

Proposal for a DIRECTIVE and for a REGULATION about the exchange of information on third country nationals (TCN) and the European Criminal Records Information System (ECRIS)  <b>IA No: HO 0293</b>  RPC Reference No: N/A  <b>Lead department or agency:</b> The Home Office  <b>Other departments:</b> N/A	<b>Impact Assessment (IA)</b>			
	Date:			
	Stage: Options			
	Source of intervention: EU			
	Type of measure: Secondary Legislation			
Contact for enquiries: X				
<b>Summary: Intervention and Options</b>				RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	In scope for One-in, Three-out (OI3O)?	Business Impact Target status
-£15.05m	£0.0m	£0.0m	N/A	N/A

**What is the problem under consideration? Why is Government intervention necessary?**  
 The European Criminal Records Information System (ECRIS) system does not provide an effective mechanism for targeted overseas criminal records requests to be made to Member States on non-EU Third Country Nationals (TCNs). There is no 'home' country to request information from so requests must be sent to all 27 Member States to capture EU-wide criminality. Currently, Member States avoid this approach and rely on information stored in national criminal registers. Government intervention is required.

**What are the policy objectives and the intended effects?**  
 The Government's objectives are to maintain public safety, and ensure fair and consistent court sentencing processes. The proposed Directive and Regulation would ensure greater access to previous convictions of TCNs as Member States would be able to check identity information against a centralised system enabling targeted ECRIS request(s) to be sent to the relevant Member State(s) and providing assurance that what is obtained has captured EU-wide criminality.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Option 1 (do nothing) The UK would not participate in the proposed Directive and Regulation on ECRIS-TCN and therefore would not be able to query the ECRIS-TCN centralised system. The UK would only be able to exchange information on TCNs using the current system.  
  
Option 2 is to participate in the proposed Directive and Regulation on ECRIS-TCN. The UK would be able to query the ECRIS-TCN centralised system to enable targeted requests to be made to relevant Member States to exchange information on TCNs more effectively via the existing decentralised ECRIS mechanism. **Option 2 is the Government's preferred option.**

<b>Will the policy be reviewed? It will not be reviewed. Review date: N/A</b>				
Does implementation go beyond minimum EU requirements?			N/A	
What sizes of organisation are affected?	Micro No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: N/A	Non-traded: N/A	

*I have read the impact assessment and am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the leading options.*

Signed by the responsible Minister: Nick Hurd MP

Date: 24/07/2018

# Summary: Analysis & Evidence

# Policy Option 2

Description: Participate in the proposed Directive and Regulation on ECRIS-TCN FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£15.05m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
<b>Best Estimate</b>	£0.14m	£2.07m	<b>£15.05m</b>

### Description and scale of key monetised costs by 'main affected groups'

The European Commission has published estimates of costs. These estimate that each Member State would incur a one-off set up cost of £0.14m. Maintenance costs are estimated to be £0.05m per Member State, per annum. The administrative cost to Member States would be £0.15k rising to £0.50k per annum. We have estimated running costs of outgoing and incoming requests of £1.60m per annum. Costs outlined in this impact assessment are used to illustrate the potential impact of the ECRIS-TCN centralised system and are not intended for the purposes of financial planning.

### Other key non-monetised costs by 'main affected groups'

Cost to the courts in considering more information; costs to prisons and probation services (due to potentially increased sentence lengths); costs to policing as overseas offending information may result in the police putting in place public protection measures; costs to immigration enforcement as increased information on offending histories could lead to increased immigration enforcement action.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low			
High			
<b>Best Estimate</b>	N/A	N/A	<b>N/A</b>

### Description and scale of key monetised benefits by 'main affected groups'

N/A a

### Other key non-monetised benefits by 'main affected groups'

The increase in usage of ECRIS to search for information relating to TCNs is likely to result in more information on the overseas offending history of TCNs being made available to the Criminal Justice System. Having more information on TCN offending allows for more consistent sentencing, increases opportunities for the police to put public protection measures in place and increases opportunities for immigration enforcement action to be taken on foreign national offenders. This presents a significant public protection benefit. In addition, opting into the measure demonstrates a desire for future EU cooperation.

### Key assumptions/sensitivities/risks

3.5%

Risk that the technical elements of the proposed ECRIS-TCN centralised system are delayed or that the development of the associated proposal on interoperability will also be delayed. As a result, the cost efficiencies from developing the ECRIS-TCN centralised system through the interoperability proposal may not be realised. The impact on court sentencing of TCNs cannot be quantified.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Business Impact Target score (£mm):
Costs: £0.0m	Benefits: £0.0m	Net: £0.0m	

**Proposal for a DIRECTIVE and for a Regulation of the EUROPEAN PARLIAMENT and of the COUNCIL amending Council Framework Decision 2009/315/JHA about the exchange of information on third country nationals and the European Criminal Records Information System (ECRIS) and replacing Council Decision 2009/316/JHA**

## **A. Strategic Overview**

### **A.1 Background**

The European Criminal Records Information System (ECRIS) was created in 2009 through EU Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA. It allows for the exchange of criminal records information across the EU. It establishes an EU-wide offending history for EU nationals in their 'home' Member State and provides the courts and law enforcement agencies with overseas criminal records information. For law enforcement agencies, criminal conviction exchange is an important tool in protecting the public, including from serious violent and sexual offenders. In terms of the Criminal Justice System, it enables the courts to take an individual's previous overseas offending into account when considering an appropriate sentence. ECRIS requests can also be made to support immigration enforcement action where no domestic prosecution is pursued.

Whilst ECRIS is well established for obtaining criminal records information in respect of EU nationals, the mechanism for exchange (a 'decentralised' Member State-to-Member State system) does not lend itself to efficient information exchange on third country (non-EU) nationals (TCNs) as there is no 'home' country to request information from. Requests must therefore be sent to all 27 Member States to capture EU-wide criminality. As a result, at present Member States only use ECRIS to obtain criminal records information on TCNs in five percent<sup>1</sup> of cases.

To improve this system, the European Commission ('the Commission') brought forward a proposal on 19 January 2016 which described placing obligations on convicting Member States to make identity information on those convicted TCNs available to other Member States. The UK opted in to the proposed Directive on 21 April 2016.

On 29 June 2017, the Commission proposed a Regulation establishing a legal basis for a centralised identification system to identify the Member State(s) that hold conviction information on TCNs ('the ECRIS-TCN centralised system'). It will require convicting Member States to load 'pseudonymised' (i.e. data with direct personal identifiers replaced by a value which does not directly identify a person - a pseudonym) alpha-numeric and fingerprint identifiers into the ECRIS-TCN centralised system which can then be queried on a 'hit/no hit' basis. The existing ECRIS decentralised mechanism is then used to request the criminal records information from the relevant Member State(s). It is important to note that the criminal conviction information itself is not to be held in the ECRIS-TCN centralised system, instead remaining in the national criminal register of the convicting Member State. The UK opted in to the proposed Regulation on 23 October 2017.

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<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 – page 9.

## A.2 Groups Affected

Public sector law enforcement agencies and judicial authorities - courts, prison service, probation service, police forces will benefit from the new proposal. TCNs who have previously been convicted of an offence in the UK and TCNs who are newly subject to criminal proceedings in the UK will also be affected.<sup>2</sup>

## B. Rationale

The current ECRIS system does not provide an effective mechanism for targeted criminal records requests to be made in respect of TCNs. Although it is possible to exchange information on TCNs through ECRIS currently, the procedure is administratively burdensome and inefficient as there is no 'home' country to request information from. As a result, 'blanket' requests must be sent to all 27 Member States to capture EU-wide criminality. In the absence of an efficient mechanism to obtain TCN conviction information across the EU, Member States often choose not to send requests and instead rely only on information stored in national criminal registers.

Due to the current limitations of the decentralised ECRIS system in respect of TCNs, at present, law enforcement and criminal justice agencies do not access the same level of historical conviction information on TCNs as for EU nationals. This negatively impacts on the ability of the police to protect the public and of the courts and other agencies to make informed decisions in relation to prosecutions and sentencing.

Enhancing the amount of criminal convictions information held by other Member States would not result in additional arrests being made in the UK, as a request for historical criminal conviction information to another Member State is only made once the individual is subject to criminal proceedings (in the UK this is determined as being at the point of arrest). However, this system would potentially increase the amount of information available to the probation services and the courts in the UK in making bail and remand decisions (custodial or otherwise). It allows for tougher sentencing, potentially resulting in a lengthening of sentence (albeit within the existing sentencing guidelines), where the initial UK criminal prosecution results in a conviction. The Council Framework Decision [2008/675/JHA](#) of 24 July 2008 on "taking account of convictions" in the EU in the course of new criminal proceedings, makes clear that Member States must ensure that previous convictions handed down in another EU country are taken into consideration under the same conditions as domestic previous convictions. The creation of the ECRIS-TCN centralised system allows for this to occur using the most efficient means possible in respect of non-EU nationals.

Overseas criminal conviction information can also be used to inform vetting processes including employment vetting checks, firearms licensing applications, residence permits, visas and naturalisation and the adoption of children or the choice of foster care parents. Without the full offending histories of TCNs, important information that could influence these decisions may not be available to the relevant agencies.

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<sup>2</sup> At the point of operation, those TCNs who have previously been convicted of an offence in the UK will have their alpha-numeric and in certain circumstances their fingerprint, proactively loaded into the ECRIS-TCN centralised system. TCNs who are subject to criminal proceedings in the UK after the proposal comes into force will have their name and fingerprint checked against the ECRIS-TCN centralised system.

## C. Objectives

The Government's objectives in this area are to maintain public safety and ensure fair and consistent court and sentencing processes. The proposed Directive and Regulation would ensure greater access to previous convictions of TCNs as Member States would be able to check identity information against a centralised system on a hit/no hit basis, enabling targeted ECRIS request(s) to be sent to the relevant Member State(s) and providing assurance that EU-wide criminality has been captured.

Having access to enhanced information on foreign national offenders can improve:

- the speed and effectiveness of joint-agency operations to tackle foreign national offending, particularly those in custody (Operation Nexus aims to maximise intelligence and information to improve law enforcement's response to foreign national offenders);
- public safety by providing more information to the police (including the effective management of offenders through mechanisms such as the Violent and Sexual Offenders Register - ViSOR) and courts so that more appropriate sentences can be imposed by considering both domestic and overseas convictions in criminal cases.

## D. Options

**Option 1** is to "do nothing" (not participate in the proposed Directive and Regulation on ECRIS-TCN). This option is included for comparative purposes. Its costs and benefits are zero.

The UK would not participate in ECRIS-TCN and therefore would not be able to query the ECRIS-TCN centralised system and would only be able to exchange information on TCNs by making 27 separate requests to all Member States each time.

**Option 2** is to participate in the proposed Directive and Regulation on ECRIS-TCN.

The UK participates in ECRIS-TCN meaning that the UK can query the ECRIS-TCN centralised system to enable targeted requests to be made to relevant Member States to exchange information on TCNs more effectively via the existing decentralised ECRIS mechanism.

## E. Appraisal (Costs and Benefits)

**OPTION 1 – Do nothing, do not participate in the proposed Directive and Regulation on ECRIS-TCN**

No costs or benefits associated in not participating (doing nothing).

## OPTION 2 – Participate in the proposed Directive and Regulation on ECRIS-TCN

### 1) COSTS FOR THE UK CENTRAL AUTHORITY

The Commission, in an Analytical Supporting Document<sup>3</sup> estimates the costs<sup>4</sup> of creating and using a centralised system under two possible variants for the ECRIS-TCN centralised system. These estimates build upon the Commission's initial 2016 Impact Assessment<sup>5</sup>. The variants in the analysis differ only in the way fingerprints are kept and processed at national level. Member States individually choose which variant they use, the UK Central Authority has opted for variant A. The costs outlined below are the Commission's estimates for variant A. Costs refer to Member State costs and not costs to the central EU contribution. The costs were determined in the course of a study carried out by an external contractor with input from Member States. These costs have been critically appraised and are considered to be reasonable.

#### Implementation - set up costs

Whilst the management and development of the technical elements of the ECRIS-TCN centralised system are expected to be overseen by eu-LISA - (the European agency for the operational management of large-scale IT systems in the area of security and justice) - there are set up costs associated with participating in the ECRIS-TCN legislation which will fall to Member States.

The Commission estimates a one-off set up cost of £3.8m<sup>6</sup>. Assuming this cost is split equally, Member States will incur a one-off set up cost of £0.14m. This cost is provided in 17/18 prices and is assumed to remain flat in real terms. These set up costs include costs for the development of the software application as well as infrastructure costs such as acquisition and set-up of hardware, software, and network connections.

#### Implementation - ongoing maintenance costs

Maintenance costs for the ECRIS-TCN centralised system falling to each Member State are estimated by the Commission to be £50,000<sup>7</sup> per year. Costs are provided in 17/18 prices and are assumed to remain flat in real terms. Maintenance costs include upkeep of software applications such as patches, bug fixing, and associated software releases.

#### Administrative costs

The Commission estimate initial administrative costs of £5.3m. When exchanges reach their maximum capacity in normal operation, administrative costs will increase to an estimated £14m<sup>8</sup>. These costs are assumed to be split amongst the 28 Member States equally. Therefore, total administrative costs for each Member State are estimated at £0.15m initially and rising to approximately £0.5m per year. These administrative costs are provided in 17/18 prices and are assumed to remain flat in real terms.

It is not possible to accurately ascertain when exchanges will reach their maximum capacity in normal operations, as this will depend on Member States' usage of the ECRIS-TCN centralised system. For

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<sup>3</sup> [https://ec.europa.eu/info/sites/info/files/analytical\\_supporting\\_document\\_accompanying\\_the\\_proposal\\_2.pdf](https://ec.europa.eu/info/sites/info/files/analytical_supporting_document_accompanying_the_proposal_2.pdf)

<sup>4</sup> All costs in this section have been published in Euros as part of the Commissions' Analytical Supporting Document. They are in 17/18 prices and the July 2017 (€1 = £0.88) exchange rate has been used.

<sup>5</sup> [https://ec.europa.eu/info/sites/info/files/ecris\\_tcn\\_impact\\_assessment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/ecris_tcn_impact_assessment_en.pdf)

<sup>6</sup> Page 9: [https://ec.europa.eu/info/sites/info/files/analytical\\_supporting\\_document\\_accompanying\\_the\\_proposal\\_2.pdf](https://ec.europa.eu/info/sites/info/files/analytical_supporting_document_accompanying_the_proposal_2.pdf)

<sup>7</sup> Page 9: [https://ec.europa.eu/info/sites/info/files/analytical\\_supporting\\_document\\_accompanying\\_the\\_proposal\\_2.pdf](https://ec.europa.eu/info/sites/info/files/analytical_supporting_document_accompanying_the_proposal_2.pdf)

<sup>8</sup> Page 10: [https://ec.europa.eu/info/sites/info/files/analytical\\_supporting\\_document\\_accompanying\\_the\\_proposal\\_2.pdf](https://ec.europa.eu/info/sites/info/files/analytical_supporting_document_accompanying_the_proposal_2.pdf)

the purpose of this analysis, we have assumed that exchanges will reach their maximum capacity one year after the deadline to implement the ECRIS-TCN centralised system.

### **Running costs**

In terms of ongoing running costs, the proposed Regulation envisages the Central Authority in each Member State interrogating the ECRIS-TCN centralised system to check where convictions are held across the EU and then subsequently sending requests to obtain the criminal records information from the relevant Member State(s) via the existing decentralised system. Consequently, the system identifies where more criminal records information is held in the EU and the UK Central Authority for the Exchange of Criminal Records Information - the ACRO Criminal Records Office (ACRO) - would send and receive more requests for information on TCNs compared to under the “do nothing option”.

### *Outgoing requests*

There are two elements to the process for making outgoing requests. The first is the initial check via the ECRIS-TCN centralised system. The second is the outgoing request via the existing decentralised system in cases where there has been a positive ‘hit’.

First, analysing the volumes of checks that the UK would expect to make via the ECRIS-TCN centralised system UK criminal justice statistics shows that 1.2m individuals were sentenced in 2017. This equates to 2 per cent of the UK population<sup>9</sup>. Assuming a similar proportion of the UK TCN population have prosecutions brought against them, we would expect to conduct an estimated 100,000<sup>10</sup> checks via the ECRIS-TCN centralised system for TCNs per year. As the initial check is automated, there will be no cost for these checks.

Second, the Commission’s analysis shows that 30 per cent<sup>11</sup> of EU nationals who come to the attention of the police (and are subject to criminal proceedings) have a criminal record elsewhere in the EU. If it is assumed that there would be a similar rate of offending for TCNs also subject to criminal proceedings, we can estimate an annual volume of 30,000 outgoing requests to other Member States per year, at a cost of £0.3m per year in 17/18 prices (£10 per request).

These estimates are uncertain as we cannot accurately estimate the number of TCNs who will have ECRIS checks performed on them and the likely ‘hit’ rate. The assumption that TCNs will have a similar hit rate to EU nationals may well be an overestimate given TCNs are likely to have spent less time in the EU than EU nationals. Also, as the UK Central Authority will no longer need to send ‘blanket’ requests to other Member States, this saving partially offsets the total costs under ECRIS-TCN. This may imply the estimated cost of £0.3m is an overestimate.

### *Incoming Requests*

There will also be further costs to the UK Central Authority in responding to requests for criminal records information from other Member States (£35 per request). This involves interrogation of the UK national criminal registers and the production of an ‘ECRIS certificate’ containing the relevant information. In 2017, the UK Central Authority received 1,800 requests from other Member States for TCNs. Given the Commission estimate that ECRIS is only used in 5 per cent of cases for TCNs, and that usage will increase when the ECRIS-TCN centralised system is introduced, the number of requests from other Member States could increase to 36,000 requests per year. The cost to the UK Central Authority in processing those requests could therefore total £1.3m. This cost will however,

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<sup>9</sup> UK population in 2017 taken from ONS data 65.2m

<sup>10</sup> Based on ONS data for non-EU population of 5.7m in 2017

<sup>11</sup> Page 35: [https://ec.europa.eu/info/sites/info/files/ecris\\_tcn\\_impact\\_assessment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/ecris_tcn_impact_assessment_en.pdf)

be partially offset by the saving realised as a result of the UK Central Authority no longer needing to respond to requests where there is no UK connection.

### Interoperability Proposal and ECRIS-TCN

The Commission have put forward an interoperability proposal which aims to create links between existing EU databases, for example enabling police officers or border guards to submit a single search which automatically checks against a number of existing systems and databases. There would be efficiency savings realised for the UK if the ECRIS-TCN centralised system is developed as part of the Commission proposal for interoperability<sup>12</sup>, as has been proposed.

### Summary - Costs for the UK Central Authority

Costs to the UK Central Authority are estimated at £1.9m in the first year increasing to £2.1m from the second year once exchanges reach their maximum capacity in normal operations. This results in a Net Present Cost (NPC) over 10 years of £15.05, using 17/18 as the price base year.

**Table E.1: Summary of costs for the UK Central Authority – Current Prices 17/18 - £millions**

Year	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32
Set-up	0.14	-	-	-	-	-	-	-	-	-
On-going maintenance	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05
Admin Costs	0.15	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
Outgoing requests	0.32	0.32	0.32	0.32	0.32	0.32	0.32	0.32	0.32	0.32
Incoming requests	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
<b>Total</b>	<b>1.90</b>	<b>2.10</b>								

**Table E.2: Summary of costs for the UK Central Authority – Present Value- 17/18 price base - £millions**

Year	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	NPV- 10 year
Set-up	0.12	-	-	-	-	-	-	-	-	-	0.12
On-going maintenance	0.04	0.04	0.04	0.04	0.04	0.04	0.03	0.03	0.03	0.03	0.36
Admin Costs	0.13	0.41	0.39	0.38	0.37	0.35	0.34	0.33	0.32	0.31	3.33
Outgoing requests	0.27	0.26	0.25	0.24	0.23	0.23	0.22	0.21	0.20	0.20	2.32
Incoming requests	1.05	1.02	0.98	0.95	0.92	0.89	0.86	0.83	0.80	0.77	9.06
<b>Total</b>	<b>1.60</b>	<b>1.71</b>	<b>1.65</b>	<b>1.59</b>	<b>1.54</b>	<b>1.49</b>	<b>1.44</b>	<b>1.39</b>	<b>1.34</b>	<b>1.30</b>	<b>15.05</b>

These costs are very uncertain, based on uncertain estimates of 'hit rates' which are unknown, and for which there is little information on which to base an estimate, other than information from EU nationals, which may not be a very good proxy. Risks are set out on page 7.

## 2) COSTS TO THE CRIMINAL JUSTICE SYSTEM (CJS)

### Cost to the courts, prisons and probation services

Courts would have previous conviction information available to them which they, in the absence of the ECRIS-TCN centralised system, would not have accessed. Knowledge of previous persistent low level or serious offending elsewhere in the EU may result in the judge handing down a custodial sentence (within existing sentencing guidelines) where a community sentence may otherwise have been given. The courts may also impose a longer custodial sentence following the sharing of historical overseas offending. In addition, where more information is provided to, for example, a

<sup>12</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212\\_proposal\\_regulation\\_on\\_establishing\\_framework\\_for\\_interoperability\\_between\\_eu\\_information\\_systems\\_police\\_judicial\\_cooperation\\_asylum\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212_proposal_regulation_on_establishing_framework_for_interoperability_between_eu_information_systems_police_judicial_cooperation_asylum_migration_en.pdf)

Magistrates' Court in England about previous offending, the Magistrate may decide to refer the case to the Crown Court, which would also invoke higher costs to the CJS. It is not possible to estimate the number of cases in which previous convictions would prove to be decisive and therefore costs have not been included.

There may also be an impact on: remand processes where evidence of multiple past crimes could increase the chances of individuals being remanded prior to trial; prisons where offenders may receive a longer sentence due to their past convictions; or probation as offenders may have stricter terms applied to a community sentence.

It is not possible to estimate with any degree of certainty what precise impact the previous offending history, when made available to the court, might have on a sentence length. The final sentence which is handed down by the courts is not solely based on the offending history of an individual but on a range of mitigating and aggravating factors which are taken into account at the sentencing stage of a criminal case. The eventual sentence given will ultimately be limited by the relevant court sentencing guidelines and the maximum possible sentence allowed for a crime.

That said, the following figures should be taken into account when looking at the downstream impacts to the Criminal Justice System. The cost of a prosecution is £6,100. This incorporates an average cost to the CPS (£700), HMCTS (£1,000), Legal aid (£2,800), Prison (£1,100) and Probation (£500). All costs are rounded to the nearest £100, are in 2013/14 prices and are estimates provided by the Ministry of Justice<sup>13</sup>.

### **Costs to policing**

Whilst ECRIS-TCN would not lead to additional arrests in the UK, overseas offending information may result in the police putting in place public protection measures for those who have already been arrested on the basis of the additional information received. For example, a person arrested for a minor crime may, following a check via the ECRIS-TCN centralised system, be revealed to have been convicted of a serious offence elsewhere in the EU that otherwise would not have been known to the police. This may lead to the police introducing monitoring of that individual more closely in the community. It is not possible to quantify the increase in police activity required resulting from overseas offending information obtained through ECRIS-TCN.

## **3) COSTS TO IMMIGRATION ENFORCEMENT**

The increase in information on EU offending histories of TCNs resulting from ECRIS-TCN could lead to an increase in immigration enforcement action. It is not possible to quantify the impact on costs to Immigration Enforcement agencies from returning additional Foreign National Offenders from the UK as a result of ECRIS-TCN. In 2017, 5,800 foreign national offenders were returned from the UK, of which 12 per cent were known to have an overseas criminal record<sup>14</sup>.

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13

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/326698/41670\\_Cm\\_8897\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/326698/41670_Cm_8897_Accessible.pdf)

<sup>14</sup> Immigration Statistics, Home Office <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/how-many-people-are-detained-or-returned>

## BENEFITS

In its impact assessment, the Commission identified a range of benefits of the ECRIS-TCN centralised system. The impact assessment emphasises the benefits of having more criminal conviction information available and how this may assist in; the investigation phases of criminal proceedings, prevention of sexual crimes involving children, administrative decisions such as licences for firearms, visas and naturalisation. For the UK, we expect the following benefits of the ECRIS-TCN centralised system to be realised:

- 1) **Increase in consistent sentencing:** Being able to effectively access the previous convictions of TCNs held within the EU ensures TCNs who are prosecuted in the UK are treated in the same way as UK and EU nationals in terms of the availability of that information. Through ECRIS-TCN, previous convictions can be made more easily available to the courts to account for previous offending when sentencing a TCN. This ensures a consistency in sentencing and a fairer application of justice.
- 2) **Increase in opportunities to put public protection measures in place:** Overseas criminal records exchange, enhanced by ECRIS-TCN, allows the UK to access the EU convictions of those TCNs residing in the UK. These can be used for public protection purposes, for instance including by monitoring the individual more closely (for example through the Violent and Sex Offender Register (ViSOR). This minimises the risk to the public of violent and sexual offenders remaining in communities without the knowledge of law enforcement.
- 3) **Increase in opportunities for removal of foreign national offenders:** Using ECRIS-TCN to request criminal conviction information in respect of TCNs can bring to light serious previous convictions. This information can be used to support immigration action, even where no domestic prosecution is pursued. This supports the Home Office objective to maintain public safety as TCNs with serious previous convictions can be removed from the UK and no longer pose a risk to the UK public.
- 4) **ECRIS and Interoperability:** The inclusion of ECRIS-TCN within the Interoperability proposal would substantially increase the number of records that could be checked against for multiple identities by the police.
- 5) **Benefits of retaining access to this EU tool:** Continuing to work with our EU partners on the development of ECRIS-TCN and seeking to participate in ECRIS-TCN supports the Government's objectives as set out in the "*Framework for the UK-EU Security Partnership*<sup>15</sup>" for an overarching agreement with the EU that supports future cooperation on security, law enforcement and criminal justice. By agreeing to participate in measures such as this, the Government is underlining the importance to the UK of EU tools in achieving a practical relationship with the EU on security cooperation after the UK leaves the EU.

### Business Impact Target

None identified

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<sup>15</sup> <https://www.gov.uk/government/publications/framework-for-the-uk-eu-security-partnership>

## F. Risks and Assumptions

### OPTION 1 – Do nothing

Previous convictions of TCNs would be unknown when encountered by law enforcement agencies given the absence of an efficient way to request the criminal record information of these individuals. This is a public protection issue and potentially leads to unbalanced sentencing (UK and EU nationals being given longer sentences based on previous convictions, whilst TCNs previous convictions are not available).

### OPTION 2 – Participate in the proposed Directive and Regulation on ECRIS-TCN

The UK would be committing to participate in a measure which may not come into force until after the UK's exit from the EU and it is unclear whether the UK will secure a deal with the EU to continue to co-operate on security and law enforcement, which includes access to ECRIS and the ECRIS-TCN centralised system. However, it is paramount to demonstrate the importance to the UK of EU tools in achieving a practical relationship with the EU on security cooperation after Brexit.

There is a risk that the development of the interoperability proposal will be delayed and that ECRIS-TCN is forced to be implemented outside of the wider system change. As a result, the potential savings from developing ECRIS-TCN within interoperability, as set out on page 8, may not be realised. This could negatively impact on the estimated costs for the UK Central Authority.

## ASSUMPTIONS & SENSITIVITIES

**Implementation and administrative costs:** Costs have used estimates provided by the Commission in their impact assessment. It is assumed that these costs will be split equally between Member States.

**Administrative costs:** The Commission state that when exchanges reach their maximum capacity in normal operations, administrative costs will increase to £0.5m. There is no way to accurately determine how long this will take. We have therefore assumed that exchanges will reach their maximum capacity one year after the deadline to implement the ECRIS-TCN centralised system.

**Estimated outgoing requests volumes:** The proportion of the UK population sentenced is the basis upon which the analysis of the number of checks which may be performed on TCNs is made. The offending rates for EU nationals has been used to estimate the number of outgoing requests which would be made. However, it is acknowledged that TCN offending rates may well be lower than assessed given TCNs would have spent less time in the EU.

**Estimate incoming requests volumes:** For the volume of incoming requests it is assumed that other Member States will use the ECRIS-TCN centralised system in 100% of cases.

Assumptions here are very uncertain, but it is likely that the assumptions used to estimate costs represent an upper estimate of costs. There is no reliable data on which to estimate a range.

## G. Enforcement

It is a matter for police forces across the UK whether to request that the UK Central Authority seeks to obtain criminal records information via ECRIS-TCN.

## H. Summary and Recommendations

Option 2 – participate in the proposed Directive and Regulation on ECRIS-TCN, **is the Government's preferred option**. ECRIS-TCN provides a more streamlined method of checking whether a TCN has a criminal record overseas. Given that at present ECRIS is used to search for TCNs in only 5 per cent of the cases, and that 30 per cent of ECRIS requests return a criminal record, the expectation is that increased usage of ECRIS to search for TCNs will mean the UK will have a more complete and accurate picture of the EU offending history of TCNs.

Despite the additional costs outlined in section E, Option 2 provides significant public protection benefits. Having more information on TCN offending can improve the investigation and prosecution of offences, allow for more consistent sentencing, increase opportunities to put public protection measures in place, increase opportunities for the removal of foreign national offenders, and increase the availability of previous convictions for use in employment vetting.

Although the terms of any future relationship, including financial obligations, are a matter for the negotiations, option 2 allows the UK to maintain our relationship with the EU. By participating in ECRIS-TCN, the UK expresses its desire for future security cooperation.

As ECRIS-TCN brings improvements to public protection, increases fairness to the Criminal Justice System and opting into the measure demonstrates a desire for future EU cooperation, it is judged that the benefits associated with Option 2 outweigh the costs.

## I. Implementation

Member States have 36 months from the date of entry into force of the proposed Directive and proposed Regulation to comply with the proposed Directive and Regulation.

## J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by the UK Central Authority with oversight by the Home Office. The Commission carry out annual reviews of ECRIS and it is expected it will continue to do so for ECRIS-TCN.

## K. Feedback

Feedback on this policy will be sought from the UK Central Authority – the ACRO Criminal Records Office.

## L. References

HM Treasury (2018) Green Book: central government guidance on appraisal and evaluation, London.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/685903/The\\_Green\\_Book.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf)

European Commission (2017) Analytical Supporting Document, Accompanying the document, Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless people (TCN) to supplement and support the European Criminal Records Information System (ECRISTCN system) and amending Regulation (EU) N° 1077/2011  
[https://ec.europa.eu/info/sites/info/files/analytical\\_supporting\\_document\\_accompanying\\_the\\_proposal\\_2.pdf](https://ec.europa.eu/info/sites/info/files/analytical_supporting_document_accompanying_the_proposal_2.pdf)

European Commission (2016) Impact Assessment, Accompanying the Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless people (TCN) to supplement and support the European Criminal Records Information System (ECRISTCN system) and amending Regulation (EU) N° 1077/2011  
[https://ec.europa.eu/info/sites/info/files/ecris\\_tcn\\_impact\\_assessment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/ecris_tcn_impact_assessment_en.pdf)

## Impact Assessment Checklist

The impact assessment checklist provides a comprehensive list of specific impact tests and policy considerations (as of October 2015). Where an element of the checklist is relevant to the policy, the appropriate advice or guidance should be followed. Where an element of the checklist is not applied, consider whether the reasons for this decision should be recorded as part of the Impact Assessment and reference the relevant page number or annex in the checklist below.

The checklist should be used in addition to [HM Treasury's Green Book guidance](#) on appraisal and evaluation in central government.

### Economic Impact Tests

Does your policy option/proposal consider...?	Yes/No
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<b>Justice Impact Test</b>  The justice impact test is a mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system. [ <a href="#">Justice Impact Test Guidance</a> ]  This has been drafted to reflect the impact assessment and has had input from the Ministry of Justice.	See Annex A i.
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<b>Statutory Equalities Duties</b>  The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [ <a href="#">Equality Duty Toolkit</a> ]  This has been drafted following drafting guidance and templates provided.	See Annex A ii.
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