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**PROPOSAL**

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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.:	COM(2016) 7 final
Subject:	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

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Delegations will find attached document COM(2016) 7 final.

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Strasbourg, 19.1.2016  
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2016/0002 (COD)

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**

{SWD(2016) 4 final}  
{SWD(2016) 5 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Efficient cooperation between Member States and exchange of information extracted from criminal records of convicted persons is a necessary cornerstone of a properly functioning common area of justice and security.

The European Council and the Justice and Home Affairs Council of Ministers have stated on several occasions the importance of improving the existing European Criminal Records Information System (ECRIS). The Riga Statement of 29 January 2015 issued by the Justice and Home Affairs Ministers stressed that exchanging information on criminal convictions is important in any strategy to combat crime and counter terrorism<sup>1</sup>. On 20 November 2015, the Justice and Home Affairs Council of Ministers concluded that it would contribute to the criminal justice response to radicalisation leading to terrorism and violent extremism if Member States used ECRIS to its full potential and if the Commission submitted a proposal for the extension of ECRIS to cover third country nationals<sup>2</sup>. In its Conclusions on Counter-Terrorism of the same day, the Council of Ministers committed the Member States to using ECRIS to its full potential and welcomed the Commission's intention to submit by January 2016 an ambitious proposal to extend ECRIS to cover third country nationals<sup>3</sup>. The European Council of 17 and 18 December 2015 reiterated that the recent terrorist attacks demonstrated in particular the urgent need to share more information on terrorist activity, notably as regards the extension of European Criminal Records Information System (ECRIS) to third country nationals<sup>4</sup>.

Improving ECRIS is also part of the European Agenda on Security<sup>5</sup>. The Commission emphasised the added value of EU measures for exchanging information, operational cooperation and other support and undertook to accelerate the work already under way to improve ECRIS for non-EU nationals and ensure it is implemented effectively.

ECRIS is an electronic system for exchanging information on previous convictions handed down against a specific person by criminal courts in the EU for the purposes of criminal proceedings against a person and, if so permitted by national law, for other purposes. The system is based on Council Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA<sup>6</sup>.

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<sup>1</sup> Riga Statement of the European Ministers of Justice and Home Affairs of 29 January 2015, doc 5855/15.

<sup>2</sup> Conclusions of the Council of the EU on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, 20 November 2015, doc 14419/15.

<sup>3</sup> Conclusions of the Council of the EU on Counter-Terrorism of 20 November 2015, doc 14406/15.

<sup>4</sup> Conclusions of the European Council meeting of 17 and 18 December 2015, doc EUCO 28/15.

<sup>5</sup> 'European Agenda on Security' - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 28 April 2015, COM(2015)185 final.

<sup>6</sup> Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (Framework Decision), OJ L 93, 7.4.2009, p. 23, and Council Decision 2009/316/JHA of 6 April 2009 on the

The underlying principle of ECRIS is that complete information on previous convictions of an EU national can be obtained from the Member State of nationality of that person. Convicting Member States must notify information and updates related to convictions handed down against a national of another Member State to the Member State of nationality. The Member State of nationality must store this information and can thus provide exhaustive, up-to-date information<sup>7</sup> on the criminal records of its nationals upon request, regardless of where in the EU convictions were handed down.

Standardised electronic formats<sup>8</sup> allow for efficient and immediately understandable communication in all EU languages and within short deadlines<sup>9</sup>. Designated central authorities in every Member State are the contact points in the ECRIS network, dealing with all tasks such as notifying, storing, requesting and providing criminal record information.

Although it is possible to exchange information on convictions concerning third country nationals and stateless persons (hereinafter: TCN) through ECRIS today, there is no procedure/mechanism in place to do so efficiently for the following reasons:

- As TCN have no Member State of nationality, in order to obtain a complete overview of the criminal records history of a particular individual requests must be sent to all the convicting Member State(s). Generally, a requesting Member State does not know in which Member State(s) a particular TCN has previously been convicted.
- If one Member State would want to have this information, it would have to send requests to all Member States ('blanket requests'). This creates an administrative burden in all Member States, including in (the majority of) the countries not holding the requested information. The administrative burden of 'blanket requests' would amount to an estimated EUR 78 million per year if Member States were to request information each time a TCN faced conviction. The costs of replying to 'blanket requests' are not compensated by an equivalent benefit and are, in fact, lost because the majority of the replies will not return results. This is especially detrimental to smaller Member States that are required to respond to all requests without being necessarily well equipped to do so. Moreover, a flood of unnecessary requests undermines confidence in the reliability and functioning of the ECRIS network as a whole, as users may conclude that the inefficiency of ECRIS-TCN is indicative of the inefficiency of ECRIS as a whole.
- In practice, Member States avoid sending 'blanket requests' and often rely only on information stored in their own national criminal record registers. This means that complete information on the criminal records history of TCN is often not available to the responsible authorities in the Member States. In fact, although in 2014 558000

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establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA, OJ L 93, 7.4.2009, p. 33.

<sup>7</sup> Comprising information on the nature of the offence, the conviction and related sanctions or other measures.

<sup>8</sup> When exchanging criminal records information via ECRIS Member State refer to codes as laid down in tables of offences and sanctions, including the parameters relating to the degree of completion and level of participation and, where applicable, the existence of total or partial exemption from criminal liability.

<sup>9</sup> According to the Framework Decision 2009/315/JHA replies to requests for the purposes of criminal proceedings shall be transmitted immediately and in any event within 10 working days. For details, see Article 8 of Framework Decision 2009/315/JHA.

TCN were convicted in 19 Member States, only 23000 requests (from 25 Member States participating in ECRIS today) related to TCN convictions were made in ECRIS.

The objective of the proposal is fully in line with the Commission's priority of combating cross-border crime and terrorism as a common European responsibility in an Area of Freedom, Security and Justice. This is one of the initiatives of the European Agenda on Security. It will ensure that ECRIS covers both EU nationals and TCN criminal record information.

- **Consistency with existing policy provisions in the policy area**

Other EU measures envisaged in the context of information exchange and cooperation with regard to combating and preventing crime would not solve or alleviate the problem of the inefficient criminal record information exchange regarding convicted TCN. There is no alternative to improve the way of information exchange regarding criminal convictions on TCN through ECRIS by means of any other instrument of information exchange mentioned in the European Agenda of Security (such as SIS II, Prüm and Eurodac), as these are designed to serve different purposes.

- **Consistency with other Union policies**

Improving ECRIS with regard to TCN is part of the strategy outlined in the European Agenda on Security. In addition, the exchange of criminal records information supports the application of Council Framework Decision 2008/675/JHA<sup>10</sup>, which stipulates that Member States judicial authorities should, during criminal proceedings, take into account previous convictions handed down against the same person for different facts in other Member States, irrespective of the nationality of the person concerned.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The proposed legal instrument is a Directive based on Article 82(1)(d) of the Treaty on the Functioning of the European Union. Article 82(1)(d) is the legal basis for the Union's right to act in the field of judicial cooperation in criminal matters to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions. The proposed action falls squarely within this area. The proposal amends the existing EU legislation in this area.

- **Subsidiarity (for non-exclusive competence)**

Improvement of the existing system to exchange criminal record information on convicted TCN cannot be done at Member State level. A common mechanism aiming at a standardised, rapid, coordinated and efficient information exchange between Member States requires concerted action. This can neither be achieved unilaterally at Member State level nor bilaterally between Member States. It is by its nature a task to be undertaken at EU level.

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<sup>10</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, OJ L 220, 15.8.2008, p. 32.

- **Proportionality**

Efficient exchange of criminal record information is instrumental in combating cross-border crime and contributes considerably to putting into practice the principle of mutual recognition of judgments and judicial decisions in a common area of justice and security where people move freely. Action at EU level is therefore proportionate to the objectives of the initiative.

The proposed changes do not go beyond what is necessary to achieve the objective of cross-border judicial cooperation, and build on what is already applied in the existing ECRIS for EU nationals. The obligation to store TCN fingerprints is deemed necessary to ensure the more secure identification of TCN. Establishing the identity of TCN is often particularly difficult if not impossible, for example because reliable identity documents do not exist or are missing, or because of widely used common surnames.

Amongst several existing options, the most proportionate option has been chosen: a decentralised system to identify the Member State(s) holding criminal record information on TCN, based on an index-filter containing anonymised identity data of convicted TCN extracted from national criminal record registers and on a hit/no hit search mechanism. A 'hit' indicates that criminal record information on the TCN is available and shows the Member State which can provide the information. The identified Member State(s) can then be requested to provide complete information through the established ECRIS.

The system will be organised in a decentralised way. Member States will have to extract identity data from their criminal record and feed it into a separate file. Specific software will irreversibly convert the personal identity data into locks and keys, the index-filter. The index-filter will be distributed to all other Member States, enabling them to search independently at their own premises. The index-filter will thus not contain personal data, but it will allow the receiving Member States to match their own data against it and to find out whether further entries in criminal records exist in other Member States. Member States will have to send updated national index-filters to all other Member States if any data contained in the index-filters are changed or deleted.

This solution satisfactorily fulfils the objectives of the legislative proposal, as it introduces a mechanism into the ECRIS framework to efficiently identify Member States holding criminal record information on TCN. This avoids costly and inefficient 'blanket' requests and will thus eliminate the reason why Member States currently refrain from using ECRIS for TCN.

The decentralised system does not require establishing an additional layer at EU level where personal data of TCN are centralised, which does not exist for EU nationals either. It does therefore not require additional data protection and security at EU level.

- **Choice of the instrument**

The legislative text to be amended is a Framework Decision, i.e. an instrument which is binding on the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. A similar legal instrument, i.e. a directive, has therefore been chosen for the amending legislative act, since many of the obligations will have to be enacted in national law.

A directive allows the national authorities to choose the form and method of transposition, e.g. as regards the information and communication technology and the national registers to be used to extract identity data for the purpose of subsequent exchange with the other Member

States. Because Member States need to adapt their national criminal record registers to be able to deal with the new demands placed on them, a directive is more appropriate as a legal instrument than a regulation, which would be directly applicable in all Member States and leave the national authorities less flexibility.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The first report on the implementation of Council Framework Decision 2009/315/JHA will provide further information on how the existing system is working, but will not focus specifically on the exchange of information on TCN. However, consultation with the Member States has shown clearly the very limited extent to which ECRIS is currently used to exchange information on convicted TCN, and the reasons why.

- **Stakeholder consultations**

In line with the Commission's minimum standards regarding participation and openness to stakeholders views presented in the Better Regulation Guidelines<sup>11</sup>, an extensive consultation strategy has been developed to ensure a wide participation throughout the policy cycle of this initiative. This strategy was based on a mix of targeted consultations (bilateral contacts, stakeholder- and experts meetings, written consultations), providing the Commission with knowledgeable and representative options. The Commission has sought a wide and balanced range of views on this issue by giving the opportunity to all relevant parties (Member States, national authorities, lawyers and academics, fundamental right stakeholder, data protection stakeholders) to express their opinions, in particular the European Union Agency for Fundamental Rights (FRA), the European Data Protection Supervisor (EDPS) and the Art.29 Working Party composed of Member States data protection supervisory authorities.

All Member States supported a regulatory option and an index-filter-based hit/no hit mechanism. A decentralised approach gained substantial support, provided that the implementation software can be installed, integrated and maintained smoothly at Member State level and that financial support (grants) would be available. Some Member States favoured the centralised solution, as they considered that it would demand less implementation effort at Member State level, would be less costly for Member States and would better secure a common approach of the Member States. A few Member States were undecided.

Practical advantages of fingerprints with regard to the secure identification of a person were acknowledged by many Member States. Indeed, this is the only way to be sure of the identity of the person. This is extremely important since the judicial authorities are responsible for the accuracy of the information held in a criminal record. Some Member States expressed constitutional concerns and drew the attention to problems regarding the practical implementation of mandatory fingerprints in ECRIS. Many Member States' central authorities do currently not store fingerprints in their national criminal record registers and are not connected to the national automated fingerprint identification system (AFIS).Some Member

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<sup>11</sup> SWD(2015) 111

States are concerned about possible double standards for EU nationals on the one hand and TCN on the other hand. The situation is different for TCN because some of them come from countries which do not have any appropriate or any valid civil registry. Against this background, the inclusion of fingerprints becomes a priority.

Fundamental rights stakeholders acknowledged in general the positive effects of a future ECRIS-TCN system from an overall justice perspective by helping to ensure appropriate sentencing and protect children from abuse, as well as the positive effect on TCN by enabling them to prove a clean criminal record throughout the Union<sup>12</sup>. They are in favour of a decentralised system accompanied by adequate anonymisation techniques.

These stakeholders pointed out that introducing a TCN-specific system is possible from the point of view of equality, provided that it is necessary and proportionate. The EDPS considered that creating a different regime for the information to be stored and exchanged of TCN on the one hand and on nationals of the Member States on the other hand needed to be duly justified. The stakeholders drew attention to the safeguards needed to address the specific situation of TCN in the context of migration, to aspects related to the creation of an index-filter and the use of fingerprints, to the rights of the child, as well as to the rights of data subjects and to the need for effective remedies.

In that context, it should be noted that the current proposal is not meant to be a tool for regulating migration. It does not change any existing provisions and guarantees in this area. The recitals of the proposed legal instrument explicitly acknowledge respect of the guarantees contained in EU and national law on asylum and migration. These are to be upheld in the future system.

Certain crimes, such as irregular entry or stay, or travelling with false visa or travel documents are specific to TCN and the future ECRIS-TCN should not impact disproportionately on the rights of TCN convicted for such offences. The FRA suggested in this respect that convictions relating to irregular entry and stay should not be processed under ECRIS-TCN for purposes other than criminal proceedings. However, the Commission considers that the extent to which criminal record information is processed for purposes other than criminal proceedings is a matter of national law, as is currently the case for EU nationals.

Fundamental rights stakeholders acknowledged that the secure identification of TCN can be more difficult than the identification of EU nationals. However, according to the FRA, the necessity and proportionality of using fingerprints for the index-filter, as well as the alternatives of using passports and/or residence permits, and the possibilities offered by existing EU and national databases, need to be taken into account. These need to be considered in comparison to the inclusion of fingerprints of all or certain categories of TCN.

However, the proposal does provide for the mandatory storage of fingerprints of TCN in order to overcome the problems in identifying TCN. The problems are different to those encountered when identifying EU nationals, where information can be more easily gained from the Member State of nationality.

Stakeholders also identified that TCN children may be particularly exposed to risks stemming from the exchange of information on their convictions. The FRA suggested that in the light of

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<sup>12</sup> Opinion of the European Union Agency for Fundamental Rights (FRA) concerning the exchange of information on third-country nationals under a possible future system complementing the European Criminal Records Information System of 4.12.2015, FRA – 2015/1 – ECRIS.

the vulnerability of children, consideration should be given to either excluding children from the scope of ECRIS altogether or from the index-filter, or to limiting exchanges to very serious crimes committed by children. At the same time, stakeholders would like to ensure that the proposal should make it possible for employers to verify in an effective manner whether a particular TCN has been barred from exercising activities involving direct and regular contacts with children as a result of past criminal convictions.

In this context, it should be noted that ECRIS is a decentralised tool for exchanging information contained in the Member States' criminal record registers. It is up to the national law of the Member States to decide whether or not the convictions of children are entered into the national criminal records and can thus be exchanged between Member States. With regard to access to criminal record information through ECRIS during recruitment to posts involving direct and regular contacts with children, the implementation of the Directive will facilitate the verification of previous convictions of TCN in this area.

Some stakeholders referred to the need to ensure that TCN have the right to access their own data and have it rectified, since inaccurate criminal records may be more common in cases involving TCN. However, the ECRIS legal instruments only cover the exchange of criminal record information, and do not touch upon the rights of individuals to have access to data concerning themselves stored at national level. This area is governed by data protection law, both at national and EU levels.

- **Collection and use of expertise**

A feasibility study on the 'Establishment of a European Index of Convicted Third Country Nationals' provided a better understanding of future mechanism for exchanges on convicted TCN and evaluated the impact of an index from a technical, legal and organisational point of view.<sup>13</sup> A study to assess the ICT impact of the legislative proposal for an ECRIS TCN system provided an overview of the costs which the EU and the Member States would incur in implementing the various options.<sup>14</sup> Eurostat migration and population statistics provided evidence regarding the size of the problem. In-depth interviews were also held with representatives of FIU.net<sup>15</sup>, in particular on the Match software, an intelligent information and knowledge sharing program based on an anonymous index-filter and developed for FIU.net.

- **Impact assessment**

The Commission conducted an impact assessment. The links to the summary sheet and the positive opinion of the Regulatory Scrutiny Board have been inserted below:

[http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index\\_en.htm](http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm)

Three policy alternatives were examined: i) maintaining the status quo; ii) a voluntary Member State project for a more efficient mechanism to exchange criminal record

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<sup>13</sup> Project Final Report 'Feasibility Study: Establishment of a European Index of Convicted Third Country Nationals' dated 11 June 2010 ('Unisys study').

<sup>14</sup> Study on Assessment of ICT impacts of the legislative proposal for ECRIS TCN system regarding the exchange of convictions for third country nationals and stateless people (TCN) dated from 04 December 2015 ('Kurt Salmon study', to be published)

<sup>15</sup> FIU.net, located in the Netherlands, is a platform connecting Financial Intelligence Units (FIUs) from the Member States. The purpose of the FIUs is to detect and disrupt terrorist financing and money laundering activities.

information on TCN, co-financed by the Commission; and iii) legislation on 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. Two sub-options were examined for the latter alternative: either a decentralised index-filter that would be anonymised and distributed to all other Member States enabling them to search at their own premises; or an index-filter that would be stored at a central EU-body.

As regards fingerprints, three sub-options were examined: i) the mandatory storage of fingerprints for TCN and their inclusion in the index/index-filter; ii) obliging Member States to verify the identity of a TCN in existing data exchange systems based on fingerprints before using ECRIS; iii) extending ECRIS to support the voluntary use of fingerprints by Member States for TCN.

The decentralised index-filter is the preferred option because it offers a mechanism to identify efficiently which Member States hold criminal record information on a particular TCN. As it implies a legal obligation for all Member States, it will guarantee a common approach. It does not require an additional EU-level system, making it more cost-efficient than the centrally-stored index-filter. To secure effective identification of third country nationals, fingerprints should be included in the identification data to be stored in the person's criminal record and in the index-filter. Establishing the identity of TCN is often particularly difficult if not impossible, for example because reliable identity documents do not exist or are missing, or because of widely used common surnames.

There would not be any significant direct impact in economic, social or environmental areas. Businesses, SMEs and micro-enterprises would not be affected. There would be the following impact on the EU and national budgets: one-off costs for the EU of approximately EUR 1 089 000, for the Member States approx. EUR 768 000 (a total of approx. EUR 1 857 000); on-going costs for the EU of approximately EUR 668 000; for the Member States, the on-going costs are expected to gradually increase over the years, starting at EUR 5 304 000 and increasing up to a maximum EUR 12 804 000. This means that the total on-going costs are expected to increase gradually over the years, starting at EUR 5 972 000 and increasing up to maximum EUR 13 472 000. The additional cost of handling fingerprints will be approximately EUR 5 million in set up costs for the EU, and EUR 1 million in on-going costs for the EU per year. Set-up costs for Member States would range from EUR 2 million to EUR 3 million per Member State depending on the volume of TCN convictions.

Member States currently use ECRIS to search for TCN only in 5% of the cases. The benefits of the proposed solution are expected to increase the use of ECRIS considerably. If Member States were to systematically send 'blanket' requests, the administrative burden in responding to them has been identified as the most costly element (estimated up to EUR 78 million) of the ECRIS-workflow; the proposed solution saves such costs.

- **Fundamental rights**

Article 6(1) of the Treaty on European Union states that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights.

The proposed measures include legal provisions to ensure that information related to convicted third-country nationals is exchanged more efficiently. These provisions are in line with relevant

provisions of the Charter, including the protection of personal data; the principle of equality before the law; and the general prohibition of discrimination.

The proposed measures are without prejudice to the respect of the right to respect for private and family life, the right to an effective remedy and to a fair trial and the presumption of innocence. The proposed measures are also without prejudice to the respect of the principle of non-refoulement, protection in the event of removal, expulsion or extradition and other relevant standards and guarantees enshrined in EU law on asylum and borders.

The provisions do not affect fundamental rights, including the right to protection of personal data, any more than what is strictly necessary to achieve the objective judicial cooperation in criminal matters, in line with the requirements of Article 52(1) of the Charter. It builds on what is already applied in the existing ECRIS for nationals of Member States by choosing a decentralised system to identify the Member States holding criminal record information on TCN and the use of state-of-the-art data minimisation technology. The jurisprudence of the Court of Justice in the cases *Digital Rights Ireland Ltd*<sup>16</sup> and *Maximilian Schrems v. Data Protection Commissioner*<sup>17</sup> has thereby been taken into account.

Given the potential impact on fundamental rights of the use of fingerprinting, the use of anonymisation techniques and of effective tools to avoid at the same time the risk of false matches shall be ensured, thus preventing any disproportionate interference with fundamental rights, including the right to protection of personal data and the right to respect for private life.

One of the purposes of the proposed measures is to protect children from the risk of abuse and exploitation by ensuring that people who work with children undergo proper vetting procedures. This will enable employers to verify in an effective manner whether someone has been banned from activities involving direct and regular contacts with children as a result of past criminal convictions.

Member States are obliged to ensure that the provisions are implemented in full respect of fundamental rights and principles as enshrined in the Charter.

The implementation and application of the provisions on ECRIS TCN should not interfere disproportionately with migrants and asylum seekers' fundamental rights, in particular protection in the event of removal and expulsion; the right to asylum; and the protection of personal data (also in light of the need to prevent the risk of data transfers to third countries, especially as far as persons in need of international protection are concerned). The necessity and proportionality of any potential negative impact on fundamental rights should be carefully assessed according to EU law on asylum and migration.

Member States should consider allowing TCN, in certain circumstances, to request and receive criminal record certificates, using the ECRIS system, particularly in case of bona fide persons seeking employment where there are no doubts about their previous stay in other Member States.

Member States must also ensure that data subjects have the right to access data in order to have it rectified, and that effective remedies are in place to allow data subjects to challenge inaccurate criminal records, in full compliance with the standards stemming from the right to an effective remedy, including as regards the availability of legal aid, interpretation and translation services.

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<sup>16</sup> Judgement of the Court of Justice, 8.4.2014, *Digital Rights Ireland Ltd*, C-293/12, ECLI:EU:C:2014:238.

<sup>17</sup> Judgement of the Court of Justice, 6.10.2015, *Maximilian Schrems v Data Protection Commissioner*, C-362/14, ECLI:EU:C:2015:650.

When reporting on the application of the provisions, the Commission will also assess the impact of the proposed measures and of their implementation on fundamental rights. Its assessment will be based in part on an evaluation of the effect on the fundamental rights of third-country nationals in comparison with the effect on the fundamental rights of EU nationals. The Commission's review will pay particular attention to the necessity and proportionality of the use of fingerprints, other biometric data and identification data in light of the experience gained and the tools and techniques used to ensure anonymisation and avoid the risk of false matches. Any proposals for the future revision of the system must take the outcome of this assessment into account.

This proposal in no way precludes Member States' responsibilities under their national laws, including rules on entering convictions against minors and children into the national criminal record register. Similarly, it does not prevent the application of Member States' constitutional law or international agreements to which they are bound, in particular those deriving from the European Convention on Human Rights and Fundamental Freedoms, to which all Member States are party.

#### **4. BUDGETARY IMPLICATIONS**

The financial envelope foreseen for the implementation of the Directive for the period January 2017 to December 2020 is EUR 10 760 000.<sup>18</sup> The proposed envelope is compatible with the current Multi-annual Financial Framework and costs will be met through the Justice programme. The commitment profile is the result of the expected adjustments needed at EU and national level in the first three years. The maintenance costs will stabilise at EUR 1 602 000 million a year from the third year of implementation. Further details are provided in the legislative financial statement accompanying this proposal.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Two years after the legislative instrument has been adopted, the Commission will evaluate the extent to which it has been implemented in the Member States, and of the effectiveness of the actions that Member States have taken in terms of achieving the objectives set out above. On the basis of this evaluation, the Commission will decide on the appropriate follow-up.

The implementation of the Directive in the Member States will be monitored continuously by the existing ECRIS expert group. This group will also act as a forum for exchanging best practices on the exchange of information on criminal records at EU level, including information on TCN.

- **Detailed explanation of the specific provisions of the proposal**

Article 1

Point 1:

Article 1 of the Framework Decision has been extended with a view to improve the exchange of information on convictions of TCN. The purpose of the instrument now includes an

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<sup>18</sup> Details are provided in Section 3.2.1 of the legislative financial statement under the total operational appropriation table.

obligation of the convicting Member State to store criminal record information on a TCN, including fingerprints.

Point 2:

The definition of ‘convicting Member State’ in Article 1(a) of the Framework Decision has been transferred to the Article on definitions, Article 2. This definition now covers convictions, irrespective of whether they were handed down against a national of another Member State or a TCN.

A definition of ‘third country national’ is added to clarify that this group of persons includes stateless persons and persons whose nationality is not known.

Point 3:

Article 4(1) of the current Framework Decision is amended to ensure that Member States’ obligation to add the nationality (or nationalities) of a convicted person to the criminal record now also applies to the nationality or nationalities of TCN. The information on nationality is indispensable for central authorities to find out which Member State holds information on the person concerned.

Point 4:

The new Article 4a lays down the following obligations of a Member State as regards convictions on TCN handed down in its territory: an obligation to store criminal record information; the obligation to distribute to the other Member States an anonymised index-filter with identity information on the TCN convicted in its territory for the purpose of identifying the Member States holding criminal record information on a TCN; and the obligation to update the index-filter in line with any deletion or alteration of the data included in it. A Member State complies with the storage obligation even if the information is stored in another database than the criminal record database, as long as the central authority has access to the database in which the information is stored.

Finally, the Article stipulates that it applies regardless of whether a person also holds an EU nationality in order to ensure that the information can be found whether or not the additional nationality is known; his/her criminal record and the index-filter will contain the information stored in his/her quality as a national of a Member State.

Point 5:

The corresponding right of the Member States which receive the index-filter is stipulated, i.e. the right to search it.

Point 6:

Provisions of the Framework Decision have been deleted if their deadline has elapsed (paragraph 2 and the introductory part of paragraph 3), to make Article 6 more readable.

In addition, Article 6(3) puts the obligation on a Member State to supplement an extract of a criminal record for which a TCN has asked (his/her own record) with information from the other Member States in the same way that it would for EU nationals.

Point 7:

Under the newly inserted paragraph 4a of Article 7, a request for information on a TCN is treated similarly to a request for information on EU nationals; paragraphs 1 and 4a are construed in the same way. So the requested central authority has to transmit information on a conviction handed down in its Member State against the TCN plus any convictions handed down in third countries that have been entered in its criminal record.

Consequently, the reference to TCN in paragraph 4 of Article 7 of the Framework Decision has been deleted.

Point 8:

The references to personal data are extended to the new provisions on TCN.

Point 9:

Article 11(3) includes an explicit reference to the European Criminal Record Information System and to the standardised format. The first sentence of Article 11(3) has become redundant because the deadline has elapsed, and has therefore been deleted.

Article 11(5) sets out the technical obligations of Member States in relation to the tasks to be fulfilled by the Directive. This concerns both the current information exchange system and the new 'hit'/'no hit' system based on an anonymised index-filter. The technical and administrative arrangements for facilitating the exchange of information will be set out in implementing acts.

Article 11(4) governs the transmission of information if ECRIS is not available; it combines the current paragraphs 5 and 3 of Article 11. The content of the current Article 11(4) can now be found in Article 11b (implementing acts).

Article 11(5) replaces the current Article 11(5) and requires Member States to notify the Commission instead of the Council in future when they are able to use ECRIS and the new index-filter.

The current Article 11(7) is deleted and the obligation of Member States to carry out the necessary technical alterations within a fixed deadline can now be found in Article 3(3) of this Directive.

Point 10:

The new Article 11a incorporates the main points contained in Council Decision 2009/316/JHA, which established ECRIS, in order to organise the exchange of information from criminal records between the Member States.

Points 11 and 12:

A comitology procedure has been introduced to give the Commission the necessary tools in order to implement the technical aspects of the exchange of information so it will work in practice. The procedure chosen is the examination procedure. This will be used in particular to take implementing measures relating to the standardised format currently provided for in Council Decision 2009/316/JHA.

Point 13:

The new Article 13a concerns the Commission's reporting and reviewing obligations.

The current reporting requirement of Article 7 of Council Decision 2009/316/JHA, i.e. the regular report on the exchange of information through ECRIS, is incorporated into the Framework Decision (Article 13a(4)).

Article 2:

This provision replaces Council Decision 2009/316/JHA. The content of the latter has largely been incorporated in the Framework Decision and will be further taken up in implementing measures in accordance with Article 11b.

Article 3:

A transposition period of 12 months seems to be adequate given that the Commission and Member States can build on existing technology and on existing, functioning criminal records in the Member States.

Article 4 and 5:

These Articles govern the entry into force and the addressees of the Directive (the Member States).

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to the prevention and combating of crime.
- (2) This objective requires that it be possible for information on convictions handed down in the Member States to be taken into account outside the convicting Member State, both in the course of new criminal proceedings, as laid down in Council Framework Decision 2008/675/JHA<sup>19</sup>, and in order to prevent new offences.
- (3) This objective presupposes the exchange of information extracted from criminal records between the competent authorities of the Member States. Such information exchange is organised and facilitated by the rules set out in Council Framework Decision 2009/315/JHA<sup>20</sup> and by the European Criminal Record Information System

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<sup>19</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220, 15.8.2008, p. 32).

<sup>20</sup> Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

(ECRIS) which has been established in accordance with Council Decision 2009/316/JHA<sup>21</sup>.

- (4) The ECRIS legal framework, however, does not sufficiently cover the particularities of requests concerning third country nationals. Although it is now possible to exchange information on third country nationals through ECRIS, there is no procedure or mechanism in place to do so efficiently.
- (5) Information on third country nationals is not gathered within the Union in the Member State of nationality as it is for nationals of Member States, but only stored in the Member States where the convictions have been handed down. A complete overview of the criminal history of a particular individual can therefore only be ascertained if information is requested from all Member States.
- (6) Such blanket requests impose an administrative burden on all Member States, including those not holding information on the particular third country national. In practice, this negative effect deters Member States from requesting information on third country nationals and leads to Member States limiting the criminal record information on information stored in their national register.
- (7) The exchange of information on criminal convictions is important in any strategy to combat crime and counter terrorism. It would contribute to the criminal justice response to radicalisation leading to terrorism and violent extremism if Member States used ECRIS to its full potential.
- (8) The recent terrorist attacks demonstrated in particular the urgency of enhancing relevant information sharing, notably as regards the extension of ECRIS to third country nationals.
- (9) As a result, a system should be established by which the central authority of a Member State finds out quickly and efficiently in which other Member State criminal record information on a third country national is stored so that the existing ECRIS framework can then be used.
- (10) The obligations of Member States as regards convictions of third country nationals should also include fingerprints to secure identification. This obligation includes to store information, including fingerprints, to reply to requests on information from other central authorities, to ensure that a criminal record extract requested by a third country national is supplemented as appropriate with information from other Member States, and to make the technical changes to apply state-of-the-art technologies necessary to make the information exchange system work.
- (11) In order to compensate the lack of a single Member State where information on a particular third country national is stored, decentralised information technology should enable the central authorities of the Member States to find out in which other Member State criminal record information is stored. For this purpose, each central authority should distribute to the other Member States an index-filter which includes, in an

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<sup>21</sup> Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

anonymised form, the identification data of the third country nationals convicted in its Member State. The personal data should be rendered anonymous in such a way that the data subject is not identifiable. The receiving Member State may then match these data with their own information on a 'hit'/'no hit' basis, thus finding out whether or not criminal record information is available in other Member States and, in case of a 'hit', in which Member States. The receiving Member State should then follow up a 'hit' using the ECRIS framework. With respect to third country nationals who also hold the nationality of a Member State, the information included in the index should be limited to information available as regards nationals of Member States.

- (12) Council Framework Decision 2008/977/JHA<sup>22</sup> should apply in the context of computerised exchange of information extracted from criminal records of Member States, providing for an adequate level of data protection when information is exchanged between Member States, whilst allowing for Member States to require higher standards of protection to national data processing.
- (13) The common communication infrastructure used for the exchange of criminal record information should be the secure Trans European Services for Telematics between Administrations (sTESTA) or any further development thereof or any alternative secure network.
- (14) Notwithstanding the possibility of using the Union's financial programmes in accordance with the applicable rules, each Member State should bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database, and from the implementation, administration, use and maintenance of the technical alterations needed to be able to use ECRIS.
- (15) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to protection of personal data, the principle of equality before the law and the general prohibition of discrimination. This Directive should be implemented in accordance with these rights and principles.
- (16) Since the objective of this Directive, namely to enable rapid and efficient exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by reason of the necessary synergy and interoperability, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (17) In order to ensure uniform conditions for the implementation of Framework Decision 2009/315/JHA, the principles of Council Decision 2009/316/JHA should be incorporated in the Framework Decision, and implementing powers should be

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<sup>22</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council<sup>23</sup>.

- (18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (19) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

[or]

In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.

- (20) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>24</sup> and delivered an opinion on ...<sup>25</sup>.
- (21) Framework Decision 2009/315/JHA should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

Framework Decision 2009/315/JHA is amended as follows:

- (1) Article 1 is replaced by the following:

*"Article 1*

#### **Subject Matter**

This Framework Decision

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<sup>23</sup> Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

<sup>24</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1).

<sup>25</sup> OJ C ...

- (a) defines the ways in which a convicting Member State shares information on convictions with other Member States;
  - (b) defines storage obligations for the convicting Member State, and specifies the methods to be followed when replying to a request for information extracted from criminal records;
  - (c) establishes a decentralised information technology system for the exchange of information on convictions based on the criminal records databases in each Member State, the European Criminal Record Information System (ECRIS).";
- (2) in Article 2, the following points are added:
- "(d) 'convicting Member State' means the Member State where a conviction is handed down;
  - (e) 'third country national' means a national of a country other than a Member State, or a stateless person, or a person whose nationality is unknown to the Member State where a conviction is handed down against the person.";
- (3) in Article 4, paragraph 1 is replaced by the following:
- "1. Each Member State shall take the necessary measures to ensure that when convictions handed down within its territory are entered into its criminal records, information on the nationality or nationalities of the convicted person is included if the person is a national of another Member State or a third country national.";
- (4) the following article is inserted:

*"Article 4a*

**Obligations of the convicting Member State concerning convictions of third country nationals**

1. The Member State where a conviction is handed down against a third country national shall store the following information, unless, in exceptional individual cases, this is not possible:
- (a) information on the convicted person (full name, date of birth, place of birth (town and country), gender, nationality and – if applicable – previous name(s);
  - (b) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);
  - (c) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions);
  - (d) information on the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence);

- (e) the convicted person's parents' names;
  - (f) the reference number of the conviction;
  - (g) the place of the offence;
  - (h) if applicable, disqualifications arising from the conviction;
  - (i) the convicted person's identity number, or the type and number of the person's identification document;
  - (j) fingerprints of the person;
  - (k) if applicable, pseudonym and/or alias name(s).
2. The central authority shall create an index-filter containing anonymised information of the types referred to in points (a), (e), (i), (j) and (k) of paragraph 1 concerning third country nationals convicted in its Member State. The central authority shall transmit this index-filter, and any updates to it, to all Member States.
  3. Any alteration or deletion of the information referred to in paragraph 1 shall immediately entail identical alteration or deletion of the information stored in accordance with paragraph 1 and contained in the index-filter created in accordance with paragraph 2 by the central authority of the convicting Member State.
  4. Paragraph 2 and paragraph 3 apply with respect to the index-filter also regarding third country nationals who hold the nationality of a Member State, to the extent that the information referred to in points (a), (e), (i), (j) and (k) of paragraph 1 is stored by the central authority in respect of nationals of Member States.
  5. Paragraph 1 shall apply to convictions handed down after [12 months after adoption].

Paragraph 2 shall apply to information already included in the criminal record on [12 months after adoption] and to information on convictions handed down after [12 months after adoption].";

- (5) the following article is inserted:

*"Article 4b*

**Use of the index-filters**

1. For the purpose of identifying those Member States holding criminal record information on a third country national, the central authorities of the Member States may search the index-filters transmitted in accordance with Article 4a in order to match any information in these index-filters with their own information of the types referred to in Article 4a(2). The index-filters shall not be used for other purposes than those referred to in Article 6.

2. This Article applies also regarding a third country national who holds the nationality of a Member State.";

(6) Article 6 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following:

"3. Whenever a national of a Member State asks the central authority of a Member State other than the Member State of the person's nationality for information on his own criminal record, that central authority shall, provided that the person concerned is or was a resident or a national of the requesting or requested Member State, submit a request to the central authority of the Member State of the person's nationality for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.

Where a third country national who does not hold the nationality of a Member State asks the central authority of a Member State for information on his own criminal record, that central authority shall submit a request only to those central authorities of the Member States which hold information on the criminal record of this person for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.";

(7) in Article 7, paragraph 4 is replaced by the following:

"4. When information extracted from the criminal record on convictions handed down against a national of a Member State is requested under Article 6 from the central authority of a Member State other than the Member State of the person's nationality, the requested Member State shall transmit information on convictions handed down in the requested Member State to the same extent as provided for in Article 13 of the European Convention on Mutual Assistance in Criminal Matters.

4a. When information extracted from the criminal record on convictions handed down against third country nationals is requested under Article 6 for purposes of criminal proceedings, the requested Member State shall transmit information to the central authority of the requesting Member State on any conviction handed down in the requested Member State and on any conviction handed down in third countries and subsequently transmitted to it and entered in the criminal record.

If such information is requested for any purpose other than that of criminal proceedings, paragraph 2 of this Article shall apply accordingly.";

(8) Article 9 is amended as follows:

- (a) in paragraph 1, the phrase "Article 7(1) and (4)" is replaced by "Article 7(1), (4) and (4a)";
  - (b) in paragraph 2, the phrase "Article 7(2) and (4)" is replaced by "Article 7(2), (4) and (4a)";
  - (c) in paragraph 3, the phrase "Article 7(1), (2) and (4)" is replaced by "Article 7(1), (2), (4) and (4a)";
- (9) in Article 11, paragraphs 3 to 7 are replaced by the following:
- "3. Central authorities of Member States shall transmit the information referred to in Article 4, the index-filter referred to in Article 4a, requests referred to in Article 6, replies referred to in Article 7 and other relevant information electronically using ECRIS and a standardised format in accordance with the standards laid down in implementing acts.
  - 4. If the mode of transmission referred to in paragraph 3 is not available and for as long as it is not available, central authorities of Member States shall transmit all information referred to in paragraph 3, with the exception of the index-filter referred to in Article 4a, by any means capable of producing a written record under conditions allowing the central authority of the receiving Member State to establish the authenticity thereof.
  - 5. Each Member State shall carry out the necessary technical alterations to be able to use the standardised format referred to in paragraph 3 and the index-filter referred to in Articles 4a and 4b and to electronically transmit all information referred to in paragraph 3 to other Member States via ECRIS. It shall notify the Commission of the date from which it will be able to carry out such transmissions and use the index-filter referred to in Articles 4a and 4b.";
- (10) the following article is inserted:

*"Article 11a*

**European Criminal Records Information System (ECRIS)**

- 1. In order to exchange information extracted from criminal records in accordance with this Framework Decision electronically, a decentralised information technology system based on the criminal records databases in each Member State, the European Criminal Records Information System (ECRIS), is established. It is composed of the following elements:
  - (a) interconnection software built in compliance with a common set of protocols enabling the exchange of information between Member States' criminal record databases;
  - (b) index-filter software built in compliance with a common set of protocols enabling the central authorities to match their data pursuant to Articles 4a and 4b with that of other central authorities while ensuring full protection of personal data;

- (c) a common communication infrastructure between central authorities that provides an encrypted network.

ECRIS shall ensure the confidentiality and integrity of criminal record information transmitted to other Member States.

2. All criminal records data shall be stored solely in databases operated by the Member States.
3. Central authorities of the Member States shall not have direct online access to criminal records databases of other Member States.
4. The software and databases storing, sending and receiving information extracted from criminal records shall operate under the responsibility of the Member State concerned.
5. The common communication infrastructure shall be operated under the responsibility of the Commission. It shall fulfil the necessary security requirements and fully meet the needs of ECRIS.
6. The Commission shall provide the software referred to in paragraph 1, general support and technical assistance, including the collection and drawing up of statistics.
7. Each Member State shall bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and the software referred to in paragraph 1.

The Commission shall bear the costs arising from the implementation, administration, use, maintenance and future development of the common communication infrastructure of ECRIS, together with the implementation and future development of the interconnection software and the software referred to in paragraph 1.";

- (11) the following article is inserted:

*"Article 11b*

### **Implementing Acts**

1. The Commission shall lay down the following in implementing acts:
  - (a) the standardised format referred to in Article 11(3), including as regards information on the offence giving rise to the conviction and information on the content of the conviction;
  - (b) the rules concerning the technical implementation of ECRIS, the index-filter referred to in Articles 4a and 4b and the exchange of fingerprints;
  - (c) any other means of organising and facilitating exchanges of information on convictions between central authorities of Member States, including:

- (i) the means of facilitating the understanding and automatic translation of transmitted information;
    - (ii) the means by which information may be exchanged electronically, particularly as regards the technical specifications to be used and, if need be, any applicable exchange procedures.
  2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 12a(2).";
- (12) the following article is inserted:

*"Article 12a*

#### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>26</sup>.
  2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.";
- (13) the following article is inserted:

*"Article 13a*

#### **Reporting by the Commission and review**

1. By [24 months after implementation], the Commission shall submit a report on the application of this Framework Decision to the European Parliament and the Council. The report shall assess the extent to which the Member States have taken the necessary measures to comply with this Framework Decision, including the technical implementation.
2. The report shall be accompanied, where appropriate, by relevant legislative proposals.
3. The Commission services shall regularly publish a report concerning the exchange, through ECRIS, of information extracted from the criminal record based in particular on the statistics referred to in Article 11a(6). This report shall be published for the first time one year after the report referred to in paragraph 1 is submitted."

*Article 2*

### **Replacement of Decision 2009/316/JHA**

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<sup>26</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Decision 2009/316/JHA is replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for implementation of that Decision into national law.

### *Article 3*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 months after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
3. Member States shall carry out the technical alterations referred to in Article 11(5) by [12 months after adoption].

### *Article 4*

#### **Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 2 shall apply from [*the date for transposition of this Directive*]

### *Article 5*

#### **Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on operational appropriations*
  - 3.2.3. *Estimated impact on appropriations of an administrative nature*
  - 3.2.4. *Compatibility with the current multiannual financial framework*
  - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

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
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#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>27</sup>

Policy area	33	Justice and Consumers
ABB activity	33 03	Justice

#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>28</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

- |   |
|---|
| <ul style="list-style-type: none"><li>• To improve the functioning of a common area of security and justice by improving information exchange in criminal matters with regard to TCN.</li><li>• To reduce crime and foster crime prevention (also with regard to terrorism).</li><li>• To ensure equal treatment of TCN and EU nationals with regard to an efficient exchange of criminal record information.</li></ul> |
|---|

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

- |  |
|--|
| <u>Specific objective</u> <ul style="list-style-type: none"><li>• To increase the exchanges of criminal record information with regard to TCN through ECRIS.</li></ul> |
|--|

<sup>27</sup> ABM: activity-based management; ABB: activity-based budgeting.

<sup>28</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

ABM/ABB activity(ies) concerned

Activity N° 33 03

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The initiative is expected to provide for a common mechanism aiming at a standardised, rapid, coordinated and efficient information exchange between Member States. The objective to have a common mechanism for the exchange of criminal convictions cannot be achieved by Member States alone but requires concerted action of 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 current use of the system.

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

Measurement of the level of exchanges of TCN criminal record as compared to the number of convictions for TCN and convicted TCN.

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term*

Implementation of a technical mechanism which will increase the criminal record information exchanges through ECRIS with regard to TCN.

### 1.5.2. *Added value of EU involvement*

The initiative is expected to provide for a common mechanism aiming at a standardised, rapid, coordinated and efficient information exchange of criminal convictions between Member States. This objective cannot be achieved by Member States alone but requires concerted action of 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 current use of the system.

### 1.5.3. *Lessons learned from similar experiences in the past*

The ECRIS was successfully established in due time in April 2012. The intention is to apply the same best practices.

### 1.5.4. *Compatibility and possible synergy with other appropriate instruments*

See paragraphs above 'Consistency with existing and other Union policies'. The improvement of information exchange regarding criminal convictions through ECRIS cannot be replaced by any other instruments of information exchange mentioned in the agenda (such as SIS II, Prüm and Eurodac), as these are designed to serve different purposes.

## 1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
- ✓ Proposal/initiative of **unlimited duration**
  - Implementation with a start-up period from 2017 to 2018,
  - followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>29</sup>

- ✓ **Direct management** by the Commission
  - ✓ by its departments, including by its staff in the Union delegations;
  - by the executive agencies
- Shared management** with the Member States
- Indirect management** by entrusting budget implementation tasks to:
  - third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 208 and 209 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
  - *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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<sup>29</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

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## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

Regular monitoring of programme implementation is planned in accordance with the principle of sound financial management and the Commission's administrative procedures. Monitoring will include annual reporting to the management committee on progress made in implementing the supported activities.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

A continuous risk management process will be established, under the authority of the Programme management Authority.

#### *2.2.2. Information concerning the internal control system set up*

Existing control methods applied by the Commission will cover appropriations under the Programme.

#### *2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

A large number of financial and administrative control mechanisms are provided for. The Programme will be implemented through public procurement in accordance with the rules and procedures in the Financial Regulation.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

The rules and procedures of public procurement apply throughout the process; these include:

- Establishment of the work programme, subject to the opinion of the management committee, with milestones for the release of funding to ensure the controllability of achievements and costs;
- Appropriate drafting of tender specifications to ensure the controllability of achievement of the required results and of incurred costs;
- Qualitative and financial analysis of the tenders;
- Involvement of other Commission departments throughout the process;
- Verification of results and examination of invoices before payment, at several levels; and

– Internal audit.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

MFF heading	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>30</sup>	from EFTA countries <sup>31</sup>	from candidate countries <sup>32</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	33 03 02 Facilitating and supporting judicial cooperation in civil and criminal matters	Diff.	NO	NO	NO	NO
5	33 01 01 Expenditure related to officials and temporary staff in the Justice and Consumers policy area	Non-Diff.	NO	NO	NO	NO

<sup>30</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>31</sup> EFTA: European Free Trade Association.

<sup>32</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	3	Security and Citizenship
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<b>DG Justice and Consumers</b>			2017 <sup>33</sup>	2018	2019	2020				<b>TOTAL</b>
• Operational appropriations										
Number of budget line: 33 03 02 <sup>34</sup>	Commitments	(1)	3,247	3,381	1,602	1,602				<b>10,232</b>
	Payments	(2)	1,624	3,314	3,942	1,802				<b>10,681</b>
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>35</sup>										
Number of budget line:		(3)								
<b>TOTAL appropriations for DG Justice and Consumers</b>	Commitments	=1+3	3,247	3,381	1,602	1,602				<b>10,232</b>
	Payments	=2+3	1,624	3,314	3,942	1,802				<b>10,681</b>

<sup>33</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>34</sup> Member States costs for the extraction of identification information may be compensated by EU funding under the form of co-financing. In addition given that some Member States are not yet exchanging information through ECRIS, some EU funding may be foreseen for upgrading their national systems. From 2019 on, the maintenance costs are assessed to stabilise at 0.602 million per year.

<sup>35</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	3,247	3,381	1,602	1,602				<b>10,232</b>
	Payments	(5)	1,624	3,314	3,942	1,802				<b>10,681</b>
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	0,000	0,000	0,000	0,000				<b>0,000</b>
<b>TOTAL appropriations under HEADING 3</b> of the multiannual financial framework	Commitments	=4+6	3,247	3,381	1,602	1,602				<b>10,232</b>
	Payments	=5+6	1,624	3,314	3,942	1,802				<b>10,681</b>

**If more than one heading is affected by the proposal / initiative:**

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 4</b> of the multiannual financial framework (Reference amount)	Commitments	=4+6								
	Payments	=5+6								

<b>Heading of multiannual financial framework</b>	<b>5</b>	‘Administrative expenditure’						
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EUR million (to three decimal places)

		2017	2018	2019	2020				<b>TOTAL</b>
DG: Justice and Consumers									
• Human resources		0,198	0,198	0,066	0,066				<b>0,528</b>
• Other administrative expenditure		0,000	0,000	0,000	0,000				<b>0,000</b>
<b>TOTAL DG Justice and Consumers</b>	Appropriations	0,198	0,198	0,066	0,066				<b>0,528</b>

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,198	0,198	0,066	0,066				<b>0,528</b>
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EUR million (to three decimal places)

		2017 <sup>36</sup>	2018	2019	2020				<b>TOTAL</b>
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	3,445	3,579	2,068	1,668				<b>10,760</b>
	Payments	1,822	3,512	4,008	1,868				<b>11,209</b>

<sup>36</sup> Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			2017		2018		2019		2020								<b>TOTAL</b>		
	<b>OUTPUTS</b>																		
	Type <sup>37</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost	
SPECIFIC OBJECTIVE as per paragraph 1.4.2																			
- Increase the ECRIS exchanges with regard to TCN				3,247		3,381		2,002		1,602								<b>10,232</b>	
Subtotal for specific objective				3,247		3,381		2,002		1,602								<b>10,232</b>	
<b>TOTAL COST</b>				3,247		3,381		2,002		1,602								<b>10,232</b>	

<sup>37</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2017 <sup>38</sup>	2018	2019	2020					TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>									
Human resources	0,198	0,198	0,066	0,066					<b>0,528</b>
Other administrative expenditure									
<b>Subtotal HEADING 5 of the multiannual financial framework</b>									

<b>Outside HEADING 5<sup>39</sup> of the multiannual financial framework</b>									
Human resources									
Other expenditure of an administrative nature									
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>									

<b>TOTAL</b>	<b>0,198</b>	<b>0,198</b>	<b>0,066</b>	<b>0,066</b>					<b>0,528</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>38</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>39</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	2017	2018	2019	2020			
<b>• Establishment plan posts (officials and temporary staff)</b>							
XX 01 01 01 (Headquarters and Commission's Representation Offices) - <b>AD</b>	1.5	1.5	0.5	0.5			
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>40</sup></b>							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
<b>XX 01 04 yy<sup>41</sup></b>	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							
10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>	<b>1.5</b>	<b>1.5</b>	<b>0.5</b>	<b>0.5</b>			

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	The AD posts cover the management of the Programme: elaboration of the work Programme, management of the budget, management of the public calls for tender(s) associated with the execution of the Programme, management of the contract associated with the execution of the Programme, follow-up of projects, contacts with Commission services and Member State experts, organisation of expert meetings, workshops and conferences.
External staff	

<sup>40</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

<sup>41</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>42</sup>					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
Article .....									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>42</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.