



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
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Opinion

Title

**DG JUST - Impact assessment accompanying the Proposal for a Directive amending Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States, as regards information on third country nationals and stateless people
(draft version of 8 December 2015)***

(A) Context

Efficient cooperation and exchange of information between Member States on criminal records of convicted persons is a necessary cornerstone of a functioning common area of justice and security. The existing electronic system of information exchange (ECRIS) on previous convictions handed down in the EU is based on the principle that information is centralised by the Member State of nationality. Although it functions properly for EU citizens, this system is deficient with regards to third country nationals and stateless persons (TCN) for whom information on convictions is not centralised. This leads to a situation where adequate information on the criminal history of TCN is often not available or can only be obtained by sending "blanket" requests to all Member States. The administrative burden for Member States to process such requests is estimated to €78 million per year. These costs are to a large extent unnecessary as the vast majority of requests return negative results. As a result, Member States only use ECRIS for information exchange on TCN to a very limited extent. This impact assessment analyses options for a mechanism to efficiently exchange data on convicted TCN to complement the existing ECRIS system and, as a result, bring the exchange of information on TCN up to par with that on EU citizens.

(B) Overall opinion: POSITIVE

The Board recommends that the IA report be improved, giving special attention to the following aspects:

- 1) The current framework, the overall context and all of the different aspects of the problem should be developed in more depth in the problem section.**
- 2) The figures and assumptions of the cost assessment should be transparently explained.**
- 3) The different options should be assessed in a more consistent way (against the baseline). In particular, the report should better explain the estimated higher cost for Member States of a centralised solution, including the proposed choice of a specific IT tool, as well as the rationale for discarding the use of fingerprints. It should also clarify the need for legislative changes under the preferred option, developing the reasons why the existing mechanisms cannot be further automated.**

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

1) Problem analysis. The background and context should include more information on the functioning of the current EU and international instruments, both in terms of strengths and weaknesses. It should also include a brief description of existing systems to exchange data in the field of police and judicial cooperation distinguishing between existing large scale EU IT systems such as SIS and other information exchange tools such as Prüm. (with a fuller description in an Annex). The problem definition should better explain the effectiveness of the current system and the nature and scale of the issues caused by the absence of a mechanism to share data on third country nationals (e.g. consequences of undetected recidivism, types of identification issues, including those specific to third country nationals, fundamental rights issues, etc). The report should explain why no formal evaluation was conducted.

2) Cost assessment. The limitations of the cost assessment should be presented more transparently and its assumptions further justified (e.g. equal spread of requests per Member State). The key differences between the costs of a centralised and a decentralised solution should be further explained, as some of them appear counterintuitive (e.g. lower maintenance costs for Member States in a decentralised scenario). Uncertainties should be factored in by presenting ranges rather than absolute figures. The presentation of a specific IT tool as a possible option should be further supported by an analysis demonstrating that it meets all the requirements of the system as well as a review of all available solutions.

3) Comparison of options. The options, including the baseline scenario, should be presented and assessed in a more balanced manner. Besides their costs, their benefits should also be presented. In that respect, the reliability of the identification of convicted individuals should be one key criterion for the comparison of the effectiveness of the different options. Since fingerprints seem to be a solution supported by a majority of stakeholders, their exclusion should be further justified. The extent of the legislative changes required under the preferred option should be clearly presented, together with an explanation of why these provisions will allow for a more reliable, efficient and effective identification of past convictions of third country nationals than what could be achieved by further automating the current system of "blanket" requests.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should ensure proper referencing of text quoted from external sources.

(E) RSB scrutiny process

Reference number	2012/JUST/014
External expertise used	No
Date of RSB meeting	Written Procedure (6 January 2016)