Understanding of behaviours and events which require close monitoring.</li> <li>■ Communication arrangement between all parties.</li> </ul>		
<p><b>Intervention / Treatment</b></p> <ul style="list-style-type: none"> <li>■ Identification and intensive one to one work on key triggers.</li> <li>■ Development and rehearsal of selfrisk management techniques.</li> <li>■ Appropriate programmes.</li> <li>■ Medication.</li> </ul>		

<p><b>Victim Safety Planning</b></p> <ul style="list-style-type: none"> <li>■ Information and education of known and potential victims.</li> <li>■ Contingency measures.</li> <li>■ Emergency contacts.</li> <li>■ Appropriate support personnel.</li> <li>■ Restriction of access to victims.</li> </ul>		
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When compiling plans you might want to consider the following questions:

- Available resources
  - Are there components missing that you consider important?
  - Are there significant concerns about the accessibility and availability of any of the necessary elements?
  - Are there concerns about the quality of some of the measures that are available?
- Working together
  - Does supervision properly work with all of the other aspects of intervention to ensure balance and consistency?
  - Are the necessary agencies involved?
  - Are there concerns about the willingness and ability of agencies to work together?
- The plan as a whole. It is useful to think about the plan from the point of view of its recipients. How will they experience it?
  - The offender
  - Victims

## Appendix 6 – NI/ROI Protocol

# **INFORMATION SHARING PROTOCOL**

**Between**

**The Probation Board for Northern Ireland  
(PBNI)**

**&**

**The Probation Service (Ireland)**

**In respect of**

**The Management of Sex Offenders and  
Offenders assessed as a Risk of Serious Harm  
to Others**



**June 2014**

## VERSION CONTROL SHEET

<b>TITLE</b>	<b>The Management of Sex Offenders and Offenders assessed as a Risk of Serious Harm to Others</b>
Information Asset Owner (s)	PBNI and PS
Version 1	Implemented June 2006
Version 1.1	Reviewed June 2007
Version 1.2	Reviewed May 2010
Version 1.3	Reviewed January 2014
Version 2	FINAL June 2014
Next review	May 2016

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## 1. INTRODUCTION

1.1 The aim of this protocol is to protect the public in Northern Ireland and Republic of Ireland from Sex Offenders and Offenders assessed as Risk of Serious Harm (RoSH) who move between jurisdictions by:

- Providing a framework for the secure and confidential sharing of information (personal and non personal) between the Probation Board for Northern Ireland, hereafter, in this protocol referred to as PBNI, and the Probation Service, (Ireland), hereafter in this protocol referred to as PS.
- Co-ordinating and strengthening the supervision and management of sex offenders and offenders assessed as Risk of Serious Harm, in the community in both jurisdictions.

1.2 For the purpose of this protocol:

- a) a sex offender is an individual who has been convicted of a sex offence as defined by the Sexual Offences Act 2003 as applied to Northern Ireland and the Sex Offenders Act 2001 (Ireland).
- b) an offender assessed as Risk of Serious Harm is defined as follows:

### **PBNI:**

Where there is high likelihood that an offender will commit a further offence, causing serious harm. (PBNI RoSH Policy 2013)

Serious harm is defined in the Criminal Justice (Northern Ireland) Order 2008 as death or serious personal injury whether physical or psychological

### **PS:**

Serious harm is defined as “personal, physical or psychological harm which is life threatening and/or traumatic and from which recovery is usually difficult or incomplete”. (PSROSH Guidance Document January 2012)

1.3 This protocol is effective from 1 June 2014. It replaces the protocol issued in May 2010.

1.4 This protocol does not impose a duty to disclose information in any particular case nor does it provide the power to demand disclosure.

1.5 This protocol may be cancelled by either party at any time, in writing, to be sent to the relevant signatory. (para 17)

## 2. DRIVERS

2.1 This protocol has been developed in part due to the fact that it is not legally possible to transfer court orders from one jurisdiction to another. It is to facilitate and/or implement the arrangements and/or legislative requirements as per:

- a) The Memorandum of Understanding between the Government of the UK and the Government of Ireland on information sharing arrangements relating to Sex Offenders.
- b) The Criminal Justice Inspection report on the Management of Sex Offenders in Northern Ireland, (2005) i.e.

**Recommendations No 4** (page 10) and at Para 2.15 (page 23) “*Inspectors would encourage progress in respect of Recommendation 291 of the Criminal Justice Review which suggests a coordinated cross-border approach to dangerous offenders*”

**Recommendation 291** of the Review of the Criminal Justice System in Northern Ireland refers to dangerous offender registers and consideration to sharing information between the authorities in the two jurisdictions so that there can be a coordinated approach to dangerous offender registers (Criminal Justice Review Implementation Plan November 2001)

- c) The Probation Service (Ireland) Protocol for Service Operation of Part 5 of Sex Offender Act 2001
- d) The SOMECE European Union (Serious Offending by Mobile European Criminals) initiative project which aims to improve cross-border information sharing on serious violent or sexual offenders travelling across the European Union and
- e) Co-operation on Criminal Justice Matters through the work of the Public Protection Advisory Group, under the Inter-Governmental Protocol

## 3. APPLICATION

3.1 This protocol applies to persons who:

- a) Are subject to the notification requirements of part 2 of the Sexual Offences Act 2003 (Northern Ireland) or Part 2 of the Sex Offenders Act 2001 (Ireland) and are subject to supervision by the probation service in either jurisdiction, or
- b) Have been convicted of a sexual offence (but are not subject to supervision orders) and are leaving prison, or



- c) Whose current offence is not a sexual one, but who have a previous conviction for a sexual offence and who are currently subject to supervision.
- d) Offenders in Northern Ireland who have been assessed as a Risk of Serious Harm to others in accordance with PBNI Policy (2013) are currently subject to a Licence or Order in Northern Ireland and
- e) Offenders in the Republic of Ireland who are assessed as being a Risk of Serious Harm to others and who are subject to Probation Supervision.

3.2 For the purposes of this protocol 'move' is defined as:

- A planned change of residence to the adjacent jurisdiction
- An unplanned or unauthorised move to the adjacent jurisdiction
- Offenders who are working or regularly visiting within the adjacent jurisdiction
- Offenders who cannot be traced and there is a reasonable concern they may currently be/or likely to cross into the adjacent jurisdiction.

3.3 From this point, persons subject to this protocol will be referred to as:

- a) Sex Offenders
- b) Offenders assessed as Risk of Serious Harm to others (RoSH)

#### **4. PURPOSE**

4.1 The purpose of this protocol is to facilitate the exchange of personal data and other information to enable the Probation Board for Northern Ireland (PBNI) and the Probation Service (Ireland) (PS) to:

- Agree voluntary arrangements for community sentences
- Agree voluntary arrangements for post custodial supervision
- Share information for the preparation of pre-sentence reports on sex offenders and Offenders assessed as Risk of Serious Harm to others who move between respective jurisdictions in Ireland
- Enhance public protection in both jurisdictions.

4.2 The parties agree that the personal data and sensitive personal data obtained through the protocol shall not be used for any purpose other than that specified at 4.1, and shall not be

shared with any other individual or group, other than in circumstances where disclosure is required by law or in the interests of public protection.

- 4.3 Where there is a clearly identified risk to the public in Northern Ireland, PBNI will share information on an individual Sex/RoSH Offender with Police Service for Northern Ireland (PSNI) and/or Health & Social Care Trusts in accordance with current Public Protection Arrangements for Northern Ireland (PPANI) and PBNI Child Protection procedures.
- 4.4 Where there is a clearly identified risk to the public in Republic of Ireland, the Probation Service will share information on the relevant Sex/RoSH Offender with the Garda Síochána and / or Child and Family Agency in accordance with the Sex Offender Risk Assessment and Management (SORAM) Procedures / Probation Service Child Protection Policy 2009 / Data Protection Act 1998 / 2003.

## **5. PARTIES TO THE PROTOCOL**

The Probation Board for Northern Ireland (PBNI)

The Probation Service (Ireland)

## **6. DEFINITIONS IN RESPECT OF THE DATA PROTECTION ACT 1998 AND DATA PROTECTION ACT 1988 AND 2003**

See Appendix 1

## **7. OPERATIONAL PROCEDURES FOR THE SHARING OF INFORMATION**

- 7.1 Sender's Role: This is the Area Manager (AM), PBNI /Senior Probation Officer (SPO), Probation Service, in the jurisdiction where the offender is currently being supervised or residing.

It is the Sender's responsibility, on becoming aware of an offender who has or is preparing to move as defined in paragraph 3.2.

Advise the Area Manager (AM) or Senior Probation Officer (SPO) in the adjacent jurisdiction – this should initially be done by phone<sup>1</sup>

1. Advise **your** Assistant Director (PBNI) or Regional Manager (Probation Service)
2. Send collated information, by encrypted email as referred to in para 7.3, to your single point of contact for **your** organisation within 3 working days

<sup>1</sup>For out of office hours contacts, Probation Service staff will phone PBNI's out of hours number **048 9056 5795** - PBNI staff will telephone the Probation Service on **00353(0)862416429 / (0)868179609**

3. If appropriate, advise Garda/PSNI and/or Social Services / Child and Family Agency as per current public protection and/or child protection arrangements.

7.2 Receiver's Role: This is the AM/SPO in the jurisdiction to which the offender has moved.

On receiving information under the protocol it is the responsibility of the AM/SPO to:

1. Advise **your** Assistant Director or Regional Manager.
2. On approval from Assistant Director/Regional Manager allocate a Probation Officer (in case where offender has moved to jurisdiction).
3. If appropriate advise local police and/or social services as per current public protection and/or child protection arrangements.
4. Ensure offender's details are recorded appropriately, including on electronic information systems where appropriate.

7.3 Single Point of Contact Role: (SPOC)

The role of the SPOC is to act as a central point of contact within each jurisdiction for the collation and communication of all transfer requests and information exchanges.

<b><u>Northern Ireland</u></b>	
Email	<a href="mailto:intdesk.pbni@pbni.gsi.gov.uk">intdesk.pbni@pbni.gsi.gov.uk</a>
Phone	04890 262469
Mobile	0044 7789412608

<b><u>Republic of Ireland</u></b>	
Email	<a href="mailto:internationaldesk@probation.ie">internationaldesk@probation.ie</a>
Phone	0035318173600
Mobile	00353862546987

The SPOC, on being advised by their AM/SPO of a change in an individual's circumstances, is to:

- Collate the detailed information and forward electronically to the single point of contact in the receiving jurisdiction within one working day

- The receiving SPOC is to forward the information electronically on to the relevant AM/SPO in the receiving jurisdiction within one working day.

#### 7.4 Operational Procedures for Voluntary Supervision

7.4.1 Where an offender on supervision indicates his intention to move to the other jurisdiction, he should be advised of the arrangements for supervision.<sup>58</sup>

7.4.2 Process to be followed:

1. The AM/SPO (sending) should contact **their** SPOC
2. The SPOC will liaise with their counterpart in the adjacent jurisdiction who will then inform the relevant AM/SPO of the request for voluntary supervision
3. Once this has been approved by the Assistant Director/Regional Manager the AM/SPOs are to make the arrangements for the case transfer.

7.4.3 The proposed address should be supplied as well as any details and information relevant to the assessment of risk in the new circumstances.

7.4.4 The SPO/AM receiving will arrange for a home visit or office interview with relevant people (e.g. proposed employer or head of household of proposed residence).

7.4.5 Offenders will be supervised in accordance with practice standards extant in the receiving jurisdiction.

7.4.6 Where child protection concerns arise, the SPO/AM will inform the relevant Social Services/ Child and Family Agency.

7.4.7 The PPANI Administration Unit (Northern Ireland) or Regional Manager, (Republic of Ireland) will be informed by the receiving AM/SPO as deemed appropriate according to assessed level of risk. (see 4.3)

7.4.8 In the event of failure to co-operate with voluntary supervision, the receiving SPO/AM will provide all information to the sending SPO/AM to facilitate enforcement in the sending jurisdiction<sup>59</sup>.

7.4.9 In cases where an offender has moved without authorisation, the receiving probation service shall consider offering the offender voluntary supervision. This offer of voluntary supervision

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<sup>58</sup> These arrangements for voluntary supervision exclude offenders subject to Determinate Custodial Sentences (DCS) or Public Protection Sentence as per Criminal Justice (NI) Order 2008 where offenders are required to reside in the jurisdiction of the United Kingdom.

<sup>59</sup> This information will be communicated through the SPOC in both jurisdictions, as occurs with the original referral

will not obviate the enforcement responsibilities of the Agency which holds statutory responsibility for supervision of the offender.

## **8. DESCRIPTION OF DATA TO BE SHARED**

8.1 In the case of an offender proposing to move, or have reported to have moved residence (to the other jurisdiction), a report should be prepared for the purpose of sharing relevant information.

8.2 For the purpose of this protocol the following information will be shared at the outset:

- Name/Alias/Date of Birth/Current address
- Current/previous offence
- Type of order/licence including details of restrictions and/or requirements
- Existence of any other court orders
- Summary of Criminal Record (The Criminal Record must not be attached).
- Most recent work plan and summary of Risk Management Meeting where applicable and where available the RM2000 and SA07 and PSROSH/PSROSH (SO) assessment outcomes, or equivalent.
- Response to supervision
- Current social circumstances for example, employment/accommodation/lifestyle/associates. Any known supports
- Any information about proposed address
- Length of proposed stay, if known
- Particular areas of concern.

## **9. SHARING OF INFORMATION – CONSENT**

9.1 Obtaining consent remains a matter of good practice and, in circumstances where it is appropriate and possible, explicit consent should be sought from and freely given by the data subject. The individual should always be informed about how their information will be used and with whom it may be shared even if consent not required.

However, in many cases seeking consent might not always be possible or appropriate. In such cases the disclosing body must consider the possible grounds which may give cause to override consent.—See Appendix 2 (Legislative requirements - Public Interest)

## **10. UNDERLYING PRINCIPLES FOR INFORMATION SHARING**

10.1 Each of the parties is responsible for their own information and therefore must be sure that they have the power to disclose the relevant information in each particular case.

Personal information should only be shared when the disclosing party is satisfied that

- (i) They are legally empowered to do so
- (ii) The proposed disclosure of personal information can be done in accordance with the Principles of the Data Protection Act (1998 for NI) and 1988 & 2003 (Ireland).
- (iii) They can disclose personal information reflecting the common law duty of confidentiality and
- (iv) The Principles of the Human Rights Act 1998 (NI) and the European Convention of Human Rights Act 2003 (Ireland).

10.2 The information that is shared in accordance with this protocol will be:

- a. Treated in the strictest confidence
- b. Where applicable, appropriately protectively marked in accordance with respective protective marking policies.
- c. Used only for the purposes set out in this protocol
- d. Used only by those authorities with a statutory duty to pursue those purposes.

10.3 The protocol will be operated within the context of the individual's rights and protection enshrined in legislation.

### **10.4 PBNI Legal Authority**

The Probation Board (Northern Ireland) Order 1982

The Criminal Justice (Northern Ireland) Order 2008

The Sexual Offences (Northern Ireland) Order 2008

### **10.5 Probation Service Ireland Legal Authority**

The Probation of Offenders Act 1907

The Criminal Justice Act, 2006

The Sex Offender Act 2001

Criminal Justice (Temporary Release of Prisoners) Act 2003

#### 10.6 Other relevant key legislation and guidance

The Data Protection Act 1998

The Data Protection Acts 1988 and 2003

The Human Rights Act 1998

European Convention of Human Rights Act 2003

The Freedom of Information Act 2000

The Freedom of Information (Amendment) Act 2003

The Common Law Duty of Confidentiality

Memorandum of Understanding between the Government of the UK and the Government of Ireland on information sharing arrangements relating to Sex Offenders

Information Commissioner's Office (ICO) Data Sharing Code of Practice. Data Protection Commissioner – relevant guidance.

10.7 The sharing of information under this protocol is compliant with both parties' registration arrangements with the Information Commissioner (UK) or the Data Protection Commissioner (Ireland) under the respective Data Protection Acts.

### **11. ACCESS AND INDIVIDUALS' RIGHTS (REQUESTS FOR INFORMATION)**

11.1 The parties to the protocol recognise that when responding to requests for information under the Freedom of Information Act 2000 (UK) or Freedom of Information Act 1997 and the Freedom of Information (Amendment) Act 2003 (Ireland) or in fulfilling their statutory obligations under section 7 of the Data Protection Act 1998 (UK), or Section 4 Data Protection Act 1988 (Ireland) that it would be good practice to consult the party from whom information has been received before disclosing it.

Consultation will allow a party to ascertain whether any of the exemptions set out in the relevant and respective legislation apply to that information.

The party to whom the request was made will respond to it. The request will only apply to information shared for purposes of this protocol.

11.2 The parties agree to provide reasonable assistance to one another to enable them to respond to such a request within the timescales set out in the relevant legislation i.e. 40 days in respect of Data Protection and 20 working days in respect of Freedom of Information.

11.3 Information will be released in accordance with the relevant legislation unless an exemption applies.

11.4 The Probation Board and Probation Service Ireland will adhere to their obligations to maintain a publication scheme in accordance with the Freedom of Information Acts. Consideration will be given to this agreement, when completed, being made available for publication on respective websites (subject to any exemptions).

## **12. INFORMATION GOVERNANCE<sup>60</sup> (See Appendix 4)**

This sets out the key responsibilities of each party in respect of the Data Protection Principles.

## **13. TRAINING**

13.1. Each party must ensure that adequate training is provided to staff involved in the sharing of information under this protocol so that they are aware of their legal responsibilities in this regard. Both parties will ensure that staff are aware that they may be subject to disciplinary and/or legal proceedings should there be any breaches of the Data Protection Act arising out of the operation of this protocol.(see also section 12, Appendix 4)

## **14. COMPLAINTS**

Complaints to either of the parties should be dealt with through the respective organisation's complaints procedure.

## **15. SENIOR MANAGEMENT COMMUNICATIONS**

15.1 In the event of media interest in relation to an offender subject to this protocol the relevant senior manager<sup>61</sup> shall contact his/her counterpart in the relevant jurisdiction. The respective PR/Communications departments should also be consulted.

15.2 In respect of NI, in the event of a decision to make public disclosure with regard to an offender subject to this protocol, the relevant senior manager from PBNI will contact their counterpart in the Probation Service.

15.3 In the event of a serious incident/situation involving an offender subject to this protocol the relevant senior manager will contact their counterpoint to share immediate information and to agree steps to be taken to manage the situation.

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<sup>60</sup> Ref First Schedule, Chapter 11 of the Data Protection Act 1988 the Data Protection (Amendment) Act 2003, and Part 1 Section 4 of the Data Protection Act 1998

<sup>61</sup> The relevant senior manager for PBNI is the Assistant Director for Risk. PS is Assistant Director for Risk and Resettlement



## **16. MONITORING AND REVIEW**

This protocol will be monitored on a regular basis to allow either party to advise of changes or raise concerns as required. The relevant senior managers will liaise directly at least on a bi annual basis to monitor the application and operation of the protocol.

The protocol will be formally reviewed every two years from date of commencement (para 1.3) or earlier at the request of either party or to take account of any legislative changes which impact on the protocol. All changes to the protocol are to be agreed and approved by both signatories prior to the changes taking place.

## **17. SIGNATORIES**

We, the undersigned have read and agree to this protocol between The Probation Board for Northern Ireland and The Probation Service (Ireland), to carry out our roles and responsibilities and to share and provide the information as outlined in this protocol.

### **17.1 Signed for: Probation Board for Northern Ireland**

Name: \_\_\_\_\_

(Print)

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### **Signed for: The Probation Service (Ireland)**

Name: \_\_\_\_\_

(Print)

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix 1

### **Definitions**

#### **Data Protection Act 1998 (UK) Chapter 29, Part 1 Preliminary**

##### **1. Data**

Information which:

- a) is being processed by means of equipment operating automatically in response to instruction given for this purpose;
- b) is recorded with the intention that it should be processed by such equipment;
- c) is recorded as part of a relevant filing system; or
- d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68 of the Data Protection Act 1998
- e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d)

*Note: Under the Freedom of Information Act 2000 **S.69 (2)** the meaning of personal data has been extended (for public authorities) to include “unstructured personal data”. (UK)*

##### **2. Data Controller**

A person who (either alone or jointly in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be processed.

##### **3. Data Processor**

Any person who, in relation to personal data (other than an employee of the Data Controller) who processes the data on behalf of the Data Controller.

##### **4. Data Subject**

An individual who is the subject of the data

##### **5. Personal Data**

Data which relate to a living individual who can be identified- a)  
from those data; or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the Data Controller, and includes any expression of opinion about the individual and any indication of the intentions of the Data Controller or any other person in respect of the individual

## 6. Processing

Means obtaining, recording or holding information or data or carrying out any operation or sets of operations on the information or data, including:

- a) organisation, adaptation or alteration of the information or data;
- b) retrieval, consultation or use of the information or data;
- c) disclosure of the information or data by transmission, dissemination or otherwise making available; or alignment, combination, blocking, erasure or destruction of the information or data

## 7. Sensitive personal data

Personal data consisting of information as to:-

- a) the racial or ethnic origin of the data subject;
- b) his political opinions;
- c) his religious beliefs or other beliefs of a similar nature;
- d) whether he is a member of a trade union
- e) his physical or mental health or condition;
- f) his sexual life;
- g) the commission or alleged commission by him of any offence; or
- h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

## Data Protection Act 1988 (Republic of Ireland) Number 25, Preliminary & First Schedule, Chapter 1, Article 2 and Data Protection Act (Amendment) 2003 Section 2

- 1. **Data** means information in a form in which it can be processed:
- 2. **Data controller** means a person who, either alone or with others, controls the contents and use of personal data
- 3. **Data equipment** means equipment for processing data
- 4. **Data material** means any document or other material used in connection with, or produced by, data equipment

5. **Data processor** means a person who processes personal data on behalf of a data controller but does not include an employee of a data controller who processes such data in the course of his employment
6. **Data subject** means an individual who is the subject of personal data
7. **Personal Data** means any information relating to an identified or identifiable individual (“Data Subject”)
8. **Automated Data File** means any set of data undergoing automatic processing
9. **Automatic processing** includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination.
10. **Sensitive personal data** means personal data as to—
  - (a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject,
  - (b) whether the data subject is a member of a trade union,
  - (c) the physical or mental health or condition or sexual life of the data subject,
  - (d) the commission or alleged commission of any offence by the data subject, or
  - (e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings;

## **Appendix 2**

### **LEGISLATIVE REQUIREMENTS (NI) CONSENT (Para 9.1)**

#### **1. Northern Ireland - Public Interest**

If consent has been sought and refused, or if it would prejudice the work of the Probation Board for Northern Ireland, in this instance, to seek consent, an overriding public interest may justify disclosure of information.

The criteria for public interest includes:

- The administration of justice
- Maintaining public safety
- The apprehension of offenders
- The prevention of crime and disorder

- The detection of crime
- The protection of vulnerable members of the community

When judging the public interest it is necessary to consider the following:

- Is the intended disclosure proportionate to the intended aim?
- What is the vulnerability of those who are at risk?
- What is the likely impact of the disclosure on the offender
- Is there another equally effective means of achieving the same aim?
- Is the disclosure necessary to uphold the rights and freedoms of the public?
- Is it necessary to disclose the information/data to protect other vulnerable people?

The rule of proportionality should be applied to ensure that a fair balance is achieved between the public interest and the rights of the data subject.

## **2. LEGISLATIVE REQUIREMENTS: IRELAND Public Interest: Section 8 of the Data Protection Acts 1988 & 2003**

This section of the Act lifts the restriction on disclosure in certain circumstances, so that disclosures may be made in cases where the individual's right to privacy must be balanced against other needs of civil society including:

- Section 8(b) "required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders..."
- Section 8(d) "The disclosure is required urgently to prevent injury or other damage to the health of a person or serious loss of or damage to property".

## **Disclosures Permitted under section 8 of the Data Protection Acts 1988 & 2003**

Section 2(1) (c) of the Data Protection Acts, provides that a data controller shall not further process personal data (which includes disclosure to a third party), except in ways that are compatible with the purpose for which the data were obtained.

However, this non-disclosure rule is not unqualified. Section 8 of the Act lifts the restriction on disclosure in certain circumstances, so that disclosures may be made in cases where the individual's right to privacy must be balanced against other needs of civil society, or where the disclosure is in the interests of the individual. The circumstances specified in section 8 are listed below, along with some explanatory comments.

Section 8(b) *"required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of those restrictions would be likely to prejudice any of the matters aforesaid"*

Comment: The individual's right to privacy must be balanced against the need to investigate offences and collect taxes effectively. If a data controller is approached by a law enforcement authority or by a tax collecting authority, which seeks to have personal data disclosed to it under this section of the Data Protection Act, it is a matter for the data controller: (i) to satisfy itself that the provisions of this section are met, for example by establishing the bona fides of the authority and by obtaining assurances that the disclosure is actually necessary, and not merely of side interest, for the investigation of an offence; and (ii) to decide whether or not to comply with the request for disclosure. While this section of the Data Protection Act lifts the restrictions on disclosure by a data controller to a law enforcement authority or to a tax collecting authority, this section does not impose any obligation on a data controller to comply with the request for disclosure.

Section 8(d) *"The disclosure is required urgently to prevent injury or other damage to the health of a person or serious loss of or damage to property"*

Comment: The individual's right to privacy can be set aside where personal data must be disclosed in order to save someone's life or protect someone's health, or to prevent property from being destroyed. This provision does not authorise disclosures of personal information for general health research purposes, or for other medical purposes where there is no immediate or urgent risk to someone's life or health. In such cases, the normal data protection rules apply, including the obtaining of consent where necessary.

Section 8(e) *"required by or under any enactment or by a rule of law or order of a court"*

Comment: If you are under a legal obligation to disclose personal data, then this obligation takes precedence over the Data Protection Act's prohibition on disclosure. However, if you

have a statutory discretion to make information available, matters are not so clear-cut. The Data Protection Commissioner has found, in the past, that a statutory discretion to make information available did not come within the scope of section 8(e) of the Data Protection Act, and that accordingly the restriction on disclosure of personal data remained in force.

Section 8(h) *"made at the request or with the consent of the data subject or to a person acting on his behalf"*

Comment: If a third party, such as a prospective employer, requests personal information from you about an individual, and if the third party has the clear consent of that individual, then you may disclose the personal data, if you wish. This section of the Data Protection Act places you under no obligation to respond positively to the request for information, if you do not want to<sup>62</sup>.

Rights and restrictions regarding the disclosure of information are also governed by the Freedom of Information Acts 1997 and 2003. The main purpose of this legislation is:

"To enable members of the public to obtain access to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies".

## APPENDIX 3

### CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

*The Data Protection Act 1998 requires that at least one condition from those listed in Schedules 2 and 3 to the Act apply in relation to the processing of personal data and sensitive personal data. The relevant conditions are listed below in an abridged form (please refer to the Data Protection Act for detail).*

Conditions in Schedule 2:	Conditions in Schedule 3:
<b>Paragraph 1:</b> The data subject has given consent to the processing.	<b>Paragraph 1:</b> The data subject has given explicit consent to the processing.
<b>Paragraph 2:</b> The processing is necessary for (a) the performance of any contract to which the data subject is a party; or (b) for the taking of steps at the request of the data subject with a view to entering into a contract.	<b>Paragraph 2:</b> (1) The processing is necessary for the purposes of exercising or performing a legal right or obligation in the context of employment.
<b>Paragraph 3:</b> The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.	<b>Paragraph 3:</b> The processing is necessary (a) to protect the vital interests of the data subject or another person in a case where – (i) consent cannot be given by or on behalf of the data subject, or (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject or, (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

<sup>62</sup> Data Protection Commissioner's Office.

<b>Paragraph 4:</b> The processing is necessary in order to protect the vital interests of the data subject.	<b>Paragraph 4:</b> The processing is of political, philosophical, religious or trade union data in connection with its legitimate interests by any non-profit bodies.
<b>Paragraph 5:</b> The processing is necessary: (a) for the administration of justice; (b) for the exercise of any functions conferred on any person by or under any enactment; (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department; or (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.	<b>Paragraph 5:</b> The processing is of information made public as a result of steps deliberately taken by the data subject.  <b>Paragraph 6:</b> The processing is necessary in connection with legal proceedings or the seeking of legal advice.  <b>Paragraph 7: (1)</b> The processing is necessary (a) for the administration of justice; (b) for the exercise of any function conferred on any person by or under any enactment; (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.
<b>Paragraph 6(1):</b> The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.	<b>Paragraph 8:</b> The processing is necessary for medical purposes and is carried out by medical professionals or others owing an obligation of confidence to the data subject.  <b>Paragraph 9:</b> The processing is necessary for ethnic monitoring purposes.
<b>Paragraph 6(2):</b> The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.	<b>Paragraph 10:</b> The personal data are processed in circumstances specified in an order made by the Secretary of State for certain purposes. The Data Protection (Processing of Personal Data) Order 2000 (SI 2000 No 417) specifies a number of circumstances in which sensitive personal data may be processed such as crime prevention, policing and regulatory functions (subject to a substantial public interest test);

## Appendix 4

# Information Governance

## 1. Fair and Lawful

Both parties agree that personal data shall be processed fairly and lawfully and in particular shall not be processed unless certain conditions are met as required by Principle 1 of the Data Protection Act 1998 and First Schedule, Chapter 11 Article 4 of the Data Protection Act 1988.

Where information is shared under the terms of this Protocol for the purposes set out para 4 the following conditions are relevant.

- (Ireland) Section 8 (b), See Appendix 2
- (NI) Schedule 2 paragraphs 1, 2(a), 6.1 & Schedule 3 paragraphs 1, 3, 7(a), See Appendix 3



## **2. Common Law duty of Confidentiality**

Where an organisation owes a common law duty of confidentiality, that duty of confidentiality continues to apply. Where consent cannot be obtained from the data subject to share/disclose his or her personal data with the other agency, that agency must consider whether they have sufficient public interest grounds to override this duty. If the organisation does not consider that there is sufficient overriding public interest to make the disclosure it must not do so.

## **3. Human Rights Act 1998**

Article 8 of the Human Rights Act 1998 states that everyone has the right to respect for his private and family life, home and his correspondence and that there shall be no interference by a public authority with this right except as in accordance with the law and is necessary in a democratic society in the interests of:

- a) National Security
- b) Public Safety
- c) Economic well-being of the country
- d) The prevention of crime and disorder
- e) The protection of health or morals
- f) The protection of the rights or freedoms of others

If the disclosure of data will in some way infringe the rights of the data subject we will consider the rule of proportionality. This is to ensure that fair balance must be achieved between the protection of the individual's rights, with the general interests of society.

## **4. European Convention on Human Rights Act 2003 (Ireland)**

Article 8 of the European Convention on Human Rights Act 2003 states that 1) everyone has the right to respect for his private and family life, home and his correspondence and

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

## **5. Limited Purposes**

Both parties agree that information will not be used for any other purpose than for which it was given (para 4) and will not be disclosed to another agency or body without the permission of the party which provided the information.

**6. Adequate, Relevant and Not Excessive**

Both parties agree that only the minimum data necessary will be exchanged to satisfy the purpose of the disclosure.

**7. Data Quality**

Both parties agree to ensure that the data shared is as far as reasonable accurate and up to date. Both parties agree that data discovered to be inaccurate or inadequate for the specified purpose will be brought to the notice of the originator of the data. The originator will be responsible for correcting the data and notifying all other recipients of the corrections.

**8. Retention and Destruction of the Data**

Both parties agree that the relevant data will be retained by the party to whom it is disclosed until such times as it is no longer required for the purposes of any legal action or appeal process.

At the expiry of this period the party to whom it had been disclosed will destroy the relevant information securely in keeping with that organisations retention and disposal policy and in accordance with the Government Protective Marking scheme, if relevant..<sup>63</sup>

**9. Security**

Both parties to this protocol are responsible for ensuring that they have appropriate security arrangements in place. They will consider how the relevant data will be stored, accessed and transmitted. The single point of contact for each party will ensure that adequate steps are taken to prevent:

- a) accidental or deliberate destruction of the data;
- b) accidental or deliberate modification of the data;
- c) deliberate and unauthorised unavailability of the data;
- d) unauthorised access to information to any computer system containing the data;
- e) misuse of the data

- 10.** The information to be shared by PBNI, for purposes of this protocol, will be protectively marked as OFFICIAL-SENSITIVE under the current Government Protective Marking Scheme (includes hard copy and if sent via secure email). This will depend on the sensitivity of the information disclosed. Information for example which includes references to offences, court disposal or risk, should be marked OFFICIAL-SENSITIVE.

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<sup>63</sup> Changes to the current protective marking scheme (UK) are due to be implemented in April 2014

11. Personal and sensitive personal information, if sent electronically, will **only** be sent to a PBNI and Probation Ireland approved secure email address. (see 7.3)
12. Secure briefcases, where available, should be used when transporting manual personal or sensitive personal information. Personal or sensitive information shall not be left unattended by any of the parties.
13. Each party will adhere to their respective organisation's data handling policies and procedures – e.g. Records Management, Management of Information, and Security.
14. Protectively marked information, when posting, should be only be sent by special delivery, double enveloped, with inner envelope marked as restricted or protect (depending on the sensitivity of the information contained).
15. **Breaches**

Both parties will ensure that staff are aware that they may be subject to disciplinary and/or legal proceedings should there be any breaches of the Data Protection Act arising out of the operation of this protocol. This may be as a result of not adhering to the correct data handling procedures for the exchange of information or through the wrongful disclosure of information or the withholding of relevant personal information in respect of this protocol.

This may also result in enforcement action by the Information Commissioner's Office and/or the Data Protection Commissioner (Republic of Ireland).
16. All suspected or confirmed breaches of protectively marked/sensitive information including information which has been lost or inadvertently disclosed must be reported immediately upon discovery. The relevant organisation's data loss/incident response plan must be engaged and the single point of contact for each party (para 7.10) must be informed.

Relevant line managers must also be informed.
17. In respect of PBNI, this should be done, where possible, via email in the first instance to the Information Security Officer at [infosec@pbni.gsi.gov.uk](mailto:infosec@pbni.gsi.gov.uk)

Please ensure that you also inform your line manager of the situation.
18. In respect to Probation Service, Ireland, this should be done, where possible, via email in the first instance to the Data Protection Officer at: [foi@probation.ie](mailto:foi@probation.ie)

Please ensure that the Director of Operations is made aware of the situation through your line manager.

- 19.** Each organisation must ensure that it is familiar with the relevant Information/Data Commissioner's Guidance on data security breach management and its guidance/codes on how and when to notify the respective Information Commissioner's Office/Data Protection Commissioner in the event of a breach.

## Appendix 7(a) – Exchanging Information: A Template (with Guidance Notes)

**N.B. Appendix 7(b) is a blank Pro Forma based on this Template, which is suitable for completing electronically or for printing to be used as a Hard Copy**

### 1. FRONT-SHEET

*Accuracy of the detail is crucial here. It will be used by the receiving Member State to scrutinise its own internal records as well as any cross-border data systems.*

#### i) Member State ii) Name of serious violent or sexual offender

Surname	First Name	Date of birth
Aliases (if known)		
ID/ Social Security No.	Gender	Nationality
Current Address	Proposed address(in receiving MS)	Last previous known address(es)

#### iii) Details of person sending information:

Name	Contact details	Role e.g. Supervising Probation Officer
		Single Point of Contact
		International Desk

*Because of the need to take action as quickly as possible, accurate information will ensure that responses can be clear and timely. Any confusion is likely to undermine the effectiveness of any decisions to manage the risk.*

#### iv) Details of person to whom information is to be sent

Name	Contact details	Role
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*It will be important here to ensure the information is sent to an appropriate person in the receiving Member State (MS):*

- *Do you know, for example, whether the MS has a SPOC or a designated International Desk?*
- *Will the information be sent directly or via LE or diplomatic channels?*

*The CEP web-site accessed at <http://www.cep-probation.org/page/73/member-organisations> provides information about different European probation systems.*

*Section 4.3 of the Guidance provides help in deciding what the most appropriate route for communication is.*

*The SOMECE Report 2, Part One: European Union Information Exchange Mechanisms – A Mapping Report of existing frameworks available at [http://www.cepprobation.org/default.asp?page\\_id=565&name=Mapping%20Report](http://www.cepprobation.org/default.asp?page_id=565&name=Mapping%20Report) provides extensive information about existing frameworks for exchanging information.*

#### **v) Other addressees/interested parties**

Name	Contact details	Role
------	-----------------	------

*It may be important to send this paperwork to other professionals, for example:*

- *Managers within the agency within the home MS*
- *Police, courts*
- *Partner agencies who share responsibility for the risk management e.g. Multi-Agency teams or public protection organisations*

## **2. PURPOSE OF THE COMMUNICATION**

*It is important to state clearly the purpose of the communication. Examples could include:*

- *Agree voluntary arrangements for community sentences*

- *Agree voluntary arrangements for post custodial supervision*
- *Provide information to accompany a deportee*
- *Share information for the preparation of pre-sentence reports on sex offenders and offenders assessed as Risk of Serious Harm to others who move between respective jurisdictions*
- *To alert another MS about a potential risk to their citizens.*

### 3. SUMMARY OF CONCERN & EXPECTED OUTCOME FROM THIS COMMUNICATION

(See Sections 4 and 5 for more detailed information)

*Information in this section does not need to be extensive. It should be an accurate summary which gives the receiver a rapid picture of the situation.*

*The sender needs to be clear about*

- *the risk*
- *its implications for the receiving MS*
- *what they require the receiving MS to do on receipt of the information in order to manage the risk*

#### i) What is the nature and level of the Risk of harm posed to others?

*Refer here to any Risk Assessment tools used, to any formal analysis of the risk which forms the basis of this judgment.*

*Then summarise:*

*Level of risk.....of what.....to whom.....?*

See **Guidance Section 2.3.2** for common definitions of levels of risk.

#### ii) What are the implications for the originating MS and the receiving MS?

*Who are potential victims?*

*What are the consequences of not sharing this information?*

#### iii) What action is expected as a result of this communication?

*Be as clear as possible about,*

- *What you want the receiving MS to do? (It is important to be aware of what can be reasonably and legally expected within that MS)*
- *What will the next steps be in the home MS?*
- *Any important decisions to be made which rely upon a timely response from the receiving MS?*

**iv) How soon is a response required and why?**

*When do you need that response?*

*Are there national deadlines that you need to meet?*

**4. OFFENDER INFORMATION (Offence Details, Sentence, Stage In Legal Process)**

**i) Current Sentence (including any sanctions/restrictions imposed because of the seriousness of the offence(s) committed)**

*You need to inform the receiving MS as accurately and clearly as possible of*

- *the legal status of the offender*
  - *any current sanctions and restrictions imposed because of the seriousness of the offence*
  - *any limitations upon the power of the state (e.g. how far decision-making is the responsibility of the judiciary, whether or not the law permits monitoring of the individual offender and to what extent)*
- ii) Most recent offence(s)**

List Offence(s)

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed (including the time and place, victims and the nature of the involvement of the individual)

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgement was issued



*It would be helpful to include here the specific legal wording of the offence, e.g. 'the offence of..... was committed contrary to section..... of the .....Law/ Act/Penal Code.*

Previous convictions & sentences (including any data from ECRIS)

### iii) Current status in the judicial process

	<input type="checkbox"/>	Start of sanction	<input type="checkbox"/>
Pre-sentence/sanction			
	<input type="checkbox"/>	In the community	<input type="checkbox"/>
In custody			
	<input type="checkbox"/>	End of sanction	<input type="checkbox"/>
Subject to supervision			
	<input type="checkbox"/>	Other	<input type="checkbox"/>
Subject to deportation			

### iv) Who holds case responsibility?

Probation	<input type="checkbox"/>	Prison	<input type="checkbox"/>
		Police	<input type="checkbox"/>
Psychologist	<input type="checkbox"/>		
Other professional	<input type="checkbox"/>		

## 5. OFFENDING BEHAVIOUR & RISK TO THE PUBLIC

*This section will draw upon systematic risk assessments and the ongoing case record*

i) Was a Risk Assessment Tool used?      Yes      No      If

YES,

- What was the tool?
- What was the conclusion?

*Summarise the conclusion:*

- *Level of risk*

- *Key elements of Risk Management Plan (surveillance/monitoring measures and any formal interventions*

**ii) Patterns of offending behaviour**

Evidence from previous convictions

Evidence of any particular Modus Operandi

*Include here any patterns of offending, details of the behaviour itself (including when it occurred, what the individual actually did, any significant aspects of the context in which it occurred), whether the individual offended alone or with other people.*

Targeted victims?

- Past Does previous offending suggest that the individual targets particular types of victim?
- Current Are there any intended victims?
- Future What types of victim(s) are most likely to be at risk?

Response to current and previous sanctions

*Include here:*

- *how well (or not) the individual has complied with formal conditions of supervision*
  - *their response to any interventions (have they simply done what was required, or have they been a passive recipient of services, or have they engaged constructively and pro-actively, demonstrating commitment to change?)*
  - *whether it has been necessary to impose further sanctions or restrictions*
- Evidence of any ongoing anti-social or criminal behaviour

**iii) Relevant Risk Factors (i.e. influences which are likely to increase the likelihood of re-offending)** *Include here:*

- *Risk factors that are known to be associated with serious violent and sexual offending and are evident in this case*
- *Contextual influences specific to the individual*
- *Personal characteristics such as substance/alcohol misuse or mental health concerns*

See [Appendix 3](#) for more comprehensive lists of risk factors specific to violent or sexual offenders

**iv) Relevant Protective Factors** (i.e. influences which, if developed, are likely to support non-offending and a commitment to engagement and compliance)

*Include here:*

- *Positive community, social, family ties*
- *Employment plans*
- *Pro-active compliance and engagement with interventions*

See [Appendix 3](#) for more comprehensive lists of protective factors specific to violent or sexual offenders **iv) Travel arrangements and intentions where available**

**v) What is the currently assessed risk?**

- Who is at risk?
- What is the nature of that risk?
- How likely is it to occur?
- What is the level of the risk?
- How imminent is the risk? How soon might the person commit the harmful offence

[Section 2.3.1](#) of the Guidance and Checklist 1 offer practical suggestions for the structure and content of a summary of risks posed by an individual. See Guidance [Section 2.3.2](#) for common definitions of levels of risk. **vi) Measures currently in place to manage the individual's risk**

## Monitoring/Surveillance

*These measures could include reporting requirements, travel restrictions, licence/supervision conditions, registration*

## Interventions

*These will include, particularly, formal programmes of intervention (specialist or generic offending behaviour programmes)*

*It is important to provide as much detailed information and be clear about how these are intended currently to manage the risk.*

*The receiving MS may not be able to provide equivalent types or levels of monitoring or supervision and this may then influence their response to this communication and the subsequent decisions e.g. about whether to give the individual permission to travel and what other alternative measures might be necessary to manage the individual's risk if they do travel.*

### **vii) Measures required to manage future risk**

## Monitoring/Surveillance

*These measures could include reporting requirements, travel restrictions, licence/supervision conditions, registration*

## Interventions

*These will include, particularly, formal programmes of intervention (specialist or generic offending behaviour programmes)* **viii) Contingency Plans**

*Expand here on*

- *What steps should be taken in the event of the risk escalating and/or the offender moving across borders before measures can be put in place to manage the risk.*
- *Any measures in place to protect victims from future harm*

## **Appendix 7(b) – Exchanging Information: A Template**

### **1. FRONT-SHEET**

**i) Member State ii) Name of serious violent or sexual offender**

Surname	First Name	Date of birth
Aliases (if known)		
ID/ Social Security No.	Gender	Nationality
Current Address	Proposed address(in receiving MS)	Last previous known address(es)

**iii) Details of person sending information:**

Name	Contact details	Role
		<i>e.g. Supervising Probation Officer</i>
		<i>Single Point of Contact</i>
		<i>International Desk</i>

**iv) Details of person to whom information is to be sent**

Name	Contact details	Role
------	-----------------	------

**v) Other addressees/interested parties**

Name	Contact details	Role
------	-----------------	------

**2. PURPOSE OF THE COMMUNICATION**

**3. SUMMARY OF CONCERN & EXPECTED OUTCOME FROM THIS COMMUNICATION**

(See Sections 4 and 5 for more detailed information)

- i) What is the nature and level of the Risk of harm posed to others?**
- ii) What are the implications for the originating MS and the receiving MS?**
- iii) What action is expected as a result of this communication? iv) How soon is a response required and why?**

#### 4. OFFENDER INFORMATION (Offence Details, Sentence, Stage In Legal Process)

**i) Current Sentence (including any sanctions/restrictions imposed because of the seriousness of the offence(s) committed) ii) Most recent offence(s)**

List Offence(s)

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed (including the time and place, victims and the nature of the involvement of the individual)

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgement was issued

Previous convictions & sentences (including any data from ECRIS) **iii)**

### Current status in the judicial process

## Pre-sentence/sanction

☐

Start of sanction

☐

In custody

9

## In the community

9

Subject to supervision

☐

End of sanction

□

Subject to deportation

☐

Other

7

**iv) Who holds case responsibility?**

## Probation

□

## Prison

7

Psychologist

□

Police

☐

Other professional

7

## 5. OFFENDING BEHAVIOUR & RISK TO THE PUBLIC

i) Was a Risk Assessment Tool used?      Yes      No      If

YES,

- What was the tool?
- What was the conclusion?    ii) Patterns of offending

**behaviour**

Evidence from previous convictions Evidence

of any particular Modus Operandi

Targeted victims?

- Past Does previous offending suggest that the individual targets particular types of victim?
- Current Are there any intended victims?
- Future What types of victim(s) are most likely to be at risk?

Response to current and previous sanctions

Evidence of any ongoing anti-social or criminal behaviour

**iii) Relevant Risk Factors (i.e. influences which are likely to increase the likelihood of re-offending)**

**iv) Relevant Protective Factors** (i.e. influences which, if developed, are likely to support non-offending and a commitment to engagement and compliance)

**iv) Travel arrangements and intentions where available**

**v) What is the currently assessed risk?**

- Who is at risk?
- What is the nature of that risk?
- How likely?

- What is the level of the risk?
- How imminent is the risk? How soon might the person commit the harmful offence **vi)**

#### **Measures currently in place to manage the individual's risk**

Monitoring/Surveillance

Interventions

#### **vii) Measures required to manage future risk**

Monitoring/Surveillance

Interventions

#### **viii) Contingency Plans**

## **Appendix 8 – Setting up a SPOC**

A guide based upon *Draft SPOC Guidelines for cross-border law enforcement information exchange* produced by the Working Group on Information Exchange and Data Protection (DAPIX)

### **Structure**

- The SPOC should be a multi-agency "one stop shop", for international cooperation in relation to SOMEK offenders. It has one phone number and one e-mail address (and other communication means, fax, etc.) for all international requests dealt with at national level.



- It gathers under the same management structure different national offices or contact points which could include:
  - Police international units (e.g. relating to Europol, ECRIS)
  - The contact point for national liaison officers posted abroad and foreign liaison officers posted in the Member State
  - The contact point for the regional and bilateral offices
  - Contact points for probation, prison, court services
  - A front desk at the SPOC, with its own generic (not personalised mail-box) determines which office/contact point will deal with the request.
- Ideally, the SPOC houses these offices and contact points in the same building.
- The SPOC is set up through its own national legislative or regulation identity, to empower them to meet their large-scale responsibilities and duties. This is particularly useful in the light of the multi-agency composition of the SPOC
- The relationship between the SPOC and all competent law enforcement and other concerned authorities is established through national law and regulated in written agreements, in particular with those authorities represented in the SPOC but not belonging to the lead agency. These agreements or regulations lay down the necessary legal aspects but also practical working procedures.
- The SPOC comprises the most comprehensive national competence, covering the broadest geographical and material scope as possible, to be able to handle the full range of possible requests
- The SPOC is set up in a secure working environment, including high level of security and safety of the premises

## Management

The SPOC should be led by Individuals who have:

- A broad relevant background in law enforcement and/or offender management
- He/she has the appropriate status and authority to request, where necessary, additional information from colleagues in other MSs and / or to speed up and ensure the follow up of requests within the time frames.
- He/she has good knowledge of national and international law in order to advise staff members (and provide regular training on those matters).

## Publicising the SPOC

- Relevant LE and OM practitioners should know about the SPOC, its contact details and the services it offers and the main channels to be used depending on the type of the information exchanges concerned (see, for example, Guidance Section 4.) ■ For that purpose, a national manual should be provided to include, for example:
  - The legal framework and international instruments (under national law, EU, United Nations, any relevant bilateral agreements)
  - Standard of quality and required data for any request (including any agreed forms to be used as for example Appendices 3 and 5)
  - The various international channels and the national rules of how to use them ■ Limits and restrictions to information exchange.
  - Guidance on how to respond appropriately to information received

## Responding to information

- Incoming information should be systematically prioritised so that data could be handled with the appropriate concern and urgency.
- Whenever possible, the SPOC replies directly to the international request, where appropriate with a copy to the concerned national authority.
- Where the SPOC cannot reply directly, because it is beyond its mandate and/or because it cannot directly obtain the information, it forwards the request to the appropriate competent national authority, even if the original request was wrongly addressed to another authority.
- When a request is refused, the grounds for refusal have to be provided through the initial channel.
- When receiving a reply from the national authorities to an international request, the unit pro-actively verifies whether this information can be useful to another Member State and if this is the case, requests and encourages the owner of the information to transmit the information further. Ideally, the unit has the legal authority to do this itself.
- The SPOC has the authority to actively check whether information received can be of use to other law enforcement and/or offender management authorities (within its Member State or outside).



## Appendix 9 – Template for Responding to Information Exchange or Request to Transfer Supervision

### 1. FRONT-SHEET

#### i) Member State ii) Name of SOMEK offender

Surname	First Name	Date of birth
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Aliases (if known)

ID/ Social Security No.	Gender	Nationality
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Current Address	Proposed address(in receiving MS)	Last previous known address(es)
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#### iii) Details of person sending information:

Name	Contact details	Role  <i>e.g. Supervising Probation Officer</i> <i>Single Point of Contact</i> <i>International Desk</i>
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#### iv) Details of person to whom information is to be sent

Name	Contact details	Role
------	-----------------	------

#### v) Other addressees/interested parties

Name	Contact details	Role
------	-----------------	------

### 2. RESPONSE

i) Date received ii) Is

action to be taken?

Yes ☐ (please tick where appropriate below at (iii))

No ☐ (if no action, please go to (v))

**iii) Actions**

Recorded on local system		Referred on to competent or responsible agency/professional	
Recorded on national system		Court to be informed	
Police to visit		Probation to visit	
Information to be provided about any convictions in MS		Information to be provided about contact with OM or LE agencies	
Registration on any national register for high risk offenders		Arrest and/or any other legal action	

**iv) Details of actions (including time-scales, who is responsible, any follow-up action required from MS initiating the original communication)**

**v) If NO ACTION please explain (including for example, any legal constraints)**

**iv) Next Steps necessary to manage the risk**

## Checklists

### Checklist 1 – Analysing and Summarising an Individual's Risk: Their Behaviour and Movement

Use the headings and the associated questions to develop a summary of an individual's risk of causing serious harm to others. The headings ask you first to consider all past and present behaviours and based on this, then make an assessment of any motivation to change and the offender's current ability to self-manage risk, in order to make decisions about what might happen in the future.

Formal Risk Assessment tools will help assessors to gather the most relevant information at an initial assessment stage. However risk assessment is ongoing and when summarising risk in relation to potentially mobile offenders additional information is likely to be relevant e.g. from records of supervision

Based upon Kemshall (2011) and RMA (2007).

	Questions	Sources of information to answer these questions
<b>Patterns of behaviour and movement</b> (including compliance with supervision)	What patterns of behaviour can be seen in this individual?  When have these behaviours occurred? Is there any evidence to suggest particular triggers or circumstances that make harmful behaviour more likely to occur?  What patterns can be found in thinking behaviour and emotional responses that are relevant to offending?  Is there evidence to suggest that there are protective factors that reduce the likelihood of harmful behaviour?  Are the factors increasing or reducing the likelihood of harmful behaviour currently evident?  What has the individual's response been to supervision or other measures (e.g. programmes in custody)?	Convictions (past and current)  Knowledge of or observation of other behaviours that might be relevant  Records of supervision in the community  Records of progress in custody  Communications with other professionals

<b>Seriousness</b>	<p>What are the most serious behaviours, including offences that have occurred in the past?</p> <p>Is there any evidence to suggest that the seriousness of that behaviour is escalating?</p> <p>Is the behaviour becoming more frequent and violent?</p>	<p>Convictions (past and current)</p> <p>Knowledge of or observation of other behaviours that might be relevant</p> <p>Record of supervision</p>
<b>Nature</b>	<p>What are the details of the behaviour that occurred, past and present what was the modus operandi?</p> <p>Who have been the victims of this behaviour, for example is it within a family or are particular vulnerable groups targeted?</p> <p>To what extent was the offending restricted to particular situations or localities?</p> <p>Were any of the following elements of the behaviour:</p> <ul style="list-style-type: none"> <li>■ Planning and grooming (including both victim and situation)</li> <li>■ Breaches of trust</li> <li>■ Influence of disinhibitors</li> <li>■ Influence of others including codefendants</li> <li>■ Use of weapons</li> </ul>	<p>In addition to all of the above, particularly relevant here will be</p> <ul style="list-style-type: none"> <li>■ detailed discussions with the individual about their behaviour</li> <li>■ scrutiny of police records/prosecution information</li> <li>■ victim statements (where available)</li> </ul>



<b>Likelihood</b>	<p>Considering the information above what is the likelihood of further harmful acts?</p> <p>What was the frequency of previous offending? Are the circumstances and risk factors that were relevant at the time in place now including the individuals thinking behaviour and emotional response?</p> <p>How likely might they be to move out of their area to commit potentially harmful acts?</p> <p>Have protective factors increased or decreased? Is there any reduction or escalation of offending opportunities?</p> <p>To what extent does this person have the capability and motivation to change and to manage their own risk?</p>	<p>Evidence of likelihood to offend either at home or abroad will come from</p> <ul style="list-style-type: none"> <li>■ the analysis of the nature, seriousness and pattern of the offending behaviour</li> <li>■ ongoing monitoring of the individual</li> <li>■ their responses to surveillance and other interventions</li> <li>■ ongoing observations of their behaviour and attitudes</li> </ul>
<b>Impact</b>	<p>If further offences do occur what will be the potential scale and harmful impact?</p> <p>What has been the impact of previous behaviours; is there any escalation?</p> <p>What is the individual's current attitude towards offending and towards potential victims, are they committed to self-risk management?</p> <p>Are there protective factors that would reduce the impact and is the individual motivated to comply with risk management plans?</p>	<p>All of the information above will help the practitioner to make judgments about the overall trajectory of the offending behaviour.</p> <p>Also important as supervision proceeds is to gauge and record</p> <ul style="list-style-type: none"> <li>■ the individual's attitude to offending and to victims,</li> <li>■ their potential or otherwise to manage their own risk,</li> <li>■ their overall level of compliance</li> </ul>
<b>Imminence</b>	<p>How soon are behaviours of concern likely to occur?</p> <p>What was the frequency of past offending and what risk and protective factors are likely to be present?</p> <p>Again what is their compliance and motivation to change what new skills and understandings do they have?</p>	<p>Again relevant here are :</p> <ul style="list-style-type: none"> <li>■ Convictions (past and current)</li> <li>■ Knowledge of or observation of other behaviours that might be relevant</li> <li>■ Records of supervision in the community</li> <li>■ Records of progress in custody</li> </ul>

Kemshall, H. (2011) *MAPPa Effective Risk Management*. Key note presentation to the NOMS MAPPa Effectiveness National Seminar, November 10<sup>th</sup> 2011.

Risk Management Authority (2007) *Standards and Guidelines for Risk Management* (version 1). RMA Paisley, available at: [www.RMAScotland.gov.uk](http://www.RMAScotland.gov.uk) (and updated 2013).

## Checklist 2 – Selecting Appropriate Risk Assessment Tools

The following questions can help to guide the choice of risk assessment tools

	YES	NO
Is the purpose and function of the instrument clearly stated?		
Does it have a user manual and an associated training programme?		
Does it include static and dynamic risk and protective factors?		
Is it designed to be used in an individualised way as part of structured professional judgment?		
Has the tool been shown to encourage consistency and reliability of judgments across users? (Inter-rater reliability)		
Does it identify those who need a more intensive assessment?		
Does it help to identify important components of risk management and the intensity of any interventions?		
Is it relevant to your own offender population?		

Is the tool transferrable to your own legal framework and its decision-making processes?		
Does the tool require additional resources to implement (e.g. time or additional staff) or can it be integrated into existing practice and procedures?		

### Checklist 3 – Reviewing a Risk Management Plan

The questions can be used to review the nature of the risk management plans in use in a member state or in a particular agency.

Do risk management plans include the following elements?			
	YES (Give some examples)	NO	COMMENTS
A clear statement of the likelihood of further harmful offending and of the likely harm if that offending occurs			
The nature and extent of monitoring that is necessary			
Identification of key risk factors			
Clear plans to address risk factors through external controls and (if possible) through support for self-risk management			

Specific plans to support and develop strengths and protective factors in order to support desistance			
Clear statements about individuals and agencies involved in risk management and of their respective roles and responsibilities			
Safety planning for current or potential victims			
<b>Do the plans meet the following criteria, are they?</b>			
	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
Sufficient to manage the risk			
Appropriate to the offender and his/her situation			
Relevant to identified risk factors			
Evidence Based			

Only as restrictive as absolutely necessary to manage the risk			
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### Checklist 4 – Developing Partnerships

Use the following checklist as the agenda for a discussion with prospective partners. These could be agency representatives or individual professionals.

(Based upon RMA (2007) *Standards and Guidelines: Risk Management of Offenders Subject to an Order for Lifelong Restriction*. Version 1. Paisley: RMA)

Aspect of Partnership	Notes	Action	Who
<b>Objectives</b> <ul style="list-style-type: none"> <li>■ Do we have a clear statement of the objectives for our working together?</li> <li>■ Where is it recorded?</li> </ul>			
<b>Roles &amp; Boundaries</b> <ul style="list-style-type: none"> <li>■ Do we have clear statements of the respective roles and responsibilities in relation to the above objectives?</li> <li>■ Are there aspects of individual roles that need clarifying?</li> </ul>			
<b>Mutual Respect</b> <ul style="list-style-type: none"> <li>■ What particular knowledge and skills do our respective agencies bring to the task?</li> </ul>			

<b>Accountability</b> <ul style="list-style-type: none"> <li>■ Who are we accountable to for our work together?</li> <li>■ How are we to be held accountable for our work together?</li> <li>■ What evidence will be needed?</li> </ul>			
<b>Information Exchange</b> <ul style="list-style-type: none"> <li>■ How will we communicate?</li> <li>■ Are there any existing procedures that we can use to ensure that communication is clear, unambiguous and reliable?</li> </ul>			
<b>Decision-Making</b> <ul style="list-style-type: none"> <li>■ Where are decisions made?</li> <li>■ Are decisions defensible?</li> <li>■ Where will they be recorded?</li> </ul>			
<b>Co-Ordination</b> <ul style="list-style-type: none"> <li>■ Who will be the main point of contact?</li> <li>■ How will liaison take place?</li> <li>■ How will the range of activities and services be organised and recorded?</li> </ul>			

### Checklist 5 – A checklist for setting up and conducting a multi-agency case conference

The following checklist can be used to inform the planning for multi-agency case conferences. It should help ensure that conferences:

- Are attended by the appropriate people.
- Are led or facilitated by a suitably qualified individual.

- Focus upon achieving a clear purpose and objectives.
- Are conducted with integrity and clarity.
- Conclude with appropriate decisions which manage risk effectively.

	Notes	Action/ Next Steps
<b>Participation</b> <ul style="list-style-type: none"> <li>■ What agencies should be represented?</li> <li>■ Who is the best person to represent an agency to ensure that decisions can be made and acted upon?</li> <li>■ If managers are to represent their agency, how will the practitioner perspective be included in the conference?</li> <li>■ Are participants informed about professional roles and boundaries of representatives from different agencies?</li> </ul>		
<b>Leadership</b> <ul style="list-style-type: none"> <li>■ How is the leadership of the conference decided?</li> <li>■ What authority, skill and competence is required?</li> </ul>		
<b>Purpose and Objectives</b> <ul style="list-style-type: none"> <li>■ Is there a clear statement of purpose?</li> <li>■ Is there a legal framework for the conference?</li> <li>■ Are the objectives of the conference clear to all participants?</li> <li>■ How and where are these recorded? (e.g. in Memorandums of Understanding)</li> </ul>		

<p><b>Conducting the Meeting</b></p> <ul style="list-style-type: none"> <li>■ Are there any written agreed principles for conducting the meeting, relating to:             <ul style="list-style-type: none"> <li>○ confidentiality within the meeting</li> <li>○ clarity about how information should be exchanged</li> <li>○ agreement about when disclosures might be necessary for the protection of victims and public.</li> </ul> </li> <li>■ Does the meeting follow a clear agenda? How is this devised and circulated?</li> <li>■ Who is responsible for keeping and circulating an accurate written record of the meeting</li> </ul>		
<p><b>Decisions and Outcomes</b></p> <ul style="list-style-type: none"> <li>■ Are decisions formally recorded?</li> <li>■ How are risk management plans coordinated and implemented?</li> <li>■ How will these plans be reviewed and progress communicated appropriately?</li> </ul>		

### Checklist 6 – Individual Risk: Additional questions to identify the ‘critical few’

These questions are likely to complement any initial assessment of risk (see Checklist 1) and the answers will lie in the ongoing supervision of the individual.

The questions focus upon aspects of an individual’s behaviour to which a supervisor should be alert to in their work with that individual.

	<p style="text-align: center;"><b>Questions</b></p>
--	---



<p><b>Patterns of behaviour and movement</b> (including compliance with supervision)</p>	<p>Is there evidence that the individual has in the past been mobile, both within his own Member State (MS) and outside its borders?</p> <p>How strong are his/her social ties with his family or local community? Are these likely to provide any ongoing support and reduce the likelihood of future harm?</p> <p>To what extent has the individual complied with interventions designed to reduce the risk?</p> <p>What has the individual's response been to previous supervision or other measures (e.g. programmes in custody)?</p> <p>What has been the level of his/her compliance with the requirements of their current supervision?</p> <p>Have they made any significant changes in their behaviour or lifestyle which suggests a positive investment in the supervision process?</p>
<p><b>Seriousness</b></p>	<p>Is there any evidence to suggest that incidents of harmful behaviour are continuing to escalate?</p> <p>Has there been any change in the attitudes that have been associated with the harmful behaviour?</p> <p>Have there been any incidents that, whilst not serious, still suggest a propensity towards violence in certain situations?</p>
<p><b>Nature</b></p>	<p>Is there evidence that the individual has social links with people in other Member States?</p> <p>How far have these been/ or could they be associated with their offending?</p>

<b>Likelihood</b>	<p>How likely might they be to move out of their area to commit potentially harmful acts?</p> <p>Is there evidence that the individual has (and is still) arranging their life to support offending?</p> <p>Is there evidence that the individual is seeking to move in order to avoid supervision, monitoring or restrictions, or has done so in the past?</p> <p>To what extent does this person have the capability and motivation to change and to manage their own risk?</p>
<b>Impact</b>	<p>What is the individual's current attitude towards offending and towards potential victims. Are they committed to self-risk management?</p> <p>Are there protective factors that would reduce the impact and is the individual motivated to comply with risk management plans?</p>
<b>Imminence</b>	<p>Does the individual have plans to move?</p> <p>How soon is this move likely to happen?</p> <p>Is there evidence of the individual becoming unsettled?</p>