

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/313444585>

Hilder, S. and Kemshall, H. (2015) The Management of Serious Violent or Sexual Offenders who are Mobile across the European...

Article · October 2015

CITATIONS

0

READS

10

2 authors, including:



[Hazel Kemshall](#)

De Montfort University

69 PUBLICATIONS 814 CITATIONS

[SEE PROFILE](#)

Some of the authors of this publication are also working on these related projects:



Effectiveness in public awareness campaigns for Child Sexual Abuse [View project](#)

The Management of Serious Violent or Sexual Offenders who are Mobile across the European Union: The Challenge of Mobile Offenders

Sarah Hilder and Hazel Kemshall¹

Summary: This article reports on an EU funded project examining the use of existing information exchange mechanisms, and monitoring, management and tracking systems available to EU Member States for use with serious violent or sexual offenders who travel across EU borders. It focuses on transfers and information exchange, on those offenders who move for short periods, or who move at the end of sentence or sanction. It also presents up to date data for probation staff and draws on good practice to offer practical tools for practitioners to assess potential mobility, and to assist in comprehensive and speedy information exchange. Broader areas of improvement for the wider EU are also identified.

Keywords: serious violent or sexual offenders, mobile, travelling, information exchange.

Introduction

SOMECE (Serious Offending by Mobile European Criminals) is a two year project funded by the European Commission Directorate-General for Home Affairs.² The project brings together a range of criminal justice organisations from across Europe to look at how Member States can cooperate in order to safeguard their citizens against travelling high risk dangerous offenders. The project responds to a number of high profile cases involving mobile EU nationals and also reflects growing concern

¹ Sarah Hilder is a Senior Lecturer/Programme Leader at De Montfort University, Leicester. Email: shilder@dmu.ac.uk Hazel Kemshall is Professor of Community and Criminal Justice at De Montfort University, Leicester. Email: kemshall@dmu.ac.uk

² <http://www.somec-project.eu/>

that greater collaboration should exist across the EU to ensure enhanced public protection. In 2013 SOMECE commenced an investigation into the use of existing information exchange mechanisms and monitoring, management and tracking systems available to EU Member States for use with serious violent or sexual offenders.³ The project mapped existing information exchange mechanisms and their relevance to this offender group (see Hilder and Kemshall, 2014). It carried out research including direct interviews and focus groups, and the authors were provided with case studies by the twenty participating EU Member States.

The full methodology and complete results of the project are presented in Kemshall, Hilder *et al.* (2015). This article presents the issues and challenges as highlighted in the field data.

Common concerns from probation staff are highlighted such as the fact that they are not always integral to the exchange of information across EU borders. Good practice examples such as the development of information-sharing protocols are discussed. Areas for improvement both nationally and EU wide are identified.

It is clear that the identification and assessment of serious violent and sexual offenders who travel across Europe are seen as particularly challenging requiring specific improvements in assessment processes and information exchange.

Background and context

The pattern of travel, migration and employment within the EU has significantly changed. In a twelve month period ending in February 2012, 43.5 million UK nationals had travelled to other parts of Europe (Office for National Statistics, 2012). During 2011, 1.3 million people migrated from one EU Member State to another, and a further estimated 1.7 million immigrants came to the EU that year from non EU countries. In 2011 there were 33.3 million foreign citizens resident in the EU, 6.6 per cent of the total population. The majority, 20.5 million, were citizens of non-EU countries, while the remaining 12.8 million were citizens of other EU Member States (Vasileva 2012–Eurostat, 31/2012). The EU community is therefore managing not only the movement of EU citizens

³ Serious Offending by Mobile European Criminals (SOMECE), EU Action Grant, ‘Prevention of and Fight Against Crime’, ISEC, 2011/AG/4000002521, available at: http://www.cepprobation.org/default.asp?page_id=563

but also those from third party countries who have entered the EU domain. Whilst there are significant benefits to be gained from increases in international travel, European growth and freedom of movement, other less desirable consequences have also started to emerge, including increased opportunities to engage in criminal activity. It is recognised that globalisation, the internet and low cost travel have contributed to an increase in crimes which cross State borders (Messenger, 2012; Alain, 2001; Puntsher and Reikmen, 2008; Magee; 2008). Cases of sexual offenders travelling abroad in order to offend, typically to Cambodia, Vietnam and Thailand are noted, but similar issues are apparent across the EU (Messenger; 2012). There is also growing evidence of the increased ‘internationalisation’ of crime (Alain; 2001), with crime gangs pursuing trade routes across the EU and beyond. People trafficking, drug and firearms trafficking, fraud and acquisitive crime are just some of the challenges facing law enforcement agencies (see Hilder and Kemshall, 2014 for a full review).

The speed, frequency and distance of travel that an offender can achieve across the EU (particularly within the Schengen area of open borders), means there is a need for effective cross-border communications to identify and manage offenders. However, practical difficulties such as lack of resources to identify such offenders or to exchange information, coupled with varying national legal restrictions and differing ethical views of the right to make such disclosures result in there being significant gaps in the ability of Member States to effectively exchange criminality information. This is particularly apparent in relation to the single transient violent or sexual offender.

Whilst there is appetite for change, this current deficit in EU co-operation has potentially devastating consequences for the victims of such offending.

There have been a number of tragic examples in recent years which illustrate this point. In Glasgow in 2008, Moira Jones was murdered by Marek Harcar. Harcar was originally from Slovakia, where he had thirteen previous convictions, four for violence. However Scottish Police were unaware of his prior criminal history and he had entered Scotland unmonitored.

Whilst the frequency of such cases should not be overstated, the impact when they occur is far-reaching. This is illustrated in the case of Robert Mikelson. Originally from Latvia, ‘Robert M’ left to live and work

in Germany, where he served a prison sentence in 2003 for distributing child pornography. On release he moved to the Netherlands. The authorities there were not aware of his offending history and he secured employment in day care centres, child care facilities and as a private baby sitter. Child protection employment checks were not made by the manager of the main centre where he worked, but even if this had occurred, it is not known if information on his German convictions would have been available. Robert Mikelson went on to sexually assault many of the children in his care from 2007 to 2010. He was charged with sixty-seven counts of raping a minor and sentenced in April 2013 to eighteen years' imprisonment.

The current situation

As the progressive abolition of European internal borders occurred, a number of EU instruments were implemented to improve cross-border police and judicial co-operation (Alain, 2001; Finjaut, 1993; Junger-Tass, 1993). Measures are also in place to assist probation services in supervising offenders across EU borders (O'Donovan, 2009). Positive strides have been made in the establishment of Europol National Units (ENU) and the provision of ENU liaison officers from all member states. Funding and support are available for Joint Investigation Teams and cross-border operations.⁴ Efforts have also been made to simplify processes of information exchange between law enforcement personnel (Swedish Framework Decision 2006/960/JHA), and more recently the European Criminal Record Information System (ECRIS) has established the routine electronic transfer of conviction data on EU citizens. This aims to ensure that Home Member States hold comprehensive records of all of the criminal convictions that a national citizen may have acquired elsewhere in the EU (EU Council Framework Decision 2009/315/JHA; and EU Council Framework Decision 2009/316/JHA). The benefits of this to risk assessment, sentencing and offender management processes are clear.

⁴ The concept of the Joint Investigation Teams originated from the 2000 EU Convention on Mutual Legal Assistance in Criminal Matters (2000 MLA Convention) with the aim of improving co-operation between judicial, police and customs authorities by updating existing mutual legal assistance provisions. The conditions under which JITs are to be set up are laid down in Article 13. The provisions of Article 13 of the 2000 MLA Convention were incorporated into the Framework Decision of 13 June (FD) 2002.

For prisons and probation EU provision has been made for the transfer of custodial (Framework Decision 2008/909/JHA) and community sentences (FD 2008/947/JHA (FD 947)). However there is evidence to suggest that the provision of opportunities for these various types of exchange can be very different from an effective application of such measures. To date only eighteen Member States have transposed 2008/909/JHA into their domestic legislation and only fourteen Member States have actively implemented FD 2008/947/JHA (European Commission, 2014). These and other types of inconsistencies of application were borne out in the SOMEK research data.

The serious impacts of organised crime and terrorism⁵ and issues such as football hooliganism have been met with a co-ordinated European response. This includes an effective exchange of information on known high risk perpetrators who are travelling to sporting events with the primary purpose of engaging in violence (Frosdick and Marsh, 2005). Legislative provisions which enable a ban on international travel to be adopted in such circumstances have been proactively used.⁶ Much of the permissible framework which enables information exchanges across EU borders to occur⁷ can also be legitimately applied to the prevention of crimes by serious violent or sexual offenders. However this proactive interpretation of EU provisions is far less common.

Key findings and challenges

The SOMEK field report comprehensively presents the data and overall findings of the project, with short, medium, and long-term

⁵ EU Counter Terrorism Strategy 2005 14469/4/05 REV4.

⁶ EU action to combat hooliganism is based mainly on the 1985 Council of Europe Convention on Spectator Violence and Mis-behaviour at Sports Events and in Particular at Football Matches. See also Council Recommendation of 22 April 1996 on guidelines for preventing and restraining disorder connected with football matches [Official Journal C 131 of 3.5.1996]; Council Resolution of 9 June 1997 on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy [Official Journal C 193 of 24.6.1997]; Council Resolution of 21 June 1999 concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with international football matches [Official Journal C 196 of 13.7.1999]; Council Resolution of 6 December 2001 concerning a handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension [Official Journal C 22 of 24.1.2002].

⁷ Such as Framework Decision 2006/960/JHA, Council decision 2008/615/JHA and as embedded in the supplementary guidance for Interpol, Europol and the Schengen Information System communication strategies.

recommendations (Kemshall, Hilder *et al.*, 2015). Ascertaining views of the necessity, legality, efficiency and effectiveness of information exchanges on serious violent or sexual offenders travelling across EU borders was the primary focus of the SOMEK project. However it was also vital to establish whether an EU wide agreement could be made in terms of a common starting point for defining such offenders and the additional assessment and identification processes this may entail.

Identification and assessment – EU variations

A select list of offences from the European Criminal Record Information System (ECRIS) was used to initiate discussions regarding the identification and assessment of serious violent and sexual offenders across Member States. This is an agreed list of offence types that have common currency across the twenty-eight EU Member States and represent those offences about which conviction information should be exchanged across EU Member States (see: http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm).

However, EU Member States varied in the extent to which they specifically identified sexual or violent offenders as a specific category of offender. Probation staff interviewed from five Member States advised that serious violent or sexual offenders were identified as a specific category in their Home Member State. In one Member State this position related to all of the Member State's constituent home countries (UK) and Probation Services took a primary role in the assessment of the level of harm posed by the individual prior to and after sentencing. In another one of these five Member States a specialist psychiatric clinic was used to assess mental competence and to provide compulsory psychiatric treatment for serious violent or sexual offenders if required. For another Member State the identification occurred in court, with the imposition of licence conditions.

In contrast, probation staff from twelve other Member States advised that offenders would not be specifically categorised as violent or sexual offenders in their Home Member States and that there was no specific policy or procedure to be considered for this particular 'type' of offender. In some instances this was said to be due to the fact that the numbers of such offenders were very small, with one Member State advising that there were unlikely to be any more than twenty such offenders in their Member State at any one time. The introduction of specific identification or management approaches was therefore seen as unwarranted.

Not all of the probation respondents were able to describe assessment procedures for serious violent or sexual offenders. Six out of the twenty Member States reported that they used some form of structured assessment and three of these Member States made direct reference to their assessment tool being derived from the Offender Assessment System (OASys) as used in England and Wales. A further Member State outlined plans to introduce the Level of Service Case Management Inventory (LSCMI), a variant of the Canadian LSIR, to be implemented by 2016, but for case management purposes only and it would not be used prior to sentence.⁸ Two further Member States reported using structured assessment processes but without the use of a formalised assessment tool. Another two Member States described comprehensive prison based assessment systems, in one instance linked to a strong focus on treatment and a rehabilitative approach and in the other used to inform community supervision. In the majority of Member States assessment was viewed as a matter of professional judgment for the individual assessor, to inform the offender's rehabilitation and treatment, and was not framed in the context of public protection.

These potentially differing views on the use of assessment processes need to be clearly understood as they have significant implications for effective cross-border information exchange. For example, risk and protective factors may be weighted differently by assessors as a result of the underpinning focus and philosophy of the approach taken, and in some instances assessment will not focus on risk concerns at all. An expectation that a final assessment will occur, and in the case of serious violent or sexual offenders, may be shared across EU borders if the offender is travelling at the end of a period of formal contact, supervision or custodial sentence is also not universal.

Only three Member States highlighted specific legislation which applied to sexual offenders – for example sex offence registration or particular forms of sentencing; or the use of prison assessments once a sentence had commenced; or the use of multi-agency public protection arrangements. The responses received reflect the diverse role and function of probation services across the EU. For example, some

⁸ A number of structured assessment tools have been developed in Canada, the USA, and the UK. It cannot be assumed that they will necessarily transfer to other jurisdictions or offender populations, and it is essential that any transfer of use is done based upon further evaluation and validation against the population concerned, and with full awareness of the limits of the tools adopted.

probation services are court based, with a tight focus on assessment for the purposes of sentencing, whilst others engage solely in post custodial welfare and resettlement provision. There are tendencies amongst probation services with a more Anglophone⁹ tradition to have a greater focus on public protection and risk assessment (Kemshall, 2008), whereas other EU probation services retain a stronger rehabilitative focus (van Kalmthout and Durnescu, undated). The length of time following a Member State's accession to the EU is also relevant, with several Member States being in the early stages of developing probation systems and practice protocols, often influenced by EU partners where the probation service role is more established. In these situations newer probation services tend to adopt much of the underpinning philosophy and characteristics of their 'mentor' probation service.

Within member states the identification and assessment of serious violent and sexual offenders are also rarely carried out in partnership. Task group activities and focus groups highlighted that the value of effective joint working between law enforcement and probation personnel in the assessment and management of serious violent or sexual offenders was broadly recognised. However for the majority of EU Member States this was not a reality and many were struggling to achieve effective information between these two key agencies. Exchanging information between agencies at a national level was often impeded – for example by a lack of protocols, formal systems, sufficient levels of trust or legal frameworks, with probation staff often unaware of the sources of information available to them such as the European Criminal Record Information System (ECRIS). This could result in court assessment reports lacking appropriate conviction details and sentences being made in the absence of full conviction histories where foreign nationals appear before courts in the country they have travelled to.

Concepts of privacy are also embedded within varied historical contexts across the EU – and a number of Member States strongly prioritise the privacy and rights of the individual above disclosures for crime prevention. Therefore, tensions between risks, rights and freedom of movement have evolved differently. Actions which some probation staff viewed as preventative public protection measures (e.g. the UK), were

⁹ Anglophone jurisdictions: these are jurisdictions within the English-speaking world (notably Australia, Canada, New Zealand, UK, USA). They derive much of their approach to criminal justice, and particularly to violent and sexual offenders, from the USA and the UK.

viewed by others as a potential violation of privacy and basic human rights. These differing views highlight the challenges that arise in ensuring a comprehensive assessment of a serious violent or sexual offender is effectively communicated to another Member State and responses are in accordance with the level of harm posed.

The process of exchange: challenges to probation transfer and information exchange

One formal strategy which has been developed to facilitate the exchange of information between probation personnel in different EU Member States is Framework Decision 2008/947/JHA (FD 947). This allows for people convicted in one Member State to transfer back to their Home Member State to serve a probation measure or alternative sanction. It is a voluntary agreement and can include forms of probation supervision and conditional release, and these were considered to be the most pertinent to SOMEK issues. Whilst the rationale for such transfer provision is primarily to facilitate the social rehabilitation of offenders, the strategy also clearly has a public protection function (see ISTEP, pages 4 and 7).¹⁰ However the formal adoption of FD 947 is varied across the EU, potentially underused, and in some Member States either it is not transposed or staff are unaware of the arrangement's existence. Varied resourcing levels for probation services across Member States, the size of the Member State and the transient patterns of its citizens can also result in further inconsistencies.

However, in the same way that Single Points of Contact (SPOCs) have been promoted for EU law enforcement exchanges (DAPIX¹¹), the use of SPOCs between probation personnel in different Member States for FD 947 transfers was also highlighted during the course of the SOMEK research as an effective method of communication. By providing other Member States with a single route for both transfers in and out for individuals under FD 947 provisions, SPOCs serve to facilitate consistent standards in information exchange and ensure, for example,

¹⁰ ISTEP-Implementation of Support for the Transfer of European Probation Sentences, available at: http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf (accessed 5 June 2014).

¹¹ 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.

that any restrictions and issues of compliance with supervision are fully considered. The provision of this information aids the receiving jurisdiction to assess risks and to make appropriate case management decisions. The Member State operating a SPOC for FD 947 was dealing with approximately 20 to 25 cases per year.

The information templates provided for probation transfers under FD 947 helpfully cover social history and to a lesser extent risk, and cover risk of reoffending factors for violent or sexual offending.¹² However the SOMEK project concluded that in order to facilitate effective information exchange on these offenders additional information was required covering the inclusion of victim targeting information, modus operandi, protective factors, and required risk management measures. This has been developed into a standardised package of information available in the SOMEK offender management guidance.¹³ This information exchange template can be used both for transfers and for the exchange of information outside of formal supervision.

Example of good practice (provided by PBNI, PSNI, the Probation Service Republic of Ireland, An Garda Síochána)¹⁴

The exchange of information outside of a formal transfer of supervision is, however, potentially far more problematic for Member States. Respondents identified the following barriers: the lack of good information exchange between agencies *within* some Member States particularly where multi agency work is less well developed; a lack of trust in other agencies in other Member States; and finally legal constraints in some Member States that make the exchange of personal data challenging. In a number of Member States this is particularly acute at the end of the sanction and sentence where the offender is considered to be a 'free citizen' for whom all rights to data protection and privacy are restored.

In addition, FD 947 was originally intended for those persons transferring back permanently to a home country, and in the case of SOMEK offenders this may not be the case. Circumstances such as home nationals wishing to travel abroad for employment or leisure, without

¹² See: http://www.probationtransfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf, pp. 64–74, especially pp. 68–74.

¹³ See SOMEK guidance for OM and LE personnel, available at: http://www.cep-probation.org/default.asp?page_id=563

¹⁴ Our thanks to the staff of these agencies who provided case studies, information and advice.

having established family and community links are not covered by these transfer provisions. In some instances, serious violent or sexual offenders are crossing a border for a short period of time (for work or holidays), or routinely crossing a border for employment and then returning home again – sometimes within their community sentence or licence or sometimes at end of sanction.¹⁵ In these instances, the use of FD 947 would not be suitable and would be unlikely to facilitate adequate and timely information sharing.¹⁶ In these situations a number of Member States facing an operational need to exchange information have tackled this through bilateral agreements and a memorandum of understanding, although this predominantly facilitates information sharing between police services and not offender management/probation services. However where multi agency arrangements are developed probation is often integral to such arrangements.¹⁷ These bilateral agreements tend to:

- give permission to operational personnel to exchange information within well-defined parameters
- limit the use of information exchange and the use of information obtained
- 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 legal instruments and legal acts
- provide a system and timeline to review the agreement
- be signed and endorsed at a sufficient level of seniority.

¹⁵ For example in the case of Northern Ireland and the Republic of Ireland; Gibraltar and Spain; Spain and Portugal, and the Nordic States.

¹⁶ <http://www.probation-transfers.eu/> provides practical information on transfers.

¹⁷ For example the Memorandum of Understanding between Northern Ireland and the Republic of Ireland allowing for cross border information exchange between police and probation services on those sex 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. 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 l. 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>.

Whilst these agreements are effective for Member States with shared borders and form a rational starting point where there is a pressing operational need (for example between Northern Ireland and the Republic of Ireland), they do not necessarily offer a consistent, EU wide approach to this challenging problem. These arrangements can often require a common language, and justice systems which share a strongly compatible approach to sanctions and offence definitions – and this is not always a common position across the twenty-eight Member States. There also needs to be mutual trust at both policy and practice level, which again is not always easy to replicate.

This immediacy and high trust between frontline staff was seen as important by Northern Ireland and Republic of Ireland staff, and these and other Member States gave examples of almost daily contact at policing levels between SPOCs (and to a lesser extent between probation staff). This contact facilitated increased monitoring, crime prevention, victim protection, and at times opportunities to re-arrest.

However, a variety of methods and arrangements continue to be utilised for information exchanges across the EU, as appropriate to the nature of a particular scenario. The challenge is co-ordinating these strategies across the whole EU, as well as increasing the efficiency and effectiveness of their execution.

Solutions and areas for improvement (both domestically and EU wide)

It is important to understand the perspectives and constraints of other Member States when attempting either formal transfer or information exchange. It cannot be assumed that other Member States will share the same public protection concerns, or that they will have the same resources to respond as the sending Member State may have. In such circumstances providing robust assessments, comprehensive information on risk, victim targeting and modus operandi are more likely to elicit an appropriate response and enable the practitioner in the receiving Member State to act and are less likely to legitimise a lack of response. In circumstances where a Member State cannot facilitate a formal transfer under FD 947, full information exchange templates sent via SPOCs will still be useful, either to cover relocations, temporary residence, or movement post sentence/ sanction. Bilateral agreements as outlined

above can be instrumental in facilitating such exchanges and setting legal parameters for them – but present wider EU frameworks do assist broader information exchange (e.g. *Council Framework Decision 2006/960/JH*).

To facilitate a more consistent approach to such exchanges the offender management guidance provided by SOMEK provides a template for the simple and speedy exchange of information that can be used with mobile serious violent or sexual offenders. This template for information exchange can be used for the following situations:

- 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 ISTEP¹⁸ paperwork, or with the exchange of information template available in the SOMEK offender management guidance which offers greater risk information.¹⁹ 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.

¹⁸ In ISTEP European Handbook accessed at http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf

¹⁹ See SOMEK Offender Management guidance, available at: http://www.cep-probation.org/default.asp?page_id=563

- Where the offender is deported back to their home Member State at the end of their custodial sentence.

(See: Kemshall and Kelly *et al.* (2015) pp. 56–57; and see template provided at Appendix 7, p. 111)²⁰

In addition, identifying those who will travel can be challenging. Travel plans may not be disclosed, and a small proportion of offenders will travel in order to avoid control, regulation or detection (Hilder and Kemshall, 2014; Messenger, 2012). Staff working with serious violent or sexual offenders should consider:

- The evidence that the individual has in the past been mobile, both within his or her own Member States and outside its borders.
- How strong are his or 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, and if there is a history of failure to comply with risk management plans.
- 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 or her compliance with the requirements of their current supervision?
- Have they made any significant changes in their behaviour or lifestyle which suggest 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?

²⁰ See SOMECE Offender Management Guidance, available at: http://www.cep-probation.org/default.asp?page_id=563

- Are there protective factors that would reduce the impact and is the individual motivated to comply with risk management plans?
- How soon are they likely to move?

(See: Kemshall, Kelly *et al.*, (2015) p. 139, Checklist 6)²¹

Probation staff also need to be fully apprised of information exchange mechanisms which can be accessed by their law enforcement counterparts, and the use of police colleagues to circulate key information EU wide or to a specific Member State should the risk justify it. The effective management of serious violent or sexual offenders travelling across EU borders therefore necessitates joint working between agencies at a national level. This is an area of development for many Member States. National SPOCs which encompass international exchange, law enforcement, judicial and probation/offender management expertise have the potential to realise further improvements.

Conclusion

Undertaking cross-border communications in relation to a serious violent or sexual offender, who may or may not be subject to current formal sanction, clearly raises concerns relating to proportionality, privacy and data protection for all Member States, but is a more acute issue for some. However there are arguable instances where the level of harm posed to others is so great that a lack of preventative action is also not defensible. In such circumstances a lack of information exchange, or the transfer of incomplete, inaccurate or misleading information may limit the ability of the receiving Member State to respond effectively, thus compromising public safety.

However the ‘common interest’ of protecting EU citizens from the single transient high risk violent or sexual offender has not developed at the same rate of interest as other issues of public security across the EU community (e.g. trafficking, organised crime, terrorism, football hooliganism). Sharing information with probation personnel is also very rarely an integral part of the cross-border information exchanges which do occur and the appropriate dissemination of received information at a national level is limited. The concept of continuing to monitor an offender who has completed their sentence is also met with some

²¹ See SOMECE Offender Management Guidance, available at: http://www.cep-probation.org/default.asp?page_id=563

resistance in some Member States and indeed is illegal in some. This makes the management and tracking of serious offenders released without parole licence particularly challenging.

However there is a broad recognition across the EU that development is needed in this area. The EU principle of freedom of movement also raises the requirement to accept joint EU wide responsibility for the management of the small number of high risk violent or sexual offenders who do/will take advantage of such movement. The appropriate governance of any information exchanges is of course vital, and existing systems such as ECRIS demonstrate that a balance between rights, privacy and public protection can be realised (and EU data information and exchange provisions to safeguard personal information are significant with a high threshold of governance and regulation). Indeed the EU framework which permits such actions sets specific criteria for use, governance and regulation systems in order to provide appropriate safeguards for citizens.²² A further move to strengthen its use for crime prevention is now required. The rights of privacy and protection are a matter of balance. The rights of all EU citizens to life and to remain free from torture, inhumane and degrading treatment²³ also need to be protected. Where assessments of risk are systematic, comprehensive and defensible and the risk of harm to others is clear an exchange of information with another Member State can be legitimised. One person's rights should not become another person's risk.

References

- Alain, M. (2001), 'Transnational Police Co-operation in Europe and in North America: Revisiting the Traditional Border Between Internal and External Security Matters, or How Policing is Being Globalized', *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 9/2, pp. 113–129
- 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
- Council Framework Decision 2006/960/JHA (Swedish Framework Decision) of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

²² Such as Framework Decision 2006/960/JHA, Council decision 2008/615/JHA and as embedded in the supplementary guidance for Interpol, Europol and the Schengen Information System communication strategies.

²³ Articles 2,3 of the European Convention on Human Rights.

- Council Framework Decision 2008/675/JHA* of 24 July 2008 on taking account of conviction in the Member States of the European in the course of new criminal proceedings
- Council Framework Decision 2008/616/JHA* on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime
- Council Framework Decision 2008/615/JHA* on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008
- Council Framework Decision 2008/909/JHA* on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
- Council Framework Decision 2008/947/JHA* on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
- Council Framework Decision 2008/977/JHA* on the protection of personal data process in the framework of police and judicial cooperation in criminal matters
- Council Framework Decision 2009/315/JHA* on the organisation and content of the exchange of information extracted from the criminal record between Member States
- Council Framework Decision 2009/316/JHA* on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA
- European Commission (2014), *Report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention*, Brussels, 5.2.2014 COM (2014) 57 final
- Fijnaut, C. (1993), 'Schengen Treaties and European Police Co-operation', *European Journal of Crime, Criminal Law and Criminal Justice* (1993), pp. 37–56
- Frosdick, S. and Marsh, P. (2005), *Football Hooliganism*, Cullompton: Willan
- Hilder, S. and Kemshall, H. (2014), 'Serious Offending by Mobile European Criminals' (SOMEC). 'Mapping Report on Existing EU Information Exchange Systems', available at http://www.cep-probation.org/default.asp?page_id=563
- Hirst, P. and Thompson, G. (2000), *Globalization in Question: The International Economy and the Possibility of Governance*, 2nd ed., Cambridge: Polity Press
- ISTEP European Handbook, available at http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf
- Junger-Tas, J. (1993), 'Cross Border Crime', *European Journal on Criminal Policy and Research* (1993), pp. 1–144
- Kemshall, H., Hilder, S., Kelly, G. and Wilkinson, B. (2015), 'Serious Offending by Mobile European Criminals': *Comparative field work report*, available at http://www.cep-probation.org/default.asp?page_id=563
- Kemshall, H., Kelly, G., Wilkinson, B. and Hilder, S. (2015), 'Offender Management Offender Guidance in work with serious violent or sexual offenders

- who are mobile across the EU', http://www.cep-probation.org/default.asp?page_id=563
- Kemshall, H. (2008), *Understanding the community management of high risk offenders*, Maidenhead: Open University Press
- Kirby, S. and Penna, S. (2011), 'Policing mobile criminality: implications for police forces in the UK', *Policing: An International Journal of Police Strategies and Management*, 34 (2), pp. 182–197
- Lammers, M. and Bernasco, W. (2013), 'Are mobile offenders less likely to be caught? The influence of the geographical dispersion of serial offenders' crime locations on their probability of arrest', *European Journal of Criminology*, 10(2), pp. 168–186. Euc.sagepub.com:SAGE
- Magee, I. Sir (2008), *The Review of Criminality Information*, London: ROCI
- Messenger, I. (2012), *An Examination of the Dynamics of Multi-Agency Arrangements in Different Cultural Contexts: The Case of the Child Exploitation and Online Protection Centre and the International Child Protection Network*, Professional Doctorate, Criminal Justice Studies, University of Portsmouth
- O'Donovan, D. (2009), 'Transfer of Probation supervision between Member States: An EU initiative', *Irish Probation Journal*, vol 6, Sept 2009, pp. 77–90
- Office for National Statistics (2012), *Migration Statistics Quarterly report February 2012*, Statistical Bulletin, London: ONS, available at <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/february-2012/msqr.html>
- Puntscher-Rekman, S. (2008), 'Freedom and Accountability: Europol and Frontex' in E Guild and F Geyer (eds.) *Security Versus Justice: Police and Judicial Cooperation in the European Union*, Aldershot: Ashgate, pp. 19–34
- Rosenberg, J. (2002), *The Follies of Globalization Theory*, London: Verso Books
- Thomas, T. (2011), *The Registration and Monitoring of Sex Offenders*, London: Routledge
- Van Kalmthout, A. M. and Durnescu, I. (undated), *European Probation Systems: A comparative overview*, available at [http://www.cepprobation.org/uploaded_files/0_Preliminary_pages_Index\(1\).pdf](http://www.cepprobation.org/uploaded_files/0_Preliminary_pages_Index(1).pdf)
- Vasileva, K. (2012), 'Nearly two thirds of the foreigners living in EU Member States are citizens of Countries outside the EU-27', *Eurostat, Statistics in focus 31/2012*, available at http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/publication?p_product_code=KS-SF-12-031 (accessed on 11 March 2015)