



Council of the
European Union

Brussels, 21 January 2016
(OR. en)

5438/16
ADD 2

COPEN 16
EJUSTICE 10
JURINFO 2
DAPIX 11
CODEC 54

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 20 January 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2016) 5 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Accompanying the document Proposal
for a Directive of the European Parliament and of the Council amending
Council Framework Decision 2009/315/JHA, as regards the exchange of
information on third country nationals and as regards the European
Criminal Records Information System (ECRIS), and replacing Council
Decision 2009/316/JHA

Delegations will find attached document SWD(2016) 5 final.

Encl.: SWD(2016) 5 final



Strasbourg, 19.1.2016
SWD(2016) 5 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a

Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA

{ COM(2016) 7 final }
{ SWD(2016) 4 final }

Executive Summary
Impact assessment on the proposal for a Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA
A. Need for action
Why? What is the problem being addressed?
<p>The existing electronic system (ECRIS – European Criminal Records Information System) to exchange information on previous convictions handed down against a specific person by criminal courts in the EU for the purposes of criminal proceedings and, if permitted so by national law, for other purposes, is inefficient for TCN. ECRIS does not contain a mechanism to easily identify Member States holding criminal record information on TCN. Member States wanting such information have to send 'blanket' requests to all Member States, including (the majority of) the Member States not holding the requested information. The administrative burden caused by having to respond to 'blanket' requests has been identified as the most costly element (estimated at up to €78 million) of the ECRIS workflow, if Member States were to systematically send such requests. As ECRIS is inefficient with regard to TCN, in practice, Member States do not use the full potential of ECRIS with regard to TCN. Thus, complete information on the criminal history of convicted TCN is not always available to courts, law enforcement authorities, and other administrative authorities according to national law. Other equally or more efficient information exchange channels do not exist.</p>
What is this initiative expected to achieve?
<p>General objectives:</p> <ul style="list-style-type: none"> • To improve the functioning of a common area of security and justice by improving information exchange in criminal matters. • To reduce crime and foster crime prevention (also with regard to terrorism). • To ensure equal treatment of TCN and EU nationals with regard to an efficient exchange of criminal record information. <p>Specific objectives:</p> <ul style="list-style-type: none"> • To reduce the number of unnecessary requests for TCN-related criminal record information and the resulting costs. • To increase criminal record information exchange through ECRIS with regard to TCN.
What is the value added of action at the EU level?
<p>The initiative is expected to provide for a common mechanism aiming at standardised, rapid, coordinated and efficient exchange of information on criminal convictions between Member States. This objective cannot be achieved by Member States alone but requires concerted action by all Member States. It cannot be expected that uncoordinated action at Member State level would produce sufficient effects of scale to overcome the deficiencies of the system in its current form.</p>
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
<ul style="list-style-type: none"> ➤ Option 1: maintaining the status quo. ➤ Option 2: non-legislative option: a voluntary project among Member States for a more efficient mechanism to exchange criminal record information on TCN, co-financed by the Commission.

<ul style="list-style-type: none"> ➤ Option 3 (preferred option): legislative option: a search mechanism to identify Member States holding criminal record information on TCN consisting of identity data of convicted TCN (index-filter) that can be searched by a hit-/no-hit search mechanism. The index-filter would be anonymised and distributed to all other Member States enabling them to search at their own premises. A "hit" would identify Member States holding criminal record information on a particular TCN. The complete information can then be requested through the established ECRIS. ➤ Option 4: as option 3 but the index data would be stored at a central EU-body and not be anonymised. <p>Option 3 is the preferred option because it offers a mechanism to efficiently identify Member States holding criminal record information on a particular TCN. As option 3 implies a legal obligation for all Member States, it will guarantee a common approach. Option 3 does not require the establishment of an additional EU-level system, making it more cost-efficient than option 4.</p>
<p>Who supports which option?</p> <p>All Member States support a regulatory option. A large majority of Member States can support option 3 if the additional software needed could be integrated smoothly into the existing networks at national level and financial support would be available. A few Member States support option 4. Fundamental rights stakeholders see merits in a decentralised system compared to a central one.</p>
<p style="text-align: center;">C. Impacts of the preferred option</p>
<p>What are the benefits of the preferred option (if any, otherwise main ones)?</p> <p>There are no significant direct impacts in economic, social or environmental areas.</p>
<p>What are the costs of the preferred option (if any, otherwise main ones)?</p> <p>The set-up costs estimates are:</p> <ul style="list-style-type: none"> - For the EU: €1 089 000. - For 28 Member States: €768 000. - Total set-up costs: €1 857 000. <p>The ongoing (yearly recurring maintenance and administrative) costs estimates are:</p> <ul style="list-style-type: none"> - For the EU: €668 000. - For 28 Member States: these costs are expected to gradually increase over the years, starting from €5 304 000 up to a maximum of €12 804 000. - The total on-going cost (incurred by the 28 Member States and the EU) is subsequently expected to increase gradually over the years, starting from €5 972 000 up to a maximum of €13 472 000.
<p>How will businesses, SMEs and micro-enterprises be affected?</p> <p>Not affected.</p>
<p>Will there be significant impacts on national budgets and administrations?</p> <p>See above under "costs of the preferred option".</p>
<p>Will there be other significant impacts?</p> <p>No other significant impacts.</p>
<p style="text-align: center;">D. Follow up</p>
<p>When will the policy be reviewed?</p> <p>Two years after adoption of the legal instrument.</p>