



Ad-Hoc Query on Quick Scan Questions

Requested by NL EMN NCP on 29 April 2011

Compilation produced on 23 May 2011

Responses from Estonia, Finland, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovak Republic, Slovenia, Sweden, United Kingdom plus Norway (13 in Total)

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1. Background Information

By request of the Netherlands ministry of Interior and Kingdom Relations, the Free University of Amsterdam is momentarily conducting a research into the legal possibilities for the State to disclose information about a person who is legally residing in the Netherlands, to his or her foreign future partner. The aim of the request is to find ways to inform the new migrant about issues that may affect his or her wellbeing and/or integration in the Netherlands. The research must be completed by June 2011. In view of the research, which is approaching rapidly, it would be highly appreciated if you could answer these questions and return your responses before **20 May 2011**.


2. Responses

		<p>Wider Dissemination?</p>	<p>1. Is there any possibility under national law which allows the State to disclose information about antecedent's history (criminal, health, family, propriety, privacy) of an EU citizen/resident to her/his future foreigner partner living outside the EU?</p> <p>2. Does the State have regulated such disclosure?</p> <p>3. Was there any discussion about this issue on national/EU level?</p> <p>NB. The research question does not concern the right of a person to get his/her own information, but it concerns the right of a third</p>
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			party (the future foreigner partner living outside the EU) to get personal information about his/her future partner living in the EU.
	Austria	Yes	
	Belgium	Yes	
	Bulgaria	Yes	
	Cyprus	Yes	
	Czech Republic	Yes	
	Denmark	Yes	
	Estonia	Yes	1. No. 2. Disclosure of information in different registers is regulated in different legal acts, but it does not foresee disclosure of information to a future foreign partner. 3. No.
	Finland	Yes	1) No, it is not possible for the immigration authorities to disclose such information without the consent of the person concerned. Nevertheless, when conducting an interview, if the interview is necessary, such matters can occasionally be discussed with the purpose of examining the family tie but not in the sense of disclosing confidential information about the person living in Finland. It must be noted that a potential family tie (marriage), as such, is not a commonly used ground for applying for a residence permit. 2) The general regulation concerning data protection and privacy/secretcy applies. There is no specific regulation on this matter concerning immigration cases. 3) This issue has not been brought up to public discussion, probably partly because the intention to get married is not a very common ground for a residence permit in Finland.
	France	Yes	
	Germany	Yes	
	Greece	Yes	
	Hungary	Yes	
	Ireland	Yes	
	Italy	Yes	
	Latvia	Yes	No, Latvian legislative acts do not foresee disclosure of such information as any request of personal data should have legitimate



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			ground and marriage would not be considered as such ground. There has not been discussion on possibility/necessity to provide this kind of data also.
	Lithuania	Yes	<p>1. There is no such practice. However, theoretically there would be a possibility to disclose such data – without the consent of the citizen – to his/her future partner. In practice it would be possible to do it only in very exceptional cases.</p> <p>According to the Law on Legal Protection of Personal Data, such personal data could be provided only in the following cases:</p> <ol style="list-style-type: none"> 1) the data subject has given his consent; 2) a contract to which the data subject is party is being concluded or performed; 3) it is a legal obligation of the data controller under laws to process personal data; 4) processing is necessary in order to protect vital interests of the data subject; 5) processing is necessary for the exercise of official authority vested by laws and other legal acts in state and municipal institutions, agencies, enterprises or a third party to whom personal data are disclosed; 6) processing is necessary for the purposes of legitimate interests pursued by the data controller or by a third party to whom the personal data are disclosed, unless such interests are overridden by interests of the data subject. <p>The data on criminal or health history are considered to be special data, and they could be disclosed only in the following cases:</p> <ol style="list-style-type: none"> 1) the data subject has given his consent; 2) such processing is necessary for the purposes of employment or civil service while exercising rights and fulfilling obligations of the data controller in the field of labour law in the cases laid down in laws; 3) it is necessary to protect vital interests of the data subject or of any other person, where the data subject is unable to give his consent due to a physical disability or legal incapacity; 4) processing of personal data is carried out for political, philosophical, religious purposes or purposes concerning the trade-unions by a foundation, association or any other non-profit organisation, as part of its activities, on condition that the personal data processed concern solely the members of such organisation or to other persons who regularly participate in such organisation in connection with its purposes. Such personal data may not be disclosed to a third party without the data subject's consent; 5) the personal data have been made public by the data subject; 6) the data are necessary, in the cases laid down in laws, in order to prevent and investigate criminal or other illegal activities; 7) the data are necessary for a court hearing; 8) it is a legal obligation of the data controller under laws to process such data. <p>Although in theory there would be a possibility to disclose such data – without the consent of the citizen – to his future partner, in practice it would be possible to do it only in very exceptional cases.</p> <ol style="list-style-type: none"> 2. Particularly such disclosure? No. 3. Not at the national level.

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	Luxembourg	Yes	1. No, there is no possibility to disclose information about antecedent's history of an EU citizen/resident in Luxembourg to her/his future foreigner partner living outside the EU. The only persons that are entitled to obtain information are the person concerned and his heirs. 2.No. 3. At the national level the issue has never been discussed.
	Malta	Yes	
	Netherlands	Yes	
	Poland	Yes	1. NO. 2. Not applicable 3. The national provisions on personal data protection make it impossible to disclose such information. There have been no proposals to change it in the predictable future.
	Portugal	No	Personal data stored in the national database for foreigners may only be disclosed to other security forces or public services, within the officially assigned competences of either the applicant or of the supplier, when, in a given case: a) there is legal obligation or authorization to that effect, or such conveyance of information was expressly authorized by the National Authority for Data Protection; b) such data is indispensable to the applicant for the fulfilment of its assigned duties and provided the collecting and processing of such information is not inconsistent either with the ends that led to the supply of the information or with the legal obligations of SEF (Regulatory Decree 4/95 of 20/01).
	Romania	Yes	1. No. The Law no. 677/2001 on protection of persons regarding processing of personal data and free movement of these data defines "processing of personal data" as "any operation or set of operations which is done with personal data, through automated or non-automated means, such as ... disclosure to third parties by transmission, dissemination or by any other means... " The same Law states that any processing of personal data (including disclosure to third parties) can be done only in cases when the concerned person has consented expressly and unequivocally on that processing. 2. 3. N/A
	Slovak Republic	Yes	1. No., disclosing foreigner's personal data registered in the information systems of the Ministry of Interior and Police Corp is in contradiction with the Act No. 428/2002 on Protection of Personal Data and Act No. 171/1993 Coll. on the Police Force. 2. No. 3. No.
	Slovenia	Yes	
	Spain	Yes	
	Sweden	Yes	1. When a third country national applies for residence permit to live as a partner or future wife/husband to a person living in Sweden, the Migration Board controls whether the antecedent has a criminal record in Sweden. (This is not possible if they are married.) If the antecedent has a criminal record that involves serious criminality and violence towards close relatives, it is

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			<p>possible to disclose this information to the applicant and to refuse the alien a residence permit.</p> <p>A third country national can always ask that the Migration Board discloses the information given to the Board and registered in the aliens act – even if the information comes from the antecedent. When the applicant requires that the antecedent can provide for the aliens residence there could be other information about the antecedent, such as standard of living, salary etc. This information is only disclosed if the alien requires it.</p> <p>Other information about the antecedent is normally not collected and thus not disclosed.</p> <p>2. The possibility to refuse an alien residence permit on the grounds that the antecedent has a criminal record is regulated in the Swedish Aliens Act. All other disclosure of information to an alien applying for residence permit is regulated in the Public Access to Information and Secrecy Act.</p> <p>3. Sweden has a tradition of publicity of official documents; the principle of public access to official records. Disclosure of documents to the applicant provided by other party(-ies) has therefore not been an issue for debate. In addition, the legislation protecting third country nationals from being abused by an antecedent that has abused close relatives before is the result of an agreement between several political parties. The discussion concerning the development of this legislation did not focus on the matter of disclosure but rather on how to protect the (potential) victim.</p>
	United Kingdom	Yes	<p>The UK Data Protection Act (DPA) protects the personal information of any living individual, irrelevant of their nationality, and prevents us from releasing information about an individual with another person. In general we would not disclose data about one individual to another. There are exemptions under the DPA that allow us to share information in some circumstances, such as to protect the vital interests of another person but this would not apply in the circumstances you mention.</p> <p>Some specific circumstances where we might share limited information to a third party include circumstances where an individual has legitimate reason for knowing the information e.g. a victim of a serious crime requests whether the individual has been removed from the UK, a victim of crime (including domestic violence) being given limited information about the perpetrator of the crime.</p> <p>Various data sharing mechanisms exist for sharing information (e.g. fingerprints) between different government departments, including foreign EEA government.</p>
	Norway	Yes	<p>1-3 Yes.</p> <p>Section 40 forth paragraph of the Norwegian Immigration Law states that an application may be rejected if it is likely that the applicant is going to be abused by the antecedent. Section 85 of the law gives the Immigration authorities access to relevant criminal records. These records may be disclosed to the applicant if the application is rejected, or if the application is granted and the information is deemed to be of importance for the case.</p> <p>The applicant may also be granted access to information about the economic and immigration history of antecedent and her/his</p>

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			<p>family. This is relevant information in considering the application, and the Norwegian Administration Act grants the applicant access to the documents in her/his own application as the main rule. Access to information about the antecedent's health is not regulated. We do normally not ask for information about the antecedent's health, but if this information is provided we may consider that this should not be disclosed to the applicant.</p>
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