

# EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM

## **This leaflet covers:**

- Information about Fair Trials International
- Frequently Asked Questions

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## **About Fair Trials International**

Since 1992 Fair Trial International has worked for the better protection of fair trial rights and defended the rights of people facing criminal charges in a country other than their own. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

Fair Trials International was established to help people arrested outside their own country to defend their right to a fair trial. Every year we help hundreds of people and their families to navigate a foreign legal system by offering practical advice, including contacts of local lawyers; guidance on key issues encountered by people arrested abroad; and basic information on different legal systems and local sources of support. As a charity, we do not charge for any of the assistance that we provide.

We believe that respect for fundamental rights and the rule of law are the hallmarks of a just society and that the right to a fair trial is at the heart of this. Sadly too many shocking cases of injustice demonstrate how, time and again, this most basic human right is being abused. We fight against injustice by lobbying for the legal reforms needed to ensure that the right to a fair trial is respected in practice. Working with our clients and international networks, we also campaign for changes to criminal justice laws which are being abused and overused.

To find out more about how FTI can assist you, please contact our legal team (contact details on the back cover).

Fair Trials International is a registered charity (No 1134586) and is registered with limited liability in England and Wales (No 7135273). We are a non-governmental organisation; as such, we are a wholly separate and independent organisation from the Foreign and Commonwealth Office.

**If you require this leaflet in large print, please contact us at the address on the back cover.**

## **FREQUENTLY ASKED QUESTIONS**

Please see below brief answers to some of the most commonly asked questions about the European Criminal Records Information System (or 'ECRIS').

### **Q1. What is ECRIS?**

ECRIS, or the European Criminal Records Information System, is a system for sharing criminal records in Europe. It means that if you commit a crime in a country within the EU which you are not a national of, the details of that crime will be sent to your home country and entered on your criminal record. For example, if a British person is convicted of a crime in Spain, then the Spanish authorities will send details of that crime to the UK where they will be stored on the local criminal records system. The UK will then have information about the conviction in Spain, and any other convictions from the rest of Europe, and in certain circumstances must send details of these to another EU country when requested to do so.

### **Q2. Is ECRIS a European database with all our criminal records on?**

No, ECRIS is not a centralised database; it is a method by which different EU countries will be able to gain access to each other's databases. Rather than keeping all records in one place, ECRIS will mean that every EU country will have a central authority which will store all the criminal records of its citizens from across Europe and will send them to other countries on request.

### **Q3. Why was ECRIS introduced?**

In the past, if you were convicted of a crime the only country that would automatically know about it would be the one that you were convicted in. This meant that if a person committed many crimes in lots of different countries, this information may only be held in the country that convicted them and the person could simply travel to another state and re-offend without the authorities being aware of their past. ECRIS was introduced to make sure that when people are convicted of a crime, the authorities know about all of their previous convictions. This could have an effect on sentencing where a person has a history of committing a particular crime – it would be unfair if someone who has committed burglary numerous times in several EU countries was treated as a first-time offender simply because the convicting country was not aware of their past. It will also help ensure that in a Europe without borders someone working with vulnerable people or children will not be able to hide previous crimes simply because they were committed in another Member State.

### **Q4. What happens when I get a conviction in another EU country?**

The ECRIS system gives each type of crime its own code. If you are convicted of a crime within the EU, the country where you are convicted will select the most appropriate code and transmit this to your home state. It may include more information about the conviction, for example any particular circumstances that resulted in you getting a more severe or lenient sentence or whether you have shown remorse, but it does not have

to. Your home state has a duty to store all the information sent to it under ECRIS. If your home country wants to know more about the details of your conviction they can make a request for it.

**Q5. Who can see my conviction? If I am arrested in another European country will they be able to see what is on my record?**

Yes. If an EU country applies to see your criminal record because you are involved in criminal proceedings, then your home country will have to disclose all of your previous convictions regardless of what country they are from. There are no exceptions to this.

**Q6. If I apply for a job anywhere in the EU, will my prospective employer now be able to see everything on my record?**

The rules on who can and can't see your record for purposes other than criminal proceedings are quite complicated and will ultimately depend on the relevant country's laws. Generally speaking, ECRIS will make it more likely that a prospective employer will be able to see your previous convictions.

There are various options depending on your circumstances:

- If you have been convicted in your home country, then your home country's national laws will determine whether your conviction can be shared with any prospective employer. So, if a UK national is convicted of a crime in the UK and applies for a

job in France, the UK authorities will use UK law to decide whether to disclose those convictions if a request is received.

- If you are convicted in another country, then the country you are convicted in can choose to place a restriction on your conviction so that it cannot be shared with anyone else unless it is for the purposes of criminal proceedings. Anyone else who wants to know about this previous conviction, for example a prospective employer, would have to make a request to the country that convicted you to obtain this information. This country will decide whether or not to disclose the information in accordance with its own national laws.
- If the country you committed the crime in does not include any restriction on the sharing of the information about your conviction, then the request is made to your home country which will follow its own national laws when deciding what to disclose.

Once the information has been requested for one purpose it cannot be used for anything else. If anyone needs the information for another reason, they would have to request it again.

#### **Q6. I have citizenship in more than one EU country, which country will my conviction information go to?**

If you are a national of more than one EU country, information about any conviction you get will be sent to each of the countries you are a national of. This would

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still be the case if you committed a crime in one of your home countries – the information would be sent to all of the others.

**Q7. I am a UK national and years ago I was convicted of a crime in Spain. Will this crime now be on my criminal record in the UK?**

Spain will not send the UK the details of the crime through ECRIS as the crime happened before 27 April 2012. However, the offence may already be on your criminal record in the UK if, for example, the UK has specifically requested this information from Spain.

**Q8. I am a Dutch national and last year I was arrested and given a caution in the UK. I never went to trial so will details about the caution be sent to the Netherlands? What counts as a conviction?**

In ECRIS, a conviction is defined as the decision of a criminal court against you in respect of any criminal offence where it would have been put on the criminal record of the convicting country. On a strict reading this would mean that if you have not been convicted in a criminal court then no information should be transmitted. However, draft guidance on ECRIS has suggested that conviction may also include any final decisions by a “competent authority” if this too is recorded in the criminal record. This may mean that, as the caution is included on a criminal record in the UK, it would be sent to Holland. We will have to wait and see how Member States interpret the meaning of conviction to know exactly what will be transmitted and what will not.



**Q9. I am a British national and the crime I committed in Italy is not a crime in the UK, will it still be on my criminal record?**

If you are convicted of a criminal offence in Italy, the details of this offence will be transferred to the UK. The UK must store this information in accordance with ECRIS and must provide it to anybody from another Member State who properly requests it. This means that you may end up with a criminal record in the UK even though the act you were convicted for in Italy isn't illegal in the UK.

**Q10. How long will a foreign conviction stay on my record?**

It is not clear exactly how the system for removing convictions from records will work, but it will probably depend on the laws of the country where you are convicted.

For example, if you are a UK citizen and you commit a crime in Belgium, then any changes or deletion of information to the record you have in Belgium will be immediately transferred back to the UK and the UK will have to make an identical change or deletion on the information stored on your UK record. This means that if the offence is removed from your Belgian record after 5 years, and another country, such as Spain, subsequently asks the UK for your criminal record for the purposes of criminal proceedings, your conviction in Belgium will not show up. This is the case even if the

same offence, if committed in the UK, would stay on your criminal record for 20 years.

However, if the reverse is true and a Belgian commits the same crime in the UK, that offence will remain on record in Belgium for 20 years even though it would have been deleted after 5 years had the crime taken place in Belgium.

There is a lack of clarity in the ECRIS legislation as to whether the UK would also have to take any change or deletion into account for the purposes of your domestic criminal record as it applies in the UK. It may be that it does not, and that the conviction could remain on your record for the purposes of criminal proceedings or other requests within the UK.

**Q11. I am a US citizen living in France, will any crimes I commit in the EU go on my US record or my French record?**

ECRIS does not govern relations between EU Member States and other countries and does not apply to convictions of nationals from third countries. Whether any record you have in France, or any other EU country, is sent to the US will depend entirely on US law, the law of the country where you are convicted, and any agreements that country may have entered into with the US. These arrangements will be different for every country.

There are discussions currently underway in Europe to extend the ECRIS system and supplement it with a centralised "European index of convicted third country

nationals” so that the ECRIS safeguards extend to people who are not nationals of the EU. These plans are in the early stages and are not yet confirmed.

**Q12. Am I allowed to access information on my criminal record and see what offences have been put on it?**

You are allowed to put in a request through ECRIS to see information on your own record. To do this you have to be a resident or national of either the country you make the request in or the country you make the request to. You must make this request through the central authority of the country you are living in which will in turn make a request to your home state. So, for example, if a French person is living in the UK then they could make a request to either the UK authorities to ask France for their criminal record or to the French authorities directly. Whether or not you are given access to the record is governed by the national laws of the states concerned, so there is no right to receive the information.

**Q13. Is my personal data protected during transfers between Member States and while it is being stored?**

There are no provisions in the underlying legislation governing how data transferred through ECRIS is going to be protected. Instead, the protection level will be decided by each Member State in accordance with existing EU data protection legislation. This may be an issue as in some EU countries data protection standards are not as robust as others and information could be stored in a way that leaves it vulnerable to hackers and

identity thieves. The European authorities have acknowledged that EU data protection laws are not effective enough and in early 2012 they put forward new proposals to improve data protection in the EU.

*Please note that at the time of writing ECRIS has not been fully implemented in all EU Member States. The practical operation of the system in some countries may not therefore be as represented in this note and may change over time. If you would like to share your experience of the ECRIS system please email [Emily.Smith@fairtrials.net](mailto:Emily.Smith@fairtrials.net).*

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**If you think that an important question is not covered in this factsheet, please let us know.**

# FAIR TRIALS INTERNATIONAL

**Working for a world where every person's right to a  
fair trial is respected, whatever their nationality,  
wherever they are accused**

## THANK YOU

Fair Trials International would like to thank the law firms and individual practitioners, both in the UK and abroad, who have generously given their time and expertise to help produce these legal guidance notes.

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For a full list of our funders see  
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