

AGIS PROJECT JAI/2003/AGIS/002

Feasibility Study on the creation of a database on investigations and prosecutions

REPORT FOR HUNGARY

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1. Introduction – methods of research

Our contribution is mainly based on the essential legal texts in connection with the topic of criminal databases on investigations and prosecutions in Hungary. During our work, we took into account the viewpoints of academics, the case law of the Hungarian courts and the Constitutional Court as well. We found it also very important to include the opinions of experts dealing with international legal assistance in criminal matters on a daily basis. Therefore we interviewed the director of the International Law Enforcement Co-operation Centre (Nemzetközi Bűnügyi Együttműködési Központ, NEBEK), Mr. Zsigmond Szabó and an expert of the General Prosecutor's Office (Legfőbb Ügyészség), Mr. Zoltán Péter in order to be able to draw a well established scheme on the matter. We also made contact with the four most significant political parties in Hungary (those that are members of the Parliament), namely the Hungarian Socialist Party, the Alliance of Free Democrats, the FIDESZ-The Hungarian Civic Alliance and the Hungarian Democratic Forum. Besides getting in touch with them through telephone, we also send them e-mails with the questions concerning their opinion on the creation of a European criminal database on investigations and prosecutions. Unfortunately – in spite of our persistent efforts – we managed to get answers to the questions only from Mr. Balázs Horváth, the legal expert of the Hungarian Democratic Forum. We emphasised the importance of this research project via telephone and e-mail, but obtained no answers from the rest of the parties.

2. Reply to the questionnaire:

Question 1)

In Hungary a central criminal database exists, the legal basis of which is statutory, namely the 85th Act of 1999 on the criminal database and the official certificate of criminal records (see the Annex to this contribution). In practice, this so-called criminal database consists of five different databases, which are administered separately. These are the following:

1. the database of offenders¹
2. the database of those under coercive measures²
3. the database of those under criminal procedure³
4. the database of fingerprints, palm prints (dactyloscopy) and photographs
5. the database of DNA profiles

This central criminal database is managed by the Central Data Processing, Registering and Electoral Office of the Ministry of the Interior, the superior body of which being the Ministry of the Interior. The legal control (meaning the supervision of the activities of the mentioned Office from the aspect of legality) over the operation of this Office is exercised by the General Prosecutor's Office.

1. The database of offenders

This database contains the given person's so-called natural personal identification data (family name, Christian name(s), maiden names in case of women, sex, place and date of birth, his/her mother's maiden names), personal identification code, former family and Christian names (for the sake of identification these are needed when the person has changed his/her names), nationality and residence. It also includes data on the criminal offence in question, on the role of the given person (main offender, accomplice), on whether he/she is a recidivist, on the legal consequences and the court, the prosecutor's office or investigation authority that made the decision, the details of the decision (number, date), those of the decisions taken after the closure of the criminal procedure (exemption from the detrimental consequences, pardon and decisions taken in other extraordinary procedures) and the date of the persons death. Besides the above mentioned

¹ This database includes data on the following persons:

- on whom a criminal court imposed a criminal sanction by a final decision bearing the effect of res iudicata;
- in connection with whom the prosecutor postponed the indictment or carried out reprimand;
- who was found guilty by a foreign court and the criminal database was informed of this fact by the minister of justice, or the execution of a sanction imposed by a foreign court was taken over by the Hungarian authority;
- who received pardon.

² This means pre-trial detention, house arrest, prohibition of leaving place of residence and temporary forced medical treatment.

³ Referring to suspected and accused persons.

information it contains data on the execution of punishments (see article 10 paragraph (2) of the 85th Act of 1999 for details).

2. The database of those under coercive measures

As far as this database is concerned we must refer to data such as the natural personal identification data (see above), the name and the qualification of the criminal offence(s) under the Criminal Code, the duration of the coercive measure, the number and date of the decisions and the name of the court that made the decision in connection with the coercive measure.

3. The database of those under criminal procedure

The database in question contains the natural personal identification data (see above), the name and the qualification of the criminal offence(s) under the Criminal Code, the date of informing of the reasonable suspicion, the date of accusation, the date of suspending and continuing the investigation or the criminal procedure, the registration number of the criminal case, the name of the proceeding investigation authority, public prosecutor's office, court.

4. The database of fingerprints, palm prints (dactyloscopy) and photographs

Data is introduced in this database of a specific person against whom there is a reasonable suspicion of the commission of an intentional criminal offence, but on the other hand fingerprints and palm prints recorded on the scene of the offence are also introduced (the purpose of this is to provide help in finding and identifying unknown perpetrators).

This database comprises the natural personal identification data, the name and the qualification of the criminal offence(s) under the Criminal Code, the place and date of the commission of the criminal offence(s), the name of the proceeding investigation authority, the registration number of the criminal case, the fingerprint, palm print and the portrait.

5. The database of DNA profiles

Data on the DNA of a given person (in the form of a DNA profile, meaning a code consisting of numbers and letters being the result of an analysis of the polymorph parts of the deoxyribonucleic acid molecule) are parts of this database, only if there is a reasonable suspicion against this person of the commission of a criminal offence that

- is punishable with five or more years of imprisonment
- can be connected to international criminality
- is committed with violence against sexual morals
- is directed against children⁴
- is committed in a serial or organised manner
- is punishable with two or more years of imprisonment and connected to drugs
- is connected to the counterfeiting of money or bonds
- is committed with weapon
- is the omission of reporting: crimes against the state, terrorism, infringement of international legal obligation, abuse of nuclear energy, money laundering, service crimes, or the preparation of terrorism.

In case of an unknown perpetrator the DNA profiles gained from the material residues found on the scene of the offence must be introduced in the database as well.

This database contains the natural personal identification data, the name and the qualification of the criminal offence(s) under the Criminal Code, the place and date of the commission of the criminal offence(s), the name of the proceeding investigation authority, the registration number of the criminal case, the identification (ID) code of the person, the DNA profile and the ID code attached to the profile. Such ID codes are needed because this database is divided into two parts. One comprises the DNA profile with its ID code and the person's ID code, while the other includes the rest of the above-mentioned data together with the person's ID code (providing the connection between the two separate databases). This system can be considered as one that fulfils the requirements of the Council Resolution of 9 June 1997 on the exchange of DNA analysis results⁵.

⁴ Meaning those under the age of 14.

⁵ Official Journal C 193, 24/06/1997 p. 0002 - 0003

All the above-mentioned databases are built on data provided by the investigation authorities, the public prosecutor's offices, the criminal courts and the bodies of the execution of punishments (see articles 2-28 of the Joint Decree of the Minister of the Interior and the Minister of Justice No. 7/2000. (II. 16.) annexed to this paper), thus they contain only such data that are introduced as results of criminal procedures.⁶

During the investigation and prosecution stage of the criminal procedure the investigation authorities and the public prosecutor's offices play a significant part. Among the investigation authorities we can find the Police, the Customs and Finance Guard and the Border Guard (see article 36 of the Criminal Procedure Code annexed to this contribution) and in our opinion the public prosecutor's office also qualifies as an investigation authority (see article 28 paragraph (3) and article 29 of the Criminal Procedure Code). In the following part of our work we would like to deal with the specific databases of the afore-mentioned authorities.

1. The Police

Under article 76 paragraph (1) of the Act of Police (34th Act of 1994, see Annex) the Police handles data at central, middle and local level on persons suspected of the commission of a criminal offence, those under criminal procedure, the injured party and other participants. The operation of the Hungarian Police is of a twofold nature, meaning that it does not only deal with matters relating to criminal justice, but also with those connected to internal security and administration. It carries out data management in both fields, therefore the criminal and the administrative database are handled separately from each other. As far as the criminal records are concerned soft intelligence and hard intelligence are divided within the database.

The database handled by the Police comprises the natural personal identification data (plus the nationality of the person if it is not Hungarian), address and wide variety of

⁶ As far as this last category is concerned, we must remark that under the joint decree (implementing the 85th Act of 1999) data (natural personal identification data and personal ID code) from the central body for administering the database of personal data and address are introduced in the central criminal database in connection with persons, whose data indicated above has changed or who has died. This is done on a monthly basis. Data are also introduced from the bodies of the Ministry of Interior dealing with cases of nationality and changing of names in case a change in such data took place (see articles 25, 27-28 of the Joint Decree of the Minister of the Interior and the Minister of Justice No. 7/2000. (II. 16.)).

criminalistic data in connection with the offence. This last group of data includes for example data supplied by the central database of offenders, material residues, traces etc. found on the crime scene, data from the database of the warrants of apprehension, specifications of unknown corpses and unusual deaths, data resulting from covert investigations, data on persons who can be connected to organised crime, data on every such person, their activities and connections, against whom international law enforcement measurements must be taken by virtue of international obligations etc. (for details and an exhaustive enumeration see article 84 points a)-s) of the Act of Police).

In order to fulfil its tasks in connection with criminal justice the Police is authorised by law (article 88 paragraphs (1)-(2) of the Act of Police) to link its criminal and administrative databases together provided that the conditions deriving from the data protection rules (see especially the 63rd Act of 1992 on the protection of personal data and the publicity of data of public interest and also the 65th Act of 1995 on the state secret and official secret) are met. This authorisation is not general, this special data management is only allowed when relating to intelligence or investigation in connection with a given offence. The Police may link its criminal databases with the databases of other investigation and law enforcement authorities (see the scheme of these databases later) under the above-mentioned conditions. For the sake of efficient law enforcement the Police is also allowed to order placing of signs in the database of the citizens' personal data and address, other administrative databases and those for the control of border traffic. This is only allowed when connected to a warrant of apprehension, prohibition of leaving place of residence, international obligation or surety.⁷ When ordering the placing of signs the Police may also request the apprehension of the concerned person or notification in case of the change of data (it is mandatory to execute the request).

Under article 81 the Police is also authorised to require data from different administrative databases (see annexed version of the Act of Police for details) in order to perform its tasks.

⁷ In Hungary a criminal procedure may take place in the absence of the defendant of foreign nationality (and he/she can return to his/her home country) in case he/she deposits a certain amount of money as surety.

Subject to article 15 paragraph (3) of the 18th Act of 2001 on Warrant of persons and objects the Police handles the database of warrant. The control of this activity from the aspect of legality is exercised by the public prosecutor's office. The content of the database depends on whether data are introduced in connection with a person, an object or a corpse (see articles 18-20 of the mentioned Act in the Annex).

2. The Border Guard

Under articles 65-77 of the 32nd Act of 1997 on the guarding of borders and the Border Guard (see Annex) the Border Guard handles the following databases:

- database for controlling the border traffic (including the placing of signs and warrants of apprehension)
- database of those committed unlawful acts
- data of persons crossing the border and the registration plates of cars
- database of those responsible for infringement of administrative regulations (Ordnungswidrigkeiten)
- database of those under the obligation of military service
- database of permissions and acquiescence of the Border Guard acting as public authority
- database of the permissions of those arriving at the border crossing area without the intention to cross the border
- database in connection with performing its tasks of criminal justice

This last type of the databases comprises mainly the same criminalistic/forensic data as what we have indicated when drawing a summary on the databases of the Police (for details see article 77 points a)-k) of the 32nd Act of 1997 in the Annex).

Data collected, stored and managed relating to the tasks of criminal justice can only be used for this sole purpose.

The Border Guard is also authorised (like the Police) to link its criminal databases with those data managing bodies which are authorised to supply personal data to the Border Guard in specific cases and in connection with its tasks of criminal justice. This

linkage must be terminated after the performance of the given task and the data gained in such way must be erased when the investigation is terminated or a judgement bearing the effect of *res iudicata* was reached (article 79 paragraph (3) of the 32nd Act of 1997).

The Border Guard also has the opportunity to require the placing of signs in administrative databases (indicating the aim of this measurement) when performing its tasks of criminal justice under international obligation or pertaining to warrants of apprehension (article 81 of the above-mentioned act).

3. The Customs and Finance Guard

In connection with its tasks of crime prevention, criminal justice, state administration and security the Customs and Finance Guard is authorised by law to handle the personal data of the suspected, those under criminal procedure, the injured party and others taking part in the criminal procedure or administrative procedure. Besides, it is also authorised to handle criminalistic/forensic type of data in connection with criminal investigation. These data are the same as those enumerated in article 84 points b), c), d), i), k), l), n) of the Act of Police (see article 36 points a)-i) of the 19th Act of 2004 on the Customs and Border Guard annexed for details). This list is a bit shorter than what we can find in the Act of Police indicating that the most important agency in the field of criminal investigation is the Police having the greatest amount of data at its disposal. This is also true when compared to the Border Guard (though a significant part of the data managed by this authority is of a diverse nature suited to the different main task of the Border Guard) or the public prosecution service (see later in this contribution).

Under article 34 paragraph (2) of the afore-mentioned act the data relating to criminal justice and state administration must be handled separately, nevertheless in article 36 paragraph (3) we can find an exception under this rule stating that the Customs and Finance Guard may link its criminal and administrative databases together in specific cases. The conditions of this are the same as what we have already outlined in the part on the Police, since comparing article 88 paragraph (1) of the Act of Police and the above-mentioned article of the Act on the Customs and Finance Guard, we can see that they comprise the same rules.

Article 40 of the 19th Act of 2004 contains an obligation of co-operation on behalf of the Police, the Border Guard and the Customs and Finance Guard in the field of criminal justice.

4. The Organised Crime Coordination Centre

This Coordination Centre is neither an investigation authority nor a body for international information exchange, rather a special agency for storing and analysing data relating to organised criminal activities and operating as a governmental agency. Its tasks are exhaustively enumerated in article 2 of the 126th Act of 2000 on the Organised Crime Coordination Centre (see Annex). It includes for example the storage, analysis and supplying of data, monitoring of parallel intelligence activities, recommending investigative measures on the basis of information it handles, monitoring possible links between data, monitoring the changes in the structure of different organised crime groups, their relationship with each other and their enterprises operating for the purpose of legalising the proceeds of crime and tendencies, making researches to help make governmental decisions.

It handles the following data:

- the natural personal identification data and other data suitable for identification of persons under intelligence (except for the personal ID code, tax code and social security code, fingerprints, portrait and DNA), who can be suspected of committing the offences listed in article 4 of the Act on the Organised Crime Coordination Centre (this list contains crimes usually associated with organised crime)
- the natural personal ID data of a person's criminal connections (partners in crime), data on the nature of the connection/partnership⁸, who can be suspected with the commission of the offences listed in article 4 of the above-mentioned act
- other data in connection with the offences enumerated in article 4, for example on the criminal procedures, intelligence launched in connection with the suspicion of those offences, the instruments and methods of the commission, the proceeds of

⁸ Meaning that the person can be suspected of receiving stolen goods (article 326 of the Criminal Code) or harbouring a criminal (article 244 of the Criminal Code).

such crime enterprises for legalising those proceeds, recommendations for measurements etc. (see article 6 of the Decree of the Government No. 70/2001. (IV. 20.)).

Data are introduced and can be demanded by the following agencies:⁹

- the National Police Headquarter (Országos Rendőr-főkapitányság, ORFK)
- the Security Service of Law Enforcement Agencies of the Ministry of the Interior/Internal Security Department of the Law Enforcement Agencies (a BM Rendvédelmi Szervek Védelmi Szolgálat)
- the Border Guard National Headquarters
- the Customs and Finance Guard National Headquarters
- the National Security Office
- the Information Office
- the National Security Special Service
- the Military Security Office
- the Military Intelligence Office.¹⁰

Question 2)

Subject to article 99 of the 80th Act of 1994 (meaning a statutory basis, see Annex) the public prosecutor's offices are authorised to handle personal data in order to fulfil their tasks in connection with criminal law, civil law, administrative law, office management, statistics and scientific research. Data relating to criminal law must be managed separately from those linked to civil or administrative law (article 99 paragraph (12) of the above-mentioned act). The public prosecutor service does not have a database consisting of (a great variety of) criminalistic data as what we have indicated when writing about the Police. However, in the field of covert investigations it is authorised to

⁹ Hereby we note that the Directive of the General Prosecutor No. 16/2001. (ÜK. 12.) contains special rules for the co-operation between the public prosecutor's offices and the Organised Crime Coordination Centre (see the part on the prosecutorial service later in this contribution).

¹⁰ The National Security Office, the Information Office and the National Security Special Service are the so-called civil national security services, while the Military Security Office and the Military Intelligence Office belong to the group of the military national security services.

handle the data of persons and data on the results of the operation, when it comes to data of criminalistic nature the public prosecutor's offices turn to the databases of the Police and other authorities and the central criminal database (see article 99 paragraph (4) and article 100 paragraph (3) point a) of the 80th Act of 1994).

The General Prosecutor may give permission to the linking of the prosecutorial database with other databases in connection with specific data for the purpose of crime prevention, law enforcement and national security.

The prosecutorial service is also in connection with the Organised Crime Coordination Centre, it introduces data to the database of the Centre and is authorised to demand data from this database (for details on this operation see the Directive of the General Prosecutor No. 16/2001. (ÜK. 12.) on the co-operation with the Organised Crime Coordination Centre annexed to this contribution).

Question 3)

In connection with the central criminal database, the following are authorised to require data (see 85th Act of 1999 as annexed):

1. The database of offenders (article 17 paragraph (1)):
 - a) courts, public prosecutor's offices, investigation authorities
 - b) the minister of justice relating to its tasks in the field of pardon, legal assistance and those prescribed in international conventions
 - c) national security services
 - d) military replacement centres
 - e) foreign courts, public prosecutor's offices, investigation authorities and international law enforcement and criminal justice bodies under the relevant domestic and international rules
 - f) the International Law Enforcement Co-operation Centre (ILECC) and other bodies of the Hungarian Republic authorised by international convention to perform the same tasks as the ILECC, both in order to provide data for those listed in point e)
 - g) bodies of the foreign security service

h) those authorised by law in connection with their tasks.¹¹

2. The database of those under coercive measures (article 24):

see the list above and article 18. In addition, the passport authorities and bodies of the Ministry of the Interior with task linked to cases of passport are also authorised to require data from this database.

3. The database of those under criminal procedure (article 29):

see the list in part 1 above, article 18 and article 19 point d; besides the bodies of the Police having tasks in connection with weaponry or road traffic, the bodies of the execution of punishments, the passport authorities and bodies of the Ministry of the Interior with task linked to cases of passport and the competent commanders of law enforcement authorities and military forces also have the right to require data.

4. The database of dactyloscopy and photographs (article 37):

see points a), c), e) and f) in part 1 above; the body executing pre-trial detention or imprisonment, the Police and bodies with tasks of foreign security and refugees in connection with identification and the bodies of the Border Guard.

5. The database of DNA profiles (article 46):

see points a), c), e), and f) in part 1 above.

For monitoring from the aspect of legality, the minister of the interior, the data protection officer, persons authorised by them and the public prosecutor who performs legal supervision has the right to inspect these databases.

Subject to article 86 paragraph (1)-(3) of the Act of Police, data may be provided for the member of the Police, the authority controlling the operation of the Police¹², the

¹¹ For more detailed enumeration in connection with specific types of data, see articles 18-19 of the aforementioned act. The list above contains only those authorities and services that are authorised to demand any of the data in the database in general.

¹² It is the public prosecutor's office, which exercises control over the legality of the investigations in a criminal procedure.

member of the Ministry of the Interior appointed by the minister, the data protection officer, those authorised by law. Besides, the investigation authority, the court, the public prosecutor's office, the national security services, the competent body of the Border Guard, of the Ministry of Foreign Affairs, of the military administration and other organisation authorised by law may ask for data from the database of the Police if relating to the performance of their tasks and provided that the purpose of this request is indicated.

We can find the same rules for the database of the Customs and Finance Guard in article 37 of the 19th Act of 2004.

As far as the database of the Border Guard is concerned, article 78 of the 37th Act of 1997 contains very similar rules; however, point i) mentions the Tax and Finance Control Office (Adó- és Pénzügyi Ellenőrzési Hivatal, APEH) as well.

Subject to article 7 of the 126th Act of 2000, data may be required from the database of the Organised Crime Coordination Centre by the authorities co-operating with the Centre¹³ and the General Prosecutor's Office. It may also mean analysis or evaluation of data (see article 7 paragraph (4) of the Directive of the General Prosecutor No. 16/2001 (ÜK. 12.)).

Under articles 178-178/A of the Criminal Procedure Code (19th Act of 1998, see Annex) the investigation authorities are authorised to make use of the criminal databases of the Police (article 178 paragraph (1)). If there is a reasonable suspicion against a person that he/she committed a given offence, then it is mandatory subject to article 178/A paragraph (2) to obtain the data of the central criminal database and – in case specific conditions are fulfilled – the data of the database managed by the Organised Crime Coordination Centre. The investigation authority has the right to obtain the data handled in the prosecutorial criminal databases and the databases of the organisation of executing punishments. These rules refer to the situation when a criminal procedure has already started.

¹³ See article 10 paragraph (1) of the Decree of the Government No. 70/2001. (IV. 20.) and also page 10 of this contribution.

We must remark that data forwarding records exist relating to the databases and a data protection officer supervises the flow of data from the aspect of legality and the data protection rules.

Question 4)

Data are introduced in the central criminal database within three days from the event serving as the base of the introduction of the data (meaning the launching of the investigation, obtaining the material residues, the becoming final (having the effect of res iudicata) of the court decision etc.).

It is also true for the rest of the databases that data are introduced in the earliest moment possible (which can be even before the start of the criminal procedure, for example in the case of proactive investigation measures) and are then updated continuously.

Question 5)

The point when data are erased from the database vary on a very wide scale depending on what kind of data is to be erased and the type of event that served as the reason for introducing data in the database. For example, as far as data in the database of offenders is concerned data of a person sentenced to imprisonment because of the commission of an intentional offence it is 15 years from the date when the offender got relieved from the consequences of conviction. If this offence was committed recklessly or with gross negligence, data must be erased after 5 years from the same date. If a person received pardon data must be erased after three years from the decision. Data of the database of those under coercive measures must be erased when the measure is terminated. Data on DNA profiles must be erased in case of termination of investigation or criminal procedure when this decision became final (bearing the effect of res iudicata). Data on covert investigations can be handled for 2 years from the end of the operation if criminal procedure was not started, but in case of conviction, for 20 years from the date when the offender got relieved from the consequences of conviction. On the other hand, -

subject to the Act of Police - data in connection with serious offences¹⁴ can be managed for 20 years anyway. Listing all the precise data would exceed the possible extent of this contribution, therefore please see the legal texts annexed for details.

Question 6)

1. The database of offenders: its aim is to record the fact or absence of conviction for the purpose of law enforcement, criminal justice, national security, ensuring the exercising of the rights of the person concerned, and the protection of others rights and safety (article 9 of the 85th Act of 1999).
2. The database of those under coercive measures: the purpose of this database is to protect the rights and the security of the person concerned and others and to enhance the quickness and effectiveness of the criminal procedures (article 20).
3. The database of those under criminal procedure: the goal is to enhance the quickness and effectiveness of criminal and other official procedures, ensuring and protecting the rights of nationals and others and the legality of the procedures (article 25).
4. The database of dactyloscopy and photographs: its purpose is to identify or exclude the suspected or others in criminal procedures, to identify the unknown deceased in administrative procedures started because of extraordinary deaths and to identify the person concerned in other official procedures or in case of identity check (article 30).
5. The database of DNA profiles: its exclusive aim is to identify or exclude those suspected of the commission of specific offences (article 38, for the offences see article 39 or the list on page 5 of this work).

¹⁴ Meaning felonies carrying 5 years or more of imprisonment

6. The use of the databases of the investigation authorities is restricted to the purpose of the given investigation authority, the relevant texts state that data collected for the purpose of law enforcement can be only be used for this purpose.

7. Subject to article 17 paragraph (1) of the 18th Act of 2001, the purpose of the database of Warrant of persons and objects is to help in finding persons and objects whose whereabouts are unknown and identifying unknown persons and corpses in order to: 1. enhance the quickness and effectiveness of criminal and other official procedures 2. protect the interests and ensure the rights of those concerned.

8. The goal of the database of the Organised Crime Coordination Centre is to enhance the fight against organised crime, the co-operation between law enforcement agencies and in concreto help in preventing, terminating and investigating certain offences (see article 4 of the 126th Act of 2000).

In practice these databases serve the same purposes, although the central criminal databases is also useful in the field of foreign security, refugee cases, cases in connection with jobs the pursuing of which require a certificate on the absence of convictions etc.¹⁵

Question 7)

Such cooperation exists; this is exercised through the International Law Enforcement Co-operation Centre (see 54th Act of 1999 on the co-operation and information exchange in the framework of the criminal information system of the European Union and the Interpol, the Joint Decree of the Ministry of the Interior and the Ministry of Finance No. 4/2002 (I. 30.) and the 54th Act of 2002 on the international co-operation of law enforcement agencies in the Annex). In the organisation of the ILECC we can find a separate Europol National Office. The personnel of the ILECC consist of so-called inner liaison officers (meaning those seconded from the Police, the Customs and Finance

¹⁵ We must remark here that the database of DNA profiles has just become operational recently.

Guard and the Border Guard) and foreign liaison officers (from foreign authorities). Under article 6 point b) of the Joint Decree, it is the task of the ILECC to coordinate the information exchange and co-operation with Europol (among others).

The information exchange with Eurojust is exercised via the prosecutor seconded to Eurojust by the General Prosecutor's Office of the Hungarian Republic. On the role of Eurojust subject to the relevant Hungarian rules, see the 130th Act of 2003 on the cooperation in criminal matters with the Member States of the European Union annexed to this contribution.

Question 8)

Special rules of data sharing are included in all the relevant acts we cited when discussing the databases as such. The general rules and principles are laid down in the 63rd Act of 1992 on the protection of personal data and the publicity of data of public interest and - as far as some qualified data are concerned - in the 65th Act of 1995 on the state secret and service secret (see Annex).

We emphasise that the right for the protection of personal data is included in our Constitution (article 59 of the 20th Act of 1949). Personal data¹⁶ can only be handled for specific purpose, practising of a specific right or performing of a specific obligation. This means that the management of the data must always be connected to the reaching of the specific purpose. Handling of personal data is only allowed if it is indispensable for the purpose of the data management, appropriate for reaching the given aim and only to the necessary extent and for the necessary period. Data relating to crime prevention and law enforcement can be managed exclusively by bodies of the state or the local government. The person concerned must always be kept informed of all the facts in connection with the management of his/her data (for details see articles 5-6 of the above-mentioned act). On the basis of such general rules details can be found in the relevant acts annexed, for example article 80 of the Police Act states that special data¹⁷ can only be handled if

¹⁶ Including every data in the field of criminal justice that can be linked to a concerned person (see article 2 point 3 of the 63rd Act of 1992)

¹⁷ Including criminal personal data defined in footnote 16

connected to the offences listed in article 84 points i)-n) and if linked to a specific offence.

Data can only be forwarded and databases can only be linked if the person concerned consented or a statutory basis exists and the conditions of handling data are all fulfilled according to every personal data (article 8 of the 63rd Act of 1992).

We must emphasise here the existence of data forwarding records.

Forwarding data to the member states of the European Union must be considered as if it took place on the territory of Hungary.

Question 9)

There are no provisions or general principles prohibiting the creation of such databases or the use of such data, however there are of course rules and principles restricting the acquisition, storage, analysis and flow of data as we have already mentioned.

Question 10)

Such exemptions exist as we have already indicated (see the obligation to inform the person concerned and the right to remedy accordingly), but we can also mention the principle of publicity of public data which can be restricted for the purpose of crime prevention and law enforcement (see article 86 paragraph (5) of the Act of Police for instance). On the other hand, for example, subject to article 89 par. (4) of the Act of Police, the Police and the concerned authority must not inform the person concerned on the placing of signs in databases.

Questions 11-12)

In our opinion data protection is the key issue according to both variations. If this problem is solved both solutions can be fruitful. Probably linking national databases would be much more cost-effective. As far as an EU database is concerned, we think that

it is essential that the credibility of the data introduced in such a system be controlled. Accountability should also be a key feature. Such a database would make the analysis of data, intelligence possible (hereby we would like to refer to Europol), which – together with the control of credibility – would constitute an added value compared to today's situation. We also think that this must not be a database comprising all types of crimes. Only data in connection with serious forms of transnational criminality (within the mandate of Eurojust or Europol) should be introduced in this database, otherwise the quantity of data would seriously undermine the effectiveness of the operation of the database.

The experts we interviewed (Mr. Zsigmond Szabó and Mr. Zoltán Péter) stated that the most important thing is not the creation of new instruments of law enforcement and international co-operation. First, the existing means should be made effective, if this condition is fulfilled, they will be satisfactory tools for the fight against transnational crime as well. The director of the ILECC referred to the fact that the Centre can supply data 24 hours a day, either via telephone or online, also to the function of Europol, SIS and the future SIS II in connection with criminal databases reflecting to the idea of creating a new one. He emphasised the importance of a computer-based encrypted system of communication and of data protection when linking national databases together. Mr. Zoltán Péter underlined the significance of personal relationships between the competent officials of the states, which makes the communication and therefore the assistance much shorter in time, much more effective and helps in increasing the sometimes very weak willingness to co-operate with foreign authorities. Both of them found it very important that before the introduction of new instruments, today's system should be made more effective, requiring – among others – the clear sharing of tasks and competences among EU bodies. None of them thought that the creation of such a database is a question of reality today.

From the legal viewpoint, the most significant obstacle of creating such a database or linking the existing ones together lies in the absence of a statute making it possible, since it is a principle in the Hungarian law that databases must not be linked. It is also very important that under the act on data protection it is crucially important that the requirements of data management be met concerning each data, which requires common

standards. The same is true for the creation of a European database, which can only be accepted if its rules of data management and accountability would meet the requirements set by Hungarian law.

Question 13)

Due to the relatively strict application of the principle of immediacy, information deriving from such databases would not be accepted as evidence by the Hungarian courts; their function would remain the support of investigations and prosecutions via the provision of soft intelligence. However, we think that such a database would help in the prevailing of the mutual recognition of evidence on a European scale.

Question 14)

As we have mentioned, our opinion is that for the sake of effectiveness such a database should be limited to serious crimes as already included in the Europol/ Eurojust mandate and in the relevant Hungarian legal texts.

Question 15)

Such safeguards should include primarily the existence of a data protection officer, a data forwarding record, that the linking of databases is forbidden and only allowed in specific cases in connection with specific data, ensuring the right to judicial remedy, that only specific officers – who are authorised by law – can have accession to such data.

Question 16)

This would be the task of the ILECC, since this authority has the means – including the safeguards – and the competence for such measures.

Question 17)

This very moment the ILEEC is entitled to access to the Eurojust database.

Question 18)

We think that Europol would be the most appropriate European agency to host such a database taking into account its present tasks and the requirement of clear-cut competences of EU agencies also emphasised by the practitioners we interviewed.

Question 19)

We think that such a database would be an effective weapon in the fight against crime but only if the existing EU instruments of criminal justice would be made much more effective (see answers to questions 11-12).

Question 20)

Data protection issues are emphasised from the side of human rights groups and the politics as well. As far as the official opinion of the political parties is concerned, we can rely on that of Mr. Balázs Horváth on behalf of the Hungarian Democratic Forum. He related to us that he would support the creation of a European database (meaning a database of the EU), but – like the practitioners we interviewed, who also mentioned the same reasons – he stated that this is unlikely to happen in the near future taking into account the personal rights and the differences in the rules and sanctions of the domestic criminal law of the members states.

Question 21)

Crime is seen as a serious problem by the media, the public. Mr. Balázs Horváth related to us that the standpoint of the Hungarian Democratic Forum is the same, but he underlined that this does not mean that crime means a much more serious problem in

Hungary than in the other member states of the EU. He also stated that reducing crime is one of their main priorities. (Unfortunately, we did not manage to get answers for the same questions from the other political parties, including those making up the government.)

Question 22)

We see no such tendency as the reduction of police powers in Hungary. We experience the opposite: the Police is trying to get rid of its tasks of state administration (and succeeds in doing so) in order to be able to allocate more of its resources to law enforcement and in addition tries to obtain more powers thus narrowing the sphere of human rights. On the other hand, we must note that the case law of the Hungarian Constitutional Court seems to be – at least partly – a trial to reach balance by declaring some rules unconstitutional that provide extensive powers for the Police. However, apart from constitutionality we can observe the mentioned tendency.

As far as the rehabilitation of ex-offenders concerned, the art. 41 par. 1 of the Regulation 17 2002 of the Minister of Justice on the Probation Service makes it possible them to help the ex-offenders if he or she requests for help. But this activity does not seem to be the integral part of the activity of the Service