



HM Government

## **Decision pursuant to Article 10(5) of Protocol 36 to The Treaty on the Functioning of the European Union**

July 2014



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Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty

July 2014

Cm 8897



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## **Introduction**

### **Article 10 of Protocol 36 to the Treaties**

Article 10 (1) to (3) of Protocol 36 to Treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union) introduced a transitional period of five years following the entry into force of the Lisbon Treaty on 1 December 2009 concerning all acts of the European Union in the field of police cooperation and judicial cooperation in criminal matters adopted prior to the entry into force of the Lisbon Treaty ('the relevant former third pillar *acquis*'). During this transitional period, the powers of the European Commission under Article 258 of the Treaty on the Functioning of the European Union are not applicable and the usual powers of the Court of Justice of the European Union do not extend, to the relevant former third pillar *acquis*.

As from 1 December 2014 these limitations will end, except where, under Article 10(2) of Protocol 36, an amendment to the measure has removed the measure from the scope of Article 10(1) of Protocol 36 and submitted the amended measure to the full powers of the Court of Justice and of the Commission earlier. This is known as 'Lisbonisation'.

### **The UK's 2014 opt-out decision under Article 10 of Protocol 36 to the Treaties**

Article 10(4) of Protocol 36 to the EU Treaties enabled the Government to decide, at the latest by 31 May 2014, whether or not the UK should continue to be bound by the relevant former third pillar *acquis*, or whether it should exercise its right to opt out *en masse*.

On 24 July 2013, following debates in both Houses of Parliament, the Prime Minister formally notified the European Council that the United Kingdom had decided to exercise its opt-out in relation to the relevant former third pillar *acquis* under Article 10(4) of Protocol 36.

Command Paper 8671

([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235912/8671.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235912/8671.pdf)) set out a list of measures that the Government considered it in the national interest for the United Kingdom to seek to rejoin. Under Article 10(5) of Protocol 36, the UK may at any time notify the Council of its wish to participate in measures which have ceased to apply to it pursuant to Article 10(4) of the Protocol.

Under Article 10(5) of Protocol 36, the Commission has responsibility to examine such requests in respect of non-Schengen measures and decide on the request of the United Kingdom. For Schengen measures, this decision is to be taken by the Council. Further details in relation to the processes for Schengen and non-Schengen are set out on page 5 and page 6 of Command Paper 8671. Article 10(5) of Protocol 36 sets out the criteria to be used by the Institutions to consider a request made by the United Kingdom. Page 4 and page 5 of Command Paper 8671 set out further details in this regard.

The Government has engaged in detailed technical level discussions with the Commission and Council on this matter. Section 3 of this Command Paper includes a list of measures which is the outcome of those discussions.

## **The Government's engagement with Parliament**

The Government has been clear throughout this process that Parliament should play a full and active role in scrutinising this matter. This Command Paper should be considered alongside the Government's previous statements and debates in Parliament, Command Paper 8671 which sets out comprehensive details of all of the measures subject to the opt-out decision, evidence provided in support of Parliamentary Inquiries, responses to those Inquiries and responses to Parliamentary Questions.

### **Parliamentary statements and debates**

On 15 October 2012 the Home Secretary announced in a statement to Parliament that the Government's current thinking was to exercise the opt-out and seek to rejoin measures that were in the national interest (Hansard 15 Oct 2012: Column 34). Communicating the proposed direction of travel on EU matters is in line with standard practice on post-Lisbon opt-in decisions to enable scrutiny of that position to take place.

On 9 July 2013 the Home Secretary reaffirmed the Government's intention to exercise the opt-out (Hansard 9 July 2013: Column 177). This statement followed consultation with operational partners, discussions with the European Commission and other Member States, detailed analysis of all the measures within scope of this decision and a number of discussions with the Departments within the Government responsible for the measures subject to the opt-out decision.

On 12 June 2013, an Opposition Day Debate was called in the House of Commons (Hansard 12 Jun 2013: Column 412). The Home Secretary responded on behalf of the Government.

On 15 July 2013 the Home Secretary set out the Government's reasons for exercising the opt-out to the House of Commons (Hansard 15 July 2013: Column 770). The motion supported by the House of Commons by a majority of 97 stated:

*'That this House believes that the UK should opt out of all EU police and criminal justice measures adopted before December 2009 and seek to rejoin measures where it is in the national interest to do so and invites the European Scrutiny Committee, the Home Affairs Select Committee and the Justice Select Committee to submit relevant reports before the end of October, before the Government opens formal discussions with the Commission, Council and other Member States, prior to the Government's formal application to rejoin measures in accordance with Article 10(5) of Protocol 36 to the TFEU.'*

On 23 July 2013 Lord McNally set out the Government's reasons to the House of Lords (23 July 2013: Column 1233). The motion supported by the House of Lords by a majority of 112 stated:

*'That this House considers that the United Kingdom should opt out of all European Union police and criminal justice measures adopted before December 2009 and should seek to rejoin measures where it is in the national interest to do so; endorses the Government's proposals in Cm 8671; and invites the European Union Committee to report to the House on the matter before the end of October, before the Government opens formal discussions with the Commission, Council and other Member States prior to the Government's formal application to rejoin measures in accordance with Article 10(5) of Protocol 36 to the Treaty on the functioning of the European Union.'*

On 7 April 2014 the Government held a General Debate in the House of Commons to update Parliament on the progress negotiations with the Commission and other Member States (Hansard 7 April 2014: Column 24). The Justice Secretary responded on behalf of the Government.

On 8 May 2014 the Government held a General Debate in the House of Lords (Hansard 8 May 2014: Column 1585). Lord Taylor responded on behalf of the Government.

## Command Paper 8671

On 9 July the Government published Command Paper 8671 - Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union. This 155 page document set out details of all the measures that remain subject to this decision and highlighted 35 measures that the Government would negotiate with the Commission and Council to seek to rejoin.

### Evidence provided in support of Parliamentary inquiries

On 28 November 2012 the Security Minister James Brokenshire provided evidence to the European Scrutiny Committee (ESC) and answered thirty-five questions relating to the opt-out.

On 14 December 2012 the Government provided twelve pages of written evidence to the House of Lords EU Committee's Inquiry into the opt-out. This evidence provided detailed information on the use made of measures such as the European Arrest Warrant, Article 40 of the Schengen Convention, the Mutual Legal Assistance Convention, Freezing Orders, Europol, Joint Investigation Teams, Eurojust, ECRIS and the Prison Transfer Framework Decision. It also included evidence on the measures that the UK was yet to implement in full, the process for rejoining measures, the potential effects of ECJ jurisdiction over the measures in question and potential alternative arrangements for cross-border cooperation.

On 13 February 2013 the Home Secretary and Justice Secretary provided oral evidence to the House of Lords EU Committee and answered thirty-four questions on a number of topics related to the opt-out decision.

On 26 June 2013 the Security Minister James Brokenshire attended a House of Lords EU Committee seminar to support the publication of its report: *EU police and criminal justice measures: The UK's 2014 opt-out decision*. During this seminar the Security Minister set out the Government's current position on its consideration of this matter in discussion with members of the House of Lords EU Committee, Emma Reynolds MP, Helen Malcolm QC and Martin Howe QC.

In October 2013 the Government submitted three pages of written evidence to support the reopened House of Lords EU Committee's Inquiry. This evidence set out details of the reforms the Government has made to the European Arrest Warrant.

In October 2013 the Government submitted eight pages of written evidence to support the Home Affairs Committee Inquiry into this matter. This provided further data and information on Eurojust, Europol, ECRIS, Naples 2, Joint Investigation Teams and the European Arrest Warrant.

In October 2013 the Government submitted four pages of written evidence to support the Justice Select Committee Inquiry. This provided further information on the Prisoner Transfer Framework Decision, the European Supervision Order, the Mutual Recognition of Financial Penalties measure and the Data Protection Framework Decision.

On 9 October 2013 the Home Secretary and Justice Secretary appeared before the House of Lords EU Committee and answered seventeen questions on the Government's reasons for not seeking to rejoin individual measures.

On 10 October 2013 the Home Secretary and Justice Secretary appeared before the European Scrutiny Committee and answered eighty-six questions. These covered a range of topics, including the Government's concerns about the threats of ECJ jurisdiction, and set out details of the Government's reasons for seeking to rejoin the 35 measures set out in Command Paper 8671.

On 15 October 2013 the Home Secretary appeared before the Home Affairs Committee and answered ten questions including detailed questions on Europol and the reforms to the European Arrest Warrant.

On 16 October 2013 the Justice Secretary provided evidence to the Justice Select Committee and answered thirty-eight questions relating to the opt-out, including some detailed questions on the Framework Decisions on prisoner transfer, probation and alternative sanctions, and data protection.

On 31 December 2013 the Government provided responses to the following four Parliamentary Inquiries:

- European Scrutiny Committee report: The UK's block opt-out of pre-Lisbon criminal law and policing measures.
- Home Affairs Committee Inquiry on Pre-Lisbon Treaty EU police and criminal justice measures: the UK's 2014 opt-in decision
- House of Lords EU Committee Inquiry on the UK's 2014 opt-out decision
- Justice Select Committee report: Ministry of Justice measures in the JHA block opt-out

On 6 April 2014 the Government published a response to the Joint Report from the European Scrutiny, Home Affairs and Justice Select Committees on the opt-out.

Ministers have had further discussions and correspondence with individual Members of Parliament and peers, and have responded to over 300 Parliamentary Questions in relation to this issue since 2011.



## **Outcome of discussions with the European Commission and Council of Ministers**

### **Non-Schengen Measures**

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- Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime
- Council Decision 2000/375/JHA to combat child pornography on the internet
- Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders
- Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes
- Council Decision 2000/641/JHA of 17 October 2000 establishing a secretariat for the joint supervisory data-protection bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)
- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
- 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
- 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
- Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network
- Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime
- Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime
- Council Decision 2003/659/JHA amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime
- Council Decision 2009/371/JHA establishing the European Police Office (Europol)
- Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information
- Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files
- Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information
- Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions of supervision measures as an alternative to provisional detention

- Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System (FADO)
- Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of Member States in respect of exchanging information
- Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension
- Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension
- Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime
- Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
- Council Act of 18 December 1997 drawing up the Convention on mutual assistance and cooperation between customs administrations (Naples II)
- Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement in the European Union
- Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union
- 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
- Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial

## Schengen Measures

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- 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.
- Convention implementing the Schengen Agreement of 1985: Article 39 to the extent that that this provision has not been replaced by Council Framework Decision 2006/960/JHA, Article 40, Article 42 and 43 (to the extent that they relate to article 40), Article 44, Article 46, Article 47 (except (2)(c) and (4)), Article 54, Article 55, Article 56, Article 57, Article 58, Articles 59 to 69 (to the extent necessary in relation to the Associated EFTA States) Article 71, Article 72, Article 126, Article 127, Article 128, Article 129, Article 130, and Final Act - Declaration N° 3 (concerning article 71(2))

- Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders
- Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)
- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II

## **Impact Assessments**

### Introduction

1. Impact Assessments (IA) have been undertaken for all the measures that the Government is seeking to rejoin. IAs seek to present the evidence base supporting the rationale for intervention and estimate the likely costs and benefits of proposals.
2. For the purposes of these IAs, it has been assumed that the UK will be fully compliant with and have fully implemented all measures by 1 December 2014, as this is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end.
3. All IAs follow the procedures set out in the Impact Assessment Guidance and are consistent with the HM Treasury Green Book.

## **Home Office Impact Assessments**

- Genval (Joint Action)
- FADO
- Financial Intelligence Units
- Indecent Images Of Children
- Football Disorder
- European Arrest Warrant & Second Generation Schengen Information System (SIS II)
- Joint Investigation Teams
- Eurojust
- Asset Recovery Office and Swedish Initiative
- Confiscation Orders
- European Judicial Network
- ECRIS
- Europol
- Policing and Criminal Justice aspects of the Schengen Convention

<b>Title:</b> Impact Assessment on Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (OJ L 344, 15.12.1997) <b>IA No: HO 0123</b> <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 24/06/2014
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> EU
	<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
Negligible	N/A	N/A	N/A	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Organised crime operates with disregard for national borders, often networking with foreign criminal organisations to facilitate further criminal activity. Additionally, the advance of globalisation has increased the activity of foreign crime syndicates in the United Kingdom. Government intervention is required to ensure an effective exchange of best practice when dealing with organised crime across the EU.

**What are the policy objectives and the intended effects?**  
The Government's objectives are to:

- Tackle cross border crime.
- Share information across borders where it may disrupt cross-border organised crime.
- Implement an effective/timely process to better coordinate the fight against organised crime.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Base case (Option 0)** – Do not seek to rejoin. The UK will not be involved in the peer evaluation exercise. The UK could still be a part of the working group in which evaluation reports are discussed. However, the UK would have no power to influence the report at these meetings.  
**Option 1** – Seek to rejoin. The UK will continue to have influence in the process, showcasing UK systems that other Member States without the same capabilities can seek to emulate in the future. Our own evaluation will test whether there are areas for improvement. We will also have influence over the final report as the UK will be actively involved in the drafting process.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister:

Karen Bradley MP

Date: 24 June 2014

Description: Seek to rejoin this Peer Evaluation exercise

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2013/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£)		
			Low: N/A	High: N/A	Best Estimate: Negligible

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
Best Estimate	N/A		Negligible	Negligible

**Description and scale of key monetised costs by ‘main affected groups’**

The evaluations are wholly funded by the Council Secretariat. However, internal estimates show that the UK spends about £1,000 every two years (2012/13 costs at 2013/14 prices) on administrative costs relating to the visit of evaluation experts.

**Other key non-monetised costs by ‘main affected groups’**

There are no key non-monetised costs to this measure.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no key monetised benefits that can be identified with this measure.

**Other key non-monetised benefits by ‘main affected groups’**

The production of country reports and the final report of the evaluation cycle (every two years) will give an assessment of the effectiveness of the fight against cross-border organised crime and recommendations to address any shortcomings. This will promote the exchange of best-practice between European law-enforcement agencies, and prosecuting authorities. The exchange of best practice will allow Member States to learn from each other and also check that weaknesses and oversights can be corrected. It will also create a culture of continuous improvement for Member States to address any shortcomings.

**Key assumptions/sensitivities/risks**

**Discount rate** 3.5%

It is assumed that the cost of hosting the European experts will not increase or decrease significantly over the next 10 years. Any change in these costs will have an impact upon the total costs of this measure.

**BUSINESS ASSESSMENT (Option 1)**

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: £0	Benefits: £0	Net: £0		

## **Evidence Base (for summary sheets)**

### **1. INTRODUCTION**

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (OJ L 344, 15.12.1997), referred to hereafter as the Joint Action. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

Joint Action 97/827/JHA of 5 December 1997 established a mechanism for evaluating the application and implementation at a national level of international undertakings in the fight against organised crime.

The peer evaluation mechanism enables Member States to evaluate the application and implementation, by other Member States, of instruments designed to combat international organised crime. A review takes two to three years to complete and it covers all the EU Member States. The process involves agreement on a questionnaire relating to the topic being evaluated by all the Member States. These topics can be an EU instrument or organisation such as Eurojust or Europol. This is followed by a short visit to the Member States by an evaluation team of experts from selected Member States, to conduct interviews with national experts.

The Evaluation Team comprises of a small number of experts drawn from the Member States, a representative of other EU Agencies and a representative from the Council Secretariat. The whole exercise is coordinated by the Council Secretariat and they prepare a final report that is discussed at the GENVAL working group.

### **2. GROUPS AFFECTED**

The groups that would be affected by the policy include:

- EU Member States, in particular their law enforcement and prosecuting agencies.

### **3. RATIONALE FOR INTERVENTION**

Organised crime operates with disregard for national borders, often networking with foreign criminal organisations to facilitate further criminal activity. Additionally, the advance of globalisation has increased the activity of foreign crime syndicates in the United Kingdom. Therefore, Government intervention aiming to tackle international organised crime through EU cooperation by exchange of best practice is required as part of a wider effort to address this phenomenon. Opting in to the Joint Action exercise will help the UK to exchange best practice with other Member States, improving law enforcement capabilities.



#### **4. OBJECTIVES**

The Government's objectives are to:

- Tackle cross border crime.
- Share information and best practice where it could help to disrupt cross-border organised crime.
- Implement an effective and time-conscious process to better coordinate the fight against organised crime.

#### **5. Base case (Option 0) – Do nothing**

The UK will not be involved in the peer evaluation exercise. The UK could still be a part of the working group in which evaluation reports are discussed. However, this would be mostly without merit; as the UK would have no power at these meetings.

The Council Secretariat will continue to fund the exercise and it is not expected that the UK will receive any refund. The Council Secretariat funds the travel and expenses of the evaluation experts and their staff conducting the peer evaluation exercise. This will come from the general budget of the Council Secretariat.

We will not directly benefit from the exchange of best practice to identify any possible deficiencies of EU measures or institutions. The evaluation process would not take into account the particular way in which the UK operates, in part due to a lack of understanding of our systems and institutions but also because the UK would not be contributing to the process.

#### **6. OPTION 1: OPT IN**

The UK will continue to influence the process, showcasing UK systems that other Member States without the same capabilities can aim to emulate in future. Evaluation of the UK will test whether there are areas for improvement domestically. We will also have influence on the content of the final report as the UK will be actively involved in the drafting process. The Council Secretariat funds the whole exercise. If we opt back in we will only be evaluated for those measures that the UK is participating in. In the past some of the topics chosen for evaluation include EU institutions, for example Eurojust and Europol, but it could equally be on a practical issue such as intelligence-led policing.

The peer evaluation exercise can identify gaps in capability that could be addressed. It will also create a culture of continuous improvement for Member States to address any shortcomings.

1. Reducing the impact of organised crime on European Member States.
2. Enhancing the capability of Member States' law enforcement and prosecution agencies through the exchange of best practice, facilitated by the continuous participation in the Working Party on General Matters including Evaluations (GENVAL) exercise.
3. Increasing public confidence in law enforcement and prosecution authorities through taking high-visibility action against international criminal organisations.

#### **COSTS**

The UK spends around £1,000 biennially, covering the additional costs of transporting and accommodating the Member State experts over the 3 to 4 day period of the training exercise.

#### **BENEFITS**

There are no monetised benefits that can be identified with this measure.

## Non-Monetised Benefits

**More effective working:** The UK has several ongoing non-monetised benefits from the concept of peer evaluations to promote more effective working between Member States in the fight against cross-border crime. Some of the mutual evaluations such as the practical operation of European Arrest Warrants (EAW) had some positive effects in that the UK was able to push for proportionality to be a consideration (see page 15 Council Document 8302/4/09).<sup>1</sup> UK experts and policy officials have evaluated other Member States and have gained valuable experience on their systems and organisation.

**Learning:** Other Member States stand to learn from the UK.

Our recent peer evaluation exercise on 'Eurojust' saw Member State experts recommend that other Member States implement a UK-style 'Oversight Board' at senior civil servant level – dealing with policy at a national level, and managing the UK desk at The Hague.

Additionally, we will be able to obtain reports of Member States and participate in discussion on the effectiveness of the measures in which we participate at the GENVAL working group. It also gives us a voice in the outcome of the evaluation process, and if there are any changes we want made to the instrument/body being evaluated. As such the evaluation is a useful means of assessing the validity of European instruments.

## 7. NET IMPACT

There is a net present cost to the United Kingdom of around £4,400 over the 10-year appraisal period. On balance, when the non-monetised benefits that the UK receives from being a part of the Peer Evaluation Exercise are compared to the costs of the training exercise, the benefits appear to far outweigh the costs. The exchange of best practice and the optimisation of law enforcement systems and procedures across Europe cannot be monetised, but is extremely valuable. A reduction in organised crime in one Member State may lead to a reduction in organised crime in other Member States.

## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	The United Kingdom of Great Britain and Northern Ireland.
<b>Price base year</b>	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Rounding</b>	Costs have been rounded to the nearest 100 (if under £10,000). Volumes have been rounded to the nearest thousand, when referring to volumes over 100,000.
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have

<sup>1</sup> [http://www.asser.nl/default.aspx?site\\_id=8&level1=10785&level2=10859&level3=&textid=29095](http://www.asser.nl/default.aspx?site_id=8&level1=10785&level2=10859&level3=&textid=29095)

	fully implemented the measure by 1 December 2014.
<b>Policy Specific Assumption: Risk of Cost Increase</b>	It is assumed that the cost of hosting the European experts will not increase or decrease significantly over the next 10 years. Any change in these costs will have an impact upon the total costs of this measure.

## **9. Wider Impacts**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **10. SUMMARY AND RECOMMENDATIONS**

By opting back into this measure, the UK will continue to exchange best practice and have influence over the Peer Evaluation Exercise.

Joint Action 97/827/JHA gives the GENVAL working group a mandate to choose a topic for evaluation and to date the UK has participated in all the rounds of peer evaluation. The measures allows for the sharing of best practice and for the UK to influence the operation of important measures in other Member States. Participation provides the UK with greater control over the evaluations and their outcomes.

<b>Title:</b> Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System (FADO)  <b>IA No:</b> HO 0107  <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> HM Passport Office, Foreign & Commonwealth Office, HM Revenue & Customs, Ministry of Justice, National Crime Agency, Police Forces, Department for Work & Pensions, Driver Vehicle Licensing Agency, Driving Standards Agency, National Health Service, Disclosure & Barring Service, Security Industry Authority, Vehicle & Operator Services Agency	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 24/06/2014
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> EU
	<b>Contact for enquiries:</b> <a href="mailto:2014decision@homeoffice.gsi.gov.uk">2014decision@homeoffice.gsi.gov.uk</a>
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£0.18m	N/A	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

Identity fraud / theft is a major and increasing challenge to countries across Europe - the cost to the UK alone is estimated at £3.3 billion a year. Identity fraud can affect business, individuals and Government.

Government intervention is required to ensure that false identity documents can be identified quickly and at an early stage to prevent identity fraud and theft. The measure establishes full access and input capability to the full FADO database which would help in the identification of real and fraudulent identity documents, quickly and early, to prevent identity fraud and theft.

**What are the policy objectives and the intended effects?**

The UK policy objectives are:

- To prevent identity fraud, through better and more efficient identification of false documents; and
- To protect the UK border.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base Case (Option 0)** – Do not seek to rejoin the measure. The UK would lose both access and the ability to contribute to the False & Authentic Documents Online (FADO) system, but would still have access to PRADO (the publically accessible database)

**Option 1** – Seek to rejoin the framework decision (preferred) which provides for a multi-tiered database of false and authentic identification documents. Opting into FADO would allow the UK full access to the expanding database and library.

Option 1 is preferred. The assistance it provides UK Government agencies, particularly those at the border, is beneficial in both the detection of identity fraud and the prevention of further crime.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) N/A			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister

*Karen Bradley MP*

Date: 24 June 2014

**Description:** Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System (FADO)

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2013/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £-0.18m

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
Best Estimate	N/A		£0.02	£0.18

**Description and scale of key monetised costs by ‘main affected groups’**

**Running costs:** The costs of running FADO in the UK are approximately £15,000 per annum (13/14 costs, 13/14 prices). This cost represents the cost incurred for Home Office IT to host and maintain the server required to run and access FADO.

**Telephony costs:** There is an additional £5,500 (08/09 costs, 13/14 prices) per year for the telephone lines. This is an ongoing cost as they are used for the data transmission to and from Brussels and National Document Fraud Unit at Heathrow.

**Other key non-monetised costs by ‘main affected groups’**

Potential increase in arrests from better detection of false passports and identity cards leading to a downstream impact on the Criminal Justice System. There is insufficient evidence to determine the extent of additional detection due solely to FADO. Associated staff costs – data entry. It is not possible to distinguish between time spent by NDFU officers on FADO-related duties and on non-FADO related duties, as FADO activities are not logged separately and is incorporated into day to day work.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	£0m

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no monetised benefits to this measure.

**Other key non-monetised benefits by ‘main affected groups’**

Increased identification of false identity documents in both public and private sectors helps reduce the level of identity fraud in the UK and therefore reduces criminality in which identity theft and fraud is involved. As FADO would increase the detection of false passports, in the longer term, this may mean individuals are deterred from using false passports. Studies on deterrence suggest its effect is mixed, so it is not possible to calculate the impact of FADO on the level of deterrence – however, any increase in deterrence would bring downstream criminal justice system savings.

**Key assumptions/sensitivities/risks**

**Discount rate**

3.5%

- This measure receives funding from the EU general budget, to which the UK contributes. It is unlikely that non-participation in this measure will lead to a return of funds from the EU general budget as the UK contribution to the EU general budget has already been agreed until 2020. Therefore it is assumed that the UK funding of this measure will continue through the general budget whether the UK seeks to rejoin or not.
- Telephony costs assumed to stay constant. Any change in the contract could impact on the level of cost.
- Assumption that the cost paid to the service provider (by Home Office IT) to keep the system running will stay constant throughout the appraisal period. However, negotiations within the appraisal period between Home Office IT and those who are responsible for the FADO system, could impact on the current cost.

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of</b>	<b>Measure qualifies</b>
<b>Costs: £0</b>	<b>Benefits: £0</b>	<b>Net: £0</b>		

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System referred to hereafter as FADO. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

In 2013 the National Fraud Authority estimated that the UK adult population lost £3.3 billion to identity fraud each year; just over one-quarter of the UK adult population surveyed had been a victim of identity fraud at some time. Identity fraud in relation to border control and law enforcement involves serious areas of criminal activity, including terrorism and organised crime such as human trafficking. Identifying false identities is extremely important at the border, in order to ensure that only those who have a right to enter the UK do so.

In order to address the growing problem of document fraud, the EU passed Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System which became known as False & Authentic Documents Online (FADO).

Since inception the UK has consistently supported, and been active in the development and updating of the FADO system. In addition, the UK has been committed to making the system available to as wide a range of control authorities in the UK as possible. This includes UK Border Force, UK Visas & Immigration and Police Forces. It also includes wider government agencies and departments assessing the authenticity of identity documents, e.g. the Driver & Vehicle Licensing Agency and the Department for Work & Pensions. It is a pan-European tool for the detection of falsified documents and the exchange of information between Member States on authentic and falsified passports, ID cards, residence permits, driving licences and various other documents. Continued support of the FADO system was identified as a priority at the JHA Council meeting on 25 and 26 February 2010. The Council adopted conclusions on 29 measures for reinforcing the protection of the external borders and combating illegal immigration and FADO featured prominently in Measure 16 (Exchange of Information).

The FADO data-base operates at three levels. Firstly there is a top read-write level for national central units such as the UK's National Document Fraud Unit - this includes highly-detailed technical information on the design, security and abuse of documents. The second abridged read-only level (iFADO) is restricted by the inclusion of sensitive information to law-enforcement and other authorised authorities for access over Government secure networks - it allows users to search for information on genuine and false documents. The third read-only level (PRADO) is further abridged to information on genuine documents only and suitable for the public domain - this last option is accessible online by members of the public at <http://prado.consilium.europa.eu/EN/homeIndex.html>. All levels include technical information and images. The purpose and remit of each part of the system is explained in the below table.

**Table 1: The European Image Archiving System**

System	Purpose	Level of Access
FADO	False and Authentic Documents Online	The EU FADO system was devised and financed by the EU as a direct result of this Joint Action. It is a computerised archive containing images and textual information relating to false and authentic identity documents such as passports, identity cards, visas, residence permits and driving licences. It went live on 6 December 2004. The database is located in the General Secretariat in Brussels and access to it is achieved via secure communication lines incorporating encryption devices. Under the terms of the Joint Action, communication with FADO is permissible only via Member States' central units, in the UK's case the National Document Fraud Unit, which is part of Immigration Intelligence in Crime and Enforcement Directorate. Data entry is carried out by the national central units.
iFADO	Intranet False & Authentic Documents Online	A read-only, control authority version of the database called iFADO was launched in October 2007. It was made available over the Government Secure Intranet to Home Office departments dealing in pre-entry, on-entry and after-entry border control and to other UK government departments with a vested interest in checking identity documents, such as the police, HM Passport Office, HM Revenue & Customs, Driver & Vehicle Licensing Agency and the Department for Work & Pensions, amongst others. iFADO is widely used. Hits on iFADO by law enforcement agencies and others with access to the Government Secure Intranet reached roughly 1,127,000 in 2013 (hits on the publicly accessible PRADO part of the FADO system totalled approximately 3,079,000).
PRADO	Public Record of Authentic Documents Online	PRADO has a mechanism through which the public can see limited information relating to authentic identity documents. This is particularly useful for financial institutions and employers who have a need to check identity documents but is also increasingly used by law enforcement officers in the field using smart-phones.

## 2. GROUPS AFFECTED

The FADO system was developed for border control/immigration purposes but departments/agencies with access to iFADO now include;

- Home Office,
- HM Passport Office,
- Police Forces,
- Driver & Vehicle Licensing Agency,
- Driving Standards Agency,
- Department for Work & Pensions,
- HM Revenue & Customs,
- Foreign & Commonwealth Office,
- National Crime Agency,
- National Health Service,
- Disclosure & Barring Service,
- Security Industry Authority
- Vehicle & Operator Services Agency

**Businesses** – Businesses could be impacted by the policy when seeking to establish an individual's nationality and identity when they are, for example, applying for employment or for financial services within the United Kingdom.



### **3. RATIONALE FOR INTERVENTION**

Identity fraud occurs when someone's personal information is used by somebody else without their permission to obtain money, credit, goods or other services. Identity fraud is in itself a crime, as well as an enabler for more serious criminal activity. For example, it can facilitate illegal border crossing, benefit fraud, plastic card fraud or mortgage fraud. Fraudsters have been known to use the identity of a deceased person. The UK's National Fraud Authority (NFA) completed a survey in December 2013 with a nationally representative sample of 4,213 UK adults to understand better the prevalence and cost of identity fraud against individuals. The survey found that identity fraud is estimated to have cost UK adults £3.3 billion during 2012.<sup>1</sup> This figure did not include losses recovered by the individual or any indirect costs that may have been incurred, such as responding to and repairing the impact of the frauds. Nor did it include any losses suffered by the public, private or charity sectors, meaning that the full cost will be greater.

Whilst this estimate is of identity fraud in which individuals are the victim, other NFA surveys completed in 2012-2013 illustrated how identity fraud enables attacks against organisations. For example, 14 per cent of charity fraud victims and 18 per cent of private sector fraud victims said they had experienced identity fraud.<sup>2</sup>

Government intervention is required to ensure that false identity documents can be identified quickly and at an early stage to prevent identity fraud and theft. The measure establishes full access and input capability to the full FADO data-base which would help in the identification of real and fraudulent identity documents. Intervention in this area through FADO is required to ensure that false identity documents can be identified quickly and at an early stage to prevent identity fraud and theft.

### **4. OBJECTIVES**

The UK's key policy objectives are:

- To prevent identity fraud, through better and more efficient identification of false documents; and
- To protect the UK border.

### **5. Base case (Option 0) – Do nothing**

If the UK were not to seek to rejoin the measure, the National Document Forgery Unit (NDFU), who currently input and access data on FADO, and other Government organisations would no longer have access to the online system providing intelligence on fraudulent documents, only to information on genuine documents via PRADO. As explained in Table 1, the PRADO system is the most limited version because it only provides examples of genuine documents uploaded onto the wider system. The alternatives to the full FADO system provide read-only access with a much reduced content, featuring only basic security features suitable to those with little or no training in the detection of false documents for front-line officers handling identity documents. NDFU would no longer be able to enter new data, notably on UK documents, thus limiting the effectiveness and scope of the system. Additionally, the UK could not influence the design, layout, accessibility and development of the system.

There is no additional cost or benefit to opting out of this measure, but there are several uncertainties and risks. There is a real risk that there would be a higher level of undetected identity fraud. As a Member State that uploads a higher than average number of documents to FADO, the system would be weaker without the UK's input. As such this could increase the risk of not detecting false UK documents or identifying trends in those committing identity fraud across Europe, leading to an increase in criminal activity. Given the international nature of organised crime it is not unlikely that such crime could impact upon the UK, despite originating in another Member State. It is therefore in the interests of the UK that other Member States are able to effectively tackle identity fraud.

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<sup>1</sup> Annual Fraud Indicator (June 2013), found online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/206552/nfa-annual-fraud-indicator-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206552/nfa-annual-fraud-indicator-2013.pdf)

<sup>2</sup> Ibid

It should be noted that based on legal advice, it is assumed that any UK funding of this measure will continue though the UK contribution to general budget whether the UK seeks to rejoin or not. Thus any alternative system which could be set up in the opt-out situation would be an additional cost.

## **6. OPTION 1: OPT IN (preferred)**

If the UK were to seek to rejoin FADO it would help support the Government's aim to tackle fraud. It would continue to bring increasing levels of awareness of document and identity fraud and therefore detections and prevention of crime, both at UK borders and elsewhere.

### **COSTS**

#### **Ongoing monetised costs**

Running costs: The cost of running FADO in the UK is approximately £15,000<sup>3</sup> per annum (13/14 costs, 12/13 prices). This cost represents the cost incurred to host and maintain the server required to run and access FADO.

Telephone costs: There is an additional cost of £5,500<sup>4</sup> (13/14 prices, 2008/09 costs) per year for the telephone lines. This is an annual cost associated with data transmission.

#### **Ongoing non-monetised costs**

**Attendance to user groups:** A Civil Servant attends FADO user group meetings in Brussels three or four times a year but these are combined with attendance at the EU False Documents Working Party meeting, so the additional costs this might bring are minimised. This is also an opportunity cost – when staff are out of the office, the opportunity cost is one day of office work.

**Arrests and Criminal Justice System impacts:** As the FADO system should increase detection of false passports, there may be an increase in arrests, leading to a downstream criminal justice impact. As it is unclear how many additional cases would be brought to attention (given there is some access to the database in the opt-out), we are unable to monetise the size of the impact.

**Data entry:** Currently four officers at the National Document Forgery Unit enter information about false and authentic documents onto the FADO system. As they perform this task as part of their everyday duties, the FADO team are unable to separately and specifically identify how much time this would take, as FADO activities are not logged separately. Staff would be employed whether we remain opted out or seek to rejoin. However, there is an opportunity cost of them entering information on FADO over other tasks.

### **BENEFITS**

#### **Ongoing non-monetised benefits**

**Increasing detection of false document:** The advantage of the EU database is that it is regularly updated by government specialists and the authenticity of data can be relied on. The iFADO system provides detailed information to law enforcement officers about false and authentic documents on a 24 hour basis, enabling detection of false documents. A suitably qualified officer can therefore provide a witness statement for the UK courts using information obtained via FADO.

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<sup>3</sup> Cost provided by Home Office IT

<sup>4</sup> Ibid

**Increasing awareness:** Access to FADO allows the UK to include documents on the system which are of particular interest to the public and private sectors. The iFADO system allows government departments to verify identity documents and detect trends in how such documents have been falsified.

**Deterrence:** As FADO would increase the detection of false passports, in the longer term, this may mean individuals are deterred from using false passports. Studies on deterrence suggest its effect is mixed, so it is not possible to calculate the impact of FADO on the level of deterrence. Any deterrence that does occur could have downstream savings on the Criminal Justice System.

**Benefits outside of border control:** The detection of a fraudulent document has a wider impact than simply removing a forged passport or identification card. Such documents can be used to gain access to healthcare, welfare payments and bank accounts. By detecting and removing forged documents from circulation, there is likely to be a downstream saving to UK PLC. HMRC's Document Verification Team, set up and supported by the NDFU, also points to investigations with a high degree of reliance on access to iFADO – identifying potential savings that could increase over time.

## 7. NET IMPACT

Whilst it is difficult to quantify the benefits of actively being part of the FADO system, we judge the assistance it provides UK Government agencies, particularly those at the border, to be beneficial in both the detection of identify fraud and the prevention of further crime. Furthermore, the ability of UK experts to contribute to this system is of benefit to domestic businesses that use the online version in their own identity checks. UK expertise is of use to other Member States in their fight against identify fraud, and consequently is of benefit to the UK in the reduction of cross border criminal activity, even when it does not originate in the UK.

## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year.</b>	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV), which is presented in the above summary sheets. <sup>5</sup>
<b>Rounding</b>	Costs have been rounded to the nearest 100 (if under £10,000). Volumes have been rounded to the nearest thousand, when referring to volumes over 100,000.

<sup>5</sup> HM Treasury (2003)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220541/green\\_book\\_complete.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf)

**Table 2: Policy specific assumptions**

Area	Assumption
<b>System running costs</b>	In January 2014 it was confirmed that the annual running and maintenance costs of FADO had been renegotiated with the service provider from over £30,000 per year to just under £15,000 per year. Moving forward we have assumed that the cost paid to the service provider (by Home Office IT) to keep the system running, will stay constant throughout the appraisal period. However, negotiations within the appraisal period between Home Office IT and those who are responsible for the FADO system, could impact on the current cost.
<b>Telephony costs</b>	Assumption that these telephony costs have stayed constant, and will not change throughout the appraisal period. Any change in the contract could impact on the level of cost.
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

**9. Wider Impacts**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

**10. SUMMARY AND RECOMMENDATIONS**

Opting back into this measure will continue to bring increasing levels of awareness and detections of false documents and identity fraud, both at UK borders and elsewhere. This will increase detection of crime and thus the ability to prevent it. The capital, financial and human resource costs of hardware, software and of data entry, have been absorbed, and running and maintenance would continue at a stable level.

The benefits of opting into this measure are judged to be greater than the costs.

<b>Title: 2000/642/JHA - Concerning Arrangements For Cooperation Between Financial Intelligence Units</b>  <b>IA No: HO 0118</b>  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> Devolved Administrations	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 24/06/2014				
	<b>Stage:</b> Final				
	<b>Source of intervention:</b> EU				
	<b>Type of measure:</b> EU				
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk					
<b>Summary: Intervention and Options</b>					<b>RPC Opinion:</b> N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0m	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Cooperation between Member States to combat organised crime, in particular in relation to preventing the use of financial systems for the purposes of money laundering, has historically been poor. Government intervention, in the form of dedicated financial intelligence units with a guaranteed ability to exchange intelligence, would support the larger aim of tackling criminal finances, and is of use in the proactive disruption and recovery of criminal finances and the proceeds of crime.

**What are the policy objectives and the intended effects?**  
The UK policy objectives are:

- To guarantee and improve cooperation and communication between Member States in relation to financial crime intelligence.
- To tackle financial crime, particularly where it has cross-border implications.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Base case (Option 0)** – If the UK did not seek to rejoin the measure the National Crime Agency would no longer be required to maintain a specific Financial Intelligence Unit and would no longer be able to operate within the framework that currently underpins international liaison work.  
**Option 1** – Seek to rejoin the measure. This measure requires Member States to maintain financial intelligence units tasked with sharing intelligence to tackle financial crime between Member States. The measure significantly enables and guarantees the sharing of intelligence.  
Option 1 is preferred as the increased identification of financial crime and recovery of the proceeds of crime are important tools in supporting the UK’s wider objectives in tackling criminal activity.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> N/A	<b>&lt; 20</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

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

Signed by the responsible Minister: Karen Bradley MP Date: 24 June 2014

Description: Seek to rejoin the Council Decision regarding financial intelligence units

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			N/A	N/A	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0	£0

**Description and scale of key monetised costs by ‘main affected groups’**

The costs associated with running the financial intelligence unit will continue to be part of the NCA operating budget. Therefore there are no monetised costs associated with this measure.

**Other key non-monetised costs by ‘main affected groups’**

If bound by this measure, there may be an increase in requests from Member States, all of which the UK would be required to deal with, regardless of their quality. There would also be an increase as Member States were required to implement the measure by 1 December. It is not possible to predict the scale of any potential increase in the number of requests that the UK is expected to deal with. Information sharing could lead to additional prosecutions, having a downstream impact on the Criminal Justice System.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no monetised benefits associated with this measure.

**Other key non-monetised benefits by ‘main affected groups’**

This measure provides a consistent, appropriate and robust procedure for the sharing of intelligence between the domestic financial intelligence units in Member States, ensuring requests are processed efficiently. This increased intelligence sharing assists in combating money laundering by ensuring that agencies have access to all the information when dealing with financial crimes cases with an international dimension. It is significant that Member States will have an obligation to provide requested intelligence. Increased intelligence sharing could increase asset recovery through helping identify assets connected to criminal activity both domestically and abroad. Better quality or additional intelligence would possibly have a saving in regards to court time. In addition it may help secure a conviction where one would not have previously been achieved or increase the speed at which a conviction can be reached.

Closer working relationships between practitioners in different jurisdictions also facilitate the sharing of best practice, which is in the interests of the UK given the international nature of organised crime. If bound by this measures other Member States would be required to deal and act upon UK intelligence.

Key assumptions/sensitivities/risks	Discount rate	3.5%
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**BUSINESS ASSESSMENT (Option 3)**

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure qualifies
Costs: N/A	No	N/A
Benefits: N/A		
Net: N/A		

## **Evidence Base (for summary sheets)**

### **1. INTRODUCTION**

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 Decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining 2000/642/JHA - Concerning Arrangements For Cooperation Between Financial Intelligence Units, referred to hereafter as financial intelligence units (FIUs). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction take effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

Information sharing between Member States, for the purpose of tackling criminal activity, has historically been poor. In order to help address this, Member States established FIUs. The primary aim of these units is to receive reports from banks, financial institutions, businesses and individuals, in respect of suspicious financial activity. The UK's unit sits within the National Crime Agency (NCA) and was established independently and prior to this measure. The information received from these reports together with any additional intelligence is then analysed with the view to identify financial crime, for example, money laundering. If there is suspicion that an offence has been committed then a criminal investigation may be conducted.

This measure provides (and to a certain extent obliges) that information can be shared, where appropriate, between the financial intelligence units of different Member States. This is both on a unilateral basis and in response to requests for information. Under the relevant legal systems of individual Member States' jurisdictions, it may be possible to share intelligence without rejoining, but the measure creates certainty. This information is intended primarily to assist Member States with their own domestic cases which is invaluable given the international nature of serious and organised crime. The main purpose of this measure is to increase and simplify the level of cooperation between financial intelligence units in Member States and create certainty that such assistance will be provided. This may lead to further disruption of criminal finances and, as a consequence, crime more generally. The intention for the UK is to obtain intelligence and information from other countries leading to obtaining evidence and freezing and recovering criminal assets located overseas which relates to criminality occurring in the UK.

As the NCA already has the function under domestic law (the Proceeds of Crime Act 2002 and the Crime and Courts Act 2013) of being the recipient of reports of suspicious financial activity (commonly known as suspicious activity reports, or SARs), there will be no additional burden on those businesses making such reports. The legal requirement under the Proceeds of Crime Act 2002 to make reports to the NCA is not affected by the terms of this measure

### **2. GROUPS AFFECTED**

The main group affected would be the law enforcement bodies within the UK, notably the NCA as the financial intelligence unit and those bodies who undertake financial investigations such as the Police, HM Revenue and Customs and the Serious Fraud Office.

### **3. RATIONALE FOR INTERVENTION**

The sharing of financial intelligence between Member States has historically been poor. Greater cooperation in this area would be beneficial given the international nature of financial crime. London's position as a centre for global finance further highlights the importance of having the right tools and up-to-date intelligence to tackle this type of crime. The Government is committed to tackling criminal finances at an intelligence level, and this is of use in the proactive disruption and recovery of criminal finances and the proceeds of crime.

This measure establishes a formal framework with commitments to support the UK's and the wider Union's work on combating money laundering and other matters relating to criminal finances. This measure uses Member States' existing financial intelligence units and provides a framework and formal basis requiring them to share information, in particular intelligence, relating to criminal finances, especially money laundering. This simplifies and encourages exchanges and requests for information. The measure ensures that financial intelligence work is being undertaken consistently across the EU and also provides a formal network for cooperation. The measure supports the creation of robust mechanisms for sharing 'fast time' financial intelligence.

### **4. OBJECTIVES**

The UK policy objectives are:

- To improve and guarantee cooperation and communication between Member States in relation to financial crime intelligence.
- To tackle financial crime, particularly where it has cross-border implications.

### **5. BASE CASE (OPTION 0)**

Do not seek to rejoin this measure. The NCA would still have a function of receiving suspicious activity reports from which they develop intelligence and could retain the Unit based in the NCA. This unit would however lose the formal structures currently in place to send and receive intelligence from Member States.

Outside of this measure other Member States would be under no obligation to cooperate with the UK in our requests for information. This could lead to assets of criminals not being identified and/or confiscated.

### **6. OPTION 1: OPT IN**

This measure establishes a formal framework with commitments to support the UK's and the wider Union's work on combating money laundering and other matters relating to criminal finances. The UK position is to support measures that underpin practical cooperation and increase international performance to assist in combating money laundering and the recovery of the proceeds of crime.

Participation in the measure would also allow the UK to more effectively and efficiently cooperate with other countries, promoting key elements of our legal and operational approach to financial intelligence through the sharing of best practice. It would ensure that other Member States were required to receive and act upon UK intelligence and would do so without placing any further burdens on UK processes. The measure would also benefit the UK when pursuing its own financial crime cases where relevant information is held overseas. The measure does not preclude the UK making further efforts on a bilateral basis with certain countries where it is deemed necessary.

Rejoining the measure would require no new legislation and the NCA is already in a position to provide the assistance required. The measure formalises the sort of behaviour and practices that we would like to see in other Member States in the area of criminal finances and requires them to cooperate with the UK, whilst not placing any further demands beyond current UK practice. The measure ultimately creates an obligation for Member States to cooperate.



Non-regulatory options were considered but none of these would provide a formal framework for the sharing of intelligence with a robust commitment to tackle financial crime at an intelligence level. As these would not meet the policy objectives they are not included in this impact assessment.

## APPRAISAL (COSTS AND BENEFITS)

### Costs

There are no monetised costs associated with this measure.

The NCA is already operationally designed to perform the tasks required under the measure. They are required under domestic law to receive reports of suspicious financial activity and have a criminal intelligence function to gather, store, process, analyse and disseminate information to combat crime. Importantly for the measure, the NCA also has the ability to liaise with other countries, which it does on an operational basis. There will therefore be no set-up or one-off costs associated with rejoining this measure, as the structure already exists.

**Requests:** There may be an increase in the number of requests for information being made to the UK that we are obligated to process in comparison to the base case. However, whilst an increase in cases would increase the amount of time that staff spend on these requests overall, we do not anticipate a large rise in requests. The reason for this is primarily due to other Member States already making approaches to the NCA and other law enforcement organisations for information and intelligence that they require, albeit that it may not be through a central formalised system as provided in this measure.

There is no record of the number of requests for intelligence/information or the resources required to process them. We note however that most requests will be data mining of existing intelligence and so would only need a small time to process, which can be as little as 15 minutes. Therefore it is likely that any additional costs will be minimal.

**Criminal Justice System:** Additional intelligence may prompt more prosecutions and confiscation cases, which could have a downstream impact to the Criminal Justice System.<sup>1</sup> The scale of this cost is dependent on the proportion of additional requests which would lead to additional prosecutions. Therefore, the scale of this cost is highly uncertain.

### Benefits

There are no monetised benefits associated with this measure.

**Increase in the proceeds of crime being identified and being recovered:** Other Member States would be required to cooperate with the UK within the terms of the measure. The expected increase in cooperation should lead to further proceeds of crime being identified and being recovered. It helps ensure that the NCA and other law enforcement agencies have all the information they require to successfully prosecute and disrupt criminal activity. The measure will also support the UK's wider aims in relation to asset recovery, money laundering and criminal finances. The scale of this benefit will depend on the volume of additional requests.

**Criminal justice system:** Further intelligence may strengthen cases through more evidence collected. This could lead to savings in court time. The extent of this impact is uncertain.

**Sharing best practice:** Improving the speed and ease with which practitioners in different jurisdictions can share intelligence facilitates the sharing of best practice and fosters closer working relationships. This is in the interests of the UK given the international nature of organised crime.

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<sup>1</sup> The criminal justice system includes: Prosecution agencies, the courts, the National Offender Management service (NOMS) and Legal aid agency.

## 7. NET IMPACT

The increased identification of financial crime and recovery of the proceeds of crime are important tools in supporting the UK's wider objectives in tackling criminal activity. The Measure supports the UK's aims to tackle financial crime and to improve cooperation between Member States. The costs arising from any increase in workload, as established above, are judged to be less than the benefits.

## 8. ASSUMPTIONS AND RISKS

**Table 1:** General Assumptions

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs using an appraisal period from January 1 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).

**Table 2:** Specific assumptions and risks associated with them

Area	Assumption
Staff costs	There will be no costs from increased staff required as the NCA is already required to undertake functions akin to what is required under the measure. Additional cases would need individuals to deal with them; this could lead to an increase in staff time used.
Transposition	The measures are already transposed into UK domestic law and are operational.
Implementation	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

## 9. Wider Impacts

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## 10. SUMMARY AND RECOMMENDATIONS

The UK already has, within the NCA, a function, with existing capacity and capability, to collect and assimilate intelligence. Significantly for this measure, the NCA also has the statutory ability and operational capability to liaise with other countries to share and collect financial intelligence. This measure provides a formal process to communicate with Member States and provides a requirement for Member States to comply with our requests which would otherwise not exist. The UK Government recommends opting in to this measure as it accords and further strengthens the UK's own policy relating to financial intelligence and criminal finances more generally, in particular relating to money laundering and asset recovery. The UK also supports international efforts at ensuring the right criminal justice outcome of disrupting the flow of criminal money.

<b>Title: Council Decision of 29 May 2000 to combat child pornography on the Internet</b>  <b>IA No: HO 0106</b>  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> UK law enforcement agencies, UK internet industry, international partners and victims of abuse.	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 24/06/2014				
	<b>Stage:</b> Final				
	<b>Source of intervention:</b> EU				
	<b>Type of measure:</b> EU				
	<b>Contact for Enquiries:</b> 2014decision@homeoffice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>					<b>RPC Opinion:</b> N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0m	£0m	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

Indecent images of children are, by their nature, an international issue, as these images are shared globally across the internet. The creation of these images is illegal and the sharing of them inflicts further suffering for the victims portrayed in the images. The distribution of these images can be a driver for further harm to children. Tackling child pornography or indecent images of children (IIOC), is a priority for the Government, both in protecting children from abuse and the wider public from inadvertent access to such material. An international solution increases capability across all Member States.

**What are the policy objectives and the intended effects?**

The Government aims are to:

- a) safeguard the victims of these crimes;
- b) reduce the amount of IIOC circulating on the internet;
- c) identify and arrest the perpetrators;
- d) ensure public confidence in the system that tackles IIOC;
- e) drive the international response to tackling IIOC.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base case (Option 0):** Do not seek to rejoin the measure. If the UK is not bound by the Council Decision (CD), there would be no requirement to amend UK legislation or to reduce or remove law enforcement capability.

**Option 1:** Seek to rejoin the council decision relating to indecent images of children. It requires all Member States to tackle IIOC by setting up 24 hour contact points to receive and act upon intelligence. The UK has already established this contact point.

Option 1 is the preferred option. The UK is fully compliant with the measure therefore there would be no costs associated with rejoining. Rejoining would also be a clear and high profile affirmation of the UK's commitment to tackling the issue of illegal images. In practical terms the CD also aids a common and effective approach to protecting children across all European Member States.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) N/A			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister:

Karen Bradley MP

Date: 24 June 2014

Description: Seek to rejoin the council decision regarding indecent images of children.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2013/14	PV Base Year 2015	Time Period 10 Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £0

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
Best Estimate	£0		£0	£0

**Description and scale of key monetised costs by ‘main affected groups’**

There are no monetised costs directly associated to this Council Decision.

**Other key non-monetised costs by ‘main affected groups’**

There are no non-monetised costs associated to this Council Decision.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	£0		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no monetised benefits to this Council Decision. .

**Other key non-monetised benefits by ‘main affected groups’**

This CD supports a consistent and coherent European position on protecting children. Standardised practices across the EU to deal with indecent images of children can improve the speed and ease of cooperation and may lead to savings in police time and resource. Images can be identified and dealt with earlier. Increased cooperation may also lead to the prevention of future abuse.

Key assumptions/sensitivities/risks	Discount rate	3.5 %
Any costs associated with this measure are included in the existing budgets of teams that would operate irrespective of this measure.		

**BUSINESS ASSESSMENT (Option 4)**

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure qualifies
Costs: N/A	N/A	N/A
Benefits: N/A		
Net: N/A		

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Decision of 29 May 2000 to combat child pornography on the Internet, referred to hereafter as indecent images of children (IIOC). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

Under the Protection of Children Act 1978 (as amended), the UK has an absolute prohibition on the taking, making, circulation and possession with a view to distribution of any indecent photograph of a child under 16. This age was raised to 18 in the Sexual Offences Act 2003 and there are defences for those aged over the ages of consent (16) who produce sexual photographs within a marriage or civil partnership. These defences are lost if such images are distributed. Such offences carry a maximum sentence of 10 years imprisonment. Section 160 of the Criminal Justice Act 1988 also makes the simple possession of indecent photographs of children an offence and carries a maximum sentence of 5 years imprisonment.

The law applies online and offline, and as the internet has become the main mechanism for sharing these images, the position of the Government is that international cooperation is required to prevent the circulation of such images. The Council Decision (CD) in question supports this policy.

The Government has implemented a major programme of work to tackle the sharing of IIOC online. This includes working with internet search engines to prevent access to websites containing such images, working with industry to identify ways to tackle technically sophisticated offenders, and ensuring that the UK has the appropriate legislation to tackle these offenders.

The aim of the CD is to enhance the response of EU Member States, including the UK, to tackle IIOC. This includes putting in place measures to encourage and facilitate reporting of IIOC, the creation of specialised law enforcement units to investigate these offences, and the development of effective cooperation with the internet industry to remove IIOC from the internet. This clearly aligns with the overall aims of the Government.

The CD requires Member States to tackle IIOC by setting up 24 hour contact points to receive and act upon intelligence. The UK has already put this contact point in place. In effect the measure requires Member States to act swiftly upon UK intelligence when they receive information on suspected production, processing, possession and distribution of IIOC. This effectively ensures good practice in this area, across the EU. Participation helps ensure that UK intelligence and good practice is used and acted upon in other Member States. Given the international nature of the crime, this sort of framework is helpful in ensuring this issue remains a priority for other Member States and that their action is of an appropriate standard.

## **2. GROUPS AFFECTED**

The groups affected are;

- Victims of abuse and their families
- UK law enforcement agencies, including the National Crime Agency (NCA) and police
- UK internet industry, and international companies offering internet services in the UK
- International partners, including both EU Member States and countries outside the EU, who have benefitted from the ability of the UK to support their law enforcement agencies

It is important to note that the work of the Internet Watch Foundation (IWF) and of the Child Exploitation and Online Protection (CEOP) Command of the NCA will continue irrespective of whether the UK opts in or out of this measure.

## **3. RATIONALE FOR INTERVENTION**

IIOC are, by their nature, an international issue, as these images are shared globally across the internet. The creation of these images is illegal and the sharing of them inflicts further suffering for the victims portrayed in the images. The distribution of these images can be a driver for further harm to children.

Tackling child pornography or indecent images of children (IIOC), is a priority for the Government, both in protecting children from abuse and the wider public from inadvertent access to such material. The Government is responsible for encouraging industry to support work to tackle IIOC, and for providing the specialist law enforcement response to investigate the offences and safeguard the victims.

## **4. OBJECTIVES**

The Government aims are to:

- a) safeguard the victims of these crimes,
- b) reduce the amount of IIOC circulating on the internet
- c) Identify and arrest the perpetrators.
- d) ensure public confidence in the system that tackles IIOC.
- e) drive the international response to in tackling IIOC.

## **5. Base case (Option 0) – Do nothing**

If the UK does not seek to rejoin the CD, there would be no requirement to change UK legislation or to reduce or remove any law enforcement capability in relation to the policy area. The existing legislation and law enforcement capability are used for both EU and non-EU work, and are not EU-specific. The UK meets the requirement of the CD through the industry-funded Internet Watch Foundation (IWF), and the Child Exploitation and Online Protection CEOP Command of the National Crime Agency. These agencies work on tackling IIOC globally, and are not specific to the policy set out in the Council Decision.

However, if we do not seek to rejoin the measure, other Member States will no longer be obliged to consider UK intelligence and act to a standard the UK would consider appropriate in our interactions with them. Given the British successful work in this area, it is to the benefit of law enforcement agencies across Europe that swift and appropriate action is taken in regards to UK intelligence. Given the international nature of the crime, improved processes in other countries can help tackle the issue domestically. The expertise and information gathered by UK law enforcement agencies can greatly assist other Member States efforts to tackle IIOC. This measure helps ensure that is the case by putting in place the right processes and ensuring the right action is taken.

There are no additional costs or benefits to not rejoining this measure.

## 6. OPTION 1: OPT IN

If the UK seeks to rejoin the provisions of the CD we could continue to operate the system as we currently do as the UK is already compliant. The measure supports the UK's work by ensuring that there is a common approach to protecting children across European Member States, and reinforces the high profile commitment to tackling the issue of illegal images by the Prime Minister. The CD supports the international response in tackling IIOC and maintains the pressure on other Member States to maintain or reach the same high standards the UK has in place to ensure child protection.

### **Costs**

There are no one-off or ongoing costs associated with opting in. As explained above, we meet the requirements of the measure with current legislation. We do not expect any additional burdens on businesses, as we already expect industry to tackle the creation and distribution of this sort of material.

### **Benefits**

There are no monetised benefits associated with this measure. However there are several non monetised benefits.

**Non monetised benefits:** By actively opting into this measure, the UK is sending a clear message to the public, perpetrators of the crime and to other Member States that we take issues relating to IIOC seriously.

Opting in to the measure would ensure a consistent UK position on tackling IIOC. This reflects the Prime Minister's position that the Government must press for more work to prevent access to these images, enhance the law enforcement response and encourage the international community to similarly tackle the causes and effect of IIOC.

Standardised practices across the EU to deal with this crime can improve the speed and ease of cooperation and may lead to savings in police time and resource. Images can be identified and dealt with earlier. Increased cooperation may also lead to the prevention of future abuse.

## 7. NET IMPACT

The UK is already compliant with this measure, both operationally and in domestic law. Participation is in line with our commitment to tackling child abuse both international and domestically, and helps promote a consistent approach to the issue across Member States.

## 8. ASSUMPTIONS AND RISKS

**Table 1:** General Assumptions

Area	Assumption
<b>Geographical Coverage</b>	Geographical coverage: The IA aims to set out the best estimates of the policy impacts using the available evidence. As the Opt in decision is for the whole of the UK. This IA covers England, Scotland, Wales and Northern Ireland
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs using an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).

Area	Assumption
Implementation	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

## 9. Wider Impacts

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## 10. SUMMARY AND RECOMMENDATIONS

It is recommended we seek to rejoin this measure. There are no costs associated to opting into the measure, and the UK is already fully compliant with its requirements. The UK would continue to tackle IIOC in the same manner as at present. However, participation in this measure helps extend the UK's influence and encourages Member States to act upon UK intelligence. By ensuring that UK intelligence is effectively acted upon in other Member States, the UK is able to better tackle domestic cases of IIOC.



<p><b>Title:</b> Council Decision of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension and Council Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.</p> <p><b>IA No:</b> HO 0108</p> <p><b>Lead department or agency:</b> Home Office</p> <p><b>Other departments or agencies:</b> Emergency services, Local municipal authorities, Football clubs (and associated businesses), national football associations and UEFA.</p>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 24/06/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> EU		
<b>Contact for Enquiries:</b> 2014decision@homeoffice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£0.6m	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

Over 100,000 football supporters travel from the UK to other EU Member States to attend football matches each season. Large numbers of supporters also enter the UK each year to attend Champions League, Europa League and International games in support of their clubs and countries. This large scale movement of supporters presents a public protection risk and requires significant coordination and cooperation between European Police Forces to keep supporters safe. Football disorder is more likely to occur when inappropriately policed. Government intervention is required as it is important the appropriate mechanisms are in place to quickly exchange information and ensure that matches are appropriately policed so that they can proceed trouble free.

**What are the policy objectives and the intended effects?**

The UK policy objectives are to ensure that:

- Where appropriate, information is shared on individuals travelling to support their football teams in Europe, in order to ensure that they are appropriately and safely policed by other Member States.
- UK Police have appropriate information on citizens from the EU travelling to the UK in support of their teams so that UK authorities can police supporters appropriately and effectively.
- Consistent and effective mechanisms are in place across the EU to tackle football disorder
- Policing standards are raised in other Member States in relation to football disorder.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Option 0 (Base case)** – If the UK were not to seek to rejoin these measures it would cease to be a member of the National Football Information Points (NFIPs) network.

**Option 1 (preferred)** – Seek to rejoin measures. The UK would remain a member of the NFIP network and be able to continue to share information through the existing mechanisms. The NFIP network is the mechanism by which we share intelligence with other Member States. Option 1 promotes the sharing of relevant information in order to allow Police Forces to plan their football-based operations more effectively – with better more appropriate intelligence.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister

*Karen Bradley MP*

Date: 24 June 2014

Description: Rejoin measures regarding football disorder.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£0.6

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
Best Estimate	N/A		£0.07	£0.6

**Description and scale of key monetised costs by ‘main affected groups’**

There is a £69,700 annual cost of maintaining the National Football Information Points (NFIP) functions. The £69,700 cost is based upon the estimated time of staff, as well as the support costs, for example, IT and telephony.

**Other key non-monetised costs by ‘main affected groups’**

There are no non-monetised costs associated with this measure.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no monetised benefits associated to this measure.

**Other key non-monetised benefits by ‘main affected groups’**

The measure promotes the sharing of relevant information relating to football-fan safety and security. These exchanges allow police forces to plan their football-based operations more effectively – with better intelligence. The result is a more appropriately sized police operation where necessary. Police will establish a smaller presence for low-risk games and a more imposing presence at high-risk matches.

Being part of this measure helps to reduce the risk of large-scale football disorder involving UK fans overseas. In addition to contributing to the safety of football fans, the measure serves to protect the financial interests of the wider football industry and results in reduced downstream costs on the police in policing football matches.

Key assumptions/sensitivities/risks (%)	Discount rate	3.5%
N/A		

**BUSINESS ASSESSMENT (Option 5)**

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure qualifies
Costs: N/A	No	N/A
Benefits: N/A		
Net: N/A		

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension and Council Decision 2002/348/JHA concerning security in connection with football matches with an international dimension, referred to hereafter as the Football Disorder IA. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

Football-related violence and disorder remains a serious concern for the UK, exacerbated by both the size and international nature of the football industry. High profile incidents, such as the disorder that marred the Euro 2000 championships, demonstrate the historic difficulty Member States have had in policing these events appropriately.

Whilst pan-European competition has existed for years, the establishment of the European common travel area, accessibility of cheap travel across the continent and the success of UK teams, have meant increases in the number of fans travelling to international matches. UK clubs are now involved in around 40 to 45 matches with an international dimension each season, and UK national teams participate in around 10 to 20 matches abroad. With over 100,000 football supporters travelling from the UK to other EU Member States to attend football matches each season, large numbers of supporters also enter the UK each year to attend Champions League, Europa League and International games in support of their clubs and countries. This large scale movement of supporters presents a public protection risk and requires significant coordination and cooperation between European Police Forces to keep supporters safe.

Throughout the 1980s and 1990s certain groups of football supporters developed a reputation for football violence. This was particularly the case with those from England, to the extent that the phenomenon of football disorder became known as "the English Disease". Since 2000 the UK has led a concerted multi-agency approach to tackling the issue, underpinned by robust legislation to exclude the worst supporters. Football Banning Orders mean that the most violent and anti-social elements of the football community must surrender their passports and cannot travel. It helps provide reassurance that supporters travelling from the UK are there to support their team and are unlikely to cause violence or disorder. This has resulted in a dramatic improvement in supporter behaviour.

However despite this progress, due to the long history of violence associated with the game there can remain a tendency to associate violence with particular nationalities and clubs. The facility to share information on the number and nature of supporters travelling from the UK overseas allows police forces access to up-to-date and detailed information and prevents Member States policing UK football fans on an outdated reputation.

## **2. GROUPS AFFECTED**

This policy impacts on:

- Police.
- Governments.
- Local municipal authorities.
- Football supporters.
- Football clubs (and associated businesses), national football associations and UEFA.
- Emergency services.

## **3. RATIONALE FOR INTERVENTION**

There are large numbers of citizens travelling to and from the UK to attend football matches and there is a history of disorder attached to the sport. Over 100,000 football supporters travel from the UK to other EU Member States to attend football matches each season. Large numbers of supporters also enter the UK each year to attend the Champions League, Europa League and International games in support of their clubs and countries.

For this reason it is necessary that those responsible for minimising risks to public order in each Member State should be able to share information and arrange international police cooperation with their counterparts in other Member States. To this end Council Decision 2002/348/JHA concerning security in connection with football matches with an international dimension was brought into effect. It was later amended by Council Decision of 12 June 2007. These measures seek to promote the provision of information exchange between Member States in order to assist relevant authorities to appropriately prevent and tackle football violence. The measures establish the National Football Information Points (NFIP), which serve as a dedicated channel for cooperation and information exchange, and ensure that the relevant persons in other Member States are easily contactable.

Government intervention is required as it is important the appropriate mechanisms are in place to quickly exchange information and ensure that matches are appropriately policed so that they can proceed trouble free. It is imperative to keep fans safe, and prevent outbreaks of football-related violence.

## **4. OBJECTIVES**

The UK policy objectives are to ensure that:

- Where appropriate, information is shared on individuals travelling to support their football teams in Europe, in order to ensure that they are appropriately and safely policed by other Member States.
- UK Police have appropriate information on citizens from the EU travelling to the UK in support of their teams, to order that UK authorities can police supporters appropriately and effectively.
- Consistent and effective mechanisms are in place across the EU to tackle football disorder.
- Policing standards are raised in other Member States in relation to football disorder.

## **5. Base case (Option 0) – Do nothing**

By not seeking to rejoin these measures the UK would no longer be required to fund a UK NFIP.

Not seeking to rejoin these measures would risk Member States not having access to, or acting upon, relevant intelligence on UK football fans travelling to their country. At best, it would make it more difficult to access the information. In turn, this risks the safety of UK fans travelling abroad for football matches through inappropriate policing based on outdated information. Russia and the Ukraine serve as good examples where the NFIPs are not in use and the UK experiences greater difficulty in this area.

Furthermore the UK would risk Member States not providing the UK with information necessary to plan for and manage foreign football fans in the UK. This could lead to emergency services being ill prepared for violence or disorder that could have been anticipated, or conversely, an excessive police presence at matches where it is not necessary.

Information exchange between Member States independent of the structure and obligations of the NFIP risks making it more difficult to guarantee appropriate high-quality information. For example, the UK shares information with foreign authorities when UK clubs (or national teams) participate in UEFA (Union of European Football Associations) or FIFA (Fédération Internationale de Football Association) competitions. However, the lack of structure and obligations would make it more difficult to identify the correct agency with which to deal and could lead to a reduction in the quality and quantity of information exchanged. In addition to this, the structures in other Member States may not exist to take appropriate action in relation to the information.

Not seeking to rejoin these measures jeopardises improvements made both domestically and with European countries. A reduction in the ability to anticipate and manage football disorder would result in increased emergency services costs, as well as an indirect cost to football clubs and associated businesses. It is not possible to monetise this, however given the size of the football industry it is judged to be considerable. The effect on the wider economy would be even greater if UK teams and clubs were banned from European competition as a result of violent incidents.

## **6. OPTION 1: OPT IN**

Rejoining the measures regarding football disorder would allow the UK to continue to participate in the NFIPs. This ensures appropriate mechanisms are in place to quickly exchange information between Member States to enable football matches to be appropriately and effectively policed. Such action would seek to protect UK football fans both abroad and at home.

### **Costs**

#### **Monetised**

There is an ongoing cost to run the NFIP of around £70,000 per year. This is an estimate of staff time spent on NFIP functions plus support costs for example, desks, IT and telephony. Over 10 years this is estimated to be £0.6 million (PV).

**Table 1, Yearly Costs of operating the NFIP, £.**

<b>Costs</b>	<b>2013/14 price</b>	<b>On-Cost</b>	<b>Total Cost</b>
	<b>£</b>	<b>%</b>	<b>£</b>
100% of one mid level officer (HEO)	45,000	17.8	53,000
10% of one HEO	4,500	17.8	5,300
5% of a senior staff member	5,000	17.8	5,900
Travel and subsistence	1,000	0.0	1,000
Telephony	1,000	0.0	1,000
IT	1,000	0.0	1,000
Other office	2,500	0.0	2,500
<b>Total Cost</b>	<b>£60,000</b>		<b>£69,700</b>

## **Benefits**

There are no monetised benefits associated with this measure. However, if the UK's involvement with these measures was able to prevent the serious wounding of one British fan, there would be a monetised benefit to the UK of £130,000.<sup>1</sup>

## **Non-Monetised Benefits**

The NFIP provides a functioning, tested system allowing for police cooperation and information exchange between Member States. The forum ensures that the UK is able to share information on individuals travelling abroad to watch football matches with the relevant agency in that country. In turn it means that genuine, non-violent fans are policed according to their behaviour and not their reputation. In the same manner, this intelligence exchange allows UK Police to police football matches to an appropriate level – reducing instances of violent disorder here in the UK.

The homogenous approach to information exchange and information led policing practices promoted by these measures help ensure best practice across Member States. This can be of particular use for Member States who lack the relevant experience or resources. This improves the safety and security of UK fans both at home and abroad and also helps to ensure cost efficient and appropriate police operations at football matches.

Policing of football matches in this way reduces the immediate demands upon the emergency services and is expected to result in downstream savings on criminal justice systems costs, due to a reduction in football related disorder. Such action also mitigates the significant risk to the wider football industry (for example, being excluded from international competitions) posed by violent behaviour of football fans. It is not possible to accurately monetise these savings, however given the size of the football industry and the cost of policing football events, it is judged to be considerable.

The measure promotes the sharing of relevant information relating to football-fan safety and security. These exchanges allow police forces to plan their football-based operations more effectively – with better intelligence. The result is a more appropriately sized police operation where necessary. Police will establish a smaller presence for low-risk games and a more imposing presence at high-risk matches.

## **7. NET IMPACT**

Despite a 10 year present value of £-0.6m, it is judged that these measures deliver longer-term savings to the emergency services, as well as the wider football industry through the avoidance of football violence. They also help ensure the safety of football fans both domestically and internationally, as well as the efficient deployment of police resources. Therefore, it is judged that the non-monetised benefits of this measure will outweigh the costs of £0.6m over 10 years, and that the net impact is positive.

## **8. ASSUMPTIONS AND RISKS**

**Table 2: General Assumptions**

<b>Area</b>	<b>Assumption</b>
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	2014
<b>Appraisal period:</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the

<sup>1</sup> Home Office Costs of Crime estimate:

<http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs/hors217.pdf>

	options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

**Table 3: specific assumptions and risks associated with them**

<b>Area</b>	<b>Assumption</b>
<b>NFIP Costs</b>	NFIP costs are assumed to stay constant; any change in these costs would impact upon the total cost of these measures.

## **9. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **10. SUMMARY AND RECOMMENDATIONS**

It is the Government's recommendation that the UK rejoin these measures. They provide an established and functioning network that helps to reduce large scale football disorder through the provision of intelligence between Member States. The system encourages an effective exchange of appropriate information by simplifying and standardising the processes. This allows police forces, both domestic and international, to effectively and efficiently police football games thus ensuring the safety of non-risk football supporters.

<b>Title:</b> Impact Assessment on the: <b>2002/584/JHA:</b> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States <b>2007/533/JHA:</b> Council Decision on the establishment, operation and use of the second generation Schengen Information System <b>2007/171/EC:</b> Commission Decision of 16 March 2007 laying down the network requirements for the Schengen Information System II. <b>IA No:</b> HO0119  <b>Lead department or agency:</b> Home Office HO International Directorate <b>Other departments or agencies:</b> Home Office, International Criminality and Extradition - International and Immigration Policy Group	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 24/06/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> EU		
<b>Contact for enquiries:</b> <a href="mailto:2014decision@homeoffice.gsi.gov.uk">2014decision@homeoffice.gsi.gov.uk</a>			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NK	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Where individuals commit crime and flee the country, effective extradition systems need to be in place to ensure such people can be both located and then returned to face justice. It is necessary for States to have effective systems in place for locating individuals of interest to law enforcement agencies and for locating objects of interest in criminal investigations wherever they may be in the EU.

**What are the policy objectives and the intended effects?**  
The Government's overarching policy aims are to:

- secure the border and effectively tackle cross-border criminality;
- ensure that the UK has strong and efficient extradition arrangements; and
- improve information sharing within the EU.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Base case (Option 0)** - Do not seek to rejoin SISII or the EAW (do nothing). SISII is used for law enforcement, immigration and border controls in the EU, containing over 51 million alerts in relation to people and objects wanted for law enforcement purposes. The EAW provides a system by which individuals sought for trial or service of a sentence are surrendered by one European Union (EU) Member State to another.  
Option 1 – Seek to rejoin into SISII but remain out of the EAW.  
Option 2 – Seek to rejoin into the EAW but remain out of SISII.  
Option 3 (preferred) – Seek to rejoin both SISII and the EAW. SISII will not operate effectively without the EAW. This option offers the maximum benefits to the UK.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

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

Signed by the responsible Minister:

Karen Bradley MP

Date: 24 June 2014



Description: To opt into SISII but remain out of EAW.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2012	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NK

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low				
High				
Best Estimate	N/A		NK	NK

**Description and scale of key monetised costs by ‘main affected groups’**

Future running costs of SISII (post April 2015) are estimated to be approximately £6.92m per year. This includes the cost of the Home Office SISII Policy team, NCA SIRENE Bureau and technical refreshes.

**Other key non-monetised costs by ‘main affected groups’**

Versus the base case, SISII may result in more criminals being brought to justice. This would incur costs to law enforcement agencies processing the requests, and to the police, Border Force, and criminal justice system dealing with any additional arrests and extraditions. The cost of each extradition is estimated at £62k per extradition out of the UK (although there may be some double counting as some of the resource costs are included in the £6.92m figure above). It is not possible to accurately estimate the difference in number of arrests and extraditions. Any increase in detection from access to the other alerts, for example on missing persons, could lead to additional opportunity costs to law enforcement agencies in reporting these detections and subsequent downstream costs on the criminal justice system if further action is required.

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

**Description and scale of key monetised benefits by ‘main affected groups’**

N/A

**Other key non-monetised benefits by ‘main affected groups’**

Any additional extraditions as a result of improved information sharing could lead to crime prevention benefits if these individuals would have gone on to commit crime in the UK in the absence of extradition. SISII will provide savings to the police and NCA as they will no longer have to go through bilateral processes to provide and obtain information relevant to all alerts. In addition, improved access to these alerts will improve the likelihood of detection of people and objects wanted for law enforcement purposes. These alerts will help the UK to tackle cross-border criminality as well as reducing the likelihood that the UK is viewed as a safe haven for criminals from the EU.

**Key assumptions/sensitivities/risks**

Discount rate

3.5%

Assumes that UK will revert back to the 1957 European Convention on Extradition.

There is uncertainty over how speedily the UK would be able to circulate extradition requests on PNC and border systems without the EAW which may limit the ability of Law Enforcement Agencies to detect these criminals. Further development work is likely to be required to operate SIS II under the ECE. this may delay go live and incur additional costs.

**BUSINESS ASSESSMENT (Option 6)**

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: N/A	Benefits: N/A	Net: N/A		

Description: To opt into the EAW but remain out of SISII

**FULL ECONOMIC ASSESSMENT**

<b>Price Base Year</b> 2012	<b>PV Base Year</b> 2014/5	<b>Time Period</b> Years 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low:</b>	<b>High:</b>	<b>Best Estimate: NK</b>

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

**Description and scale of key monetised costs by ‘main affected groups’**

N/A

**Other key non-monetised costs by ‘main affected groups’**

Cooperation with other Member States under the EAW will streamline and improve the effectiveness of the extradition process. This could incur costs to the National Crime Agency (NCA) in processing the requests and the police and Criminal Justice System when dealing with any additional arrests and extraditions, estimated at £13k per extradition out of the UK.

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

**Description and scale of key monetised benefits by ‘main affected groups’**

The more streamlined process under the EAW means that an extradition takes less time to process compared to the base case. Detention times are shorter and fewer cases are contested. This leads to lower unit costs to the criminal justice system for an EAW case, saving an estimated £49k per extradition.

**Other key non-monetised benefits by ‘main affected groups’**

Using the EAW extradition framework could benefit the UK if the individuals would go on to commit crimes in the UK and could not be extradited under the base case. This could act as a deterrent for offenders deciding whether to enter the UK.

In addition, any increase in extraditions back into the UK due to the removal of bars to extradition would bring justice benefits.

**Key assumptions/sensitivities/risks**

It is assumed that missing person and object requests would continue to operate as under the present process.

**Discount rate**

3.5%

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of</b>	<b>Measure qualifies</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net: N/A</b>
	N/A	N/A

Description: To opt into both SISII and the EAW.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2012	PV Base Year 2014/15	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NK
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>		<b>Total Cost (Present Value)</b>
Low					
High					
Best Estimate	N/A		NK		NK
<p><b>Description and scale of key monetised costs by ‘main affected groups’</b></p> <p>Future running costs of SISII (post April 2015) are estimated to be approximately £6.92m per year. This includes the cost of the Home Office SISII Policy team, NCA SIRENE Bureau and technical refreshes.</p>					
<p><b>Other key non-monetised costs by ‘main affected groups’</b></p> <p>Operating under EAW and with access to SISII data is expected to streamline and improve the efficiency of the extradition process. Any increase in the number of criminals brought to justice (for example due to the removal of bars to extradition) would incur costs to law enforcement agencies processing the requests and the police, Border Force, and criminal justice system when dealing with any additional arrests. The cost of each extradition is estimated at £13k per extradition out of the UK (although there may be some double counting as some of the resource costs are included in the £6.92m figure above). Any increase in detection from access to the other alerts, for example on missing persons, could lead to additional opportunity costs to law enforcement agencies in reporting these detections and subsequent downstream costs on the criminal justice system if further action is required.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>		<b>Total Benefit (Present Value)</b>
Low					
High					
Best Estimate	N/A		NK		NK
<p><b>Description and scale of key monetised benefits by ‘main affected groups’</b></p> <p>The more streamlined process under the EAW means that an extradition takes less time to process compared to the base case. Detention times are shorter and fewer cases are contested. This leads to lower unit costs to the criminal justice system for an EAW case, saving an estimated £49k per extradition.</p>					
<p><b>Other key non-monetised benefits by ‘main affected groups’</b></p> <p>Versus the base case, SISII may result in more criminals being brought to justice. Border Force will be checking SISII data against advanced passenger information, affording the relevant police forces the opportunity to intercept such individuals before they attempt to cross the UK border. There are potentially significant savings as the police will be able to effectively target individuals without having to search for them within the UK, as well as preventing further crimes from being committed in the UK. In addition, any increase in extraditions of foreign nationals back into the UK for serious crimes (see case studies) due to the removal of bars to extradition would bring justice benefits. SISII will also provide savings to the police and NCA as they will no longer have to go through bilateral processes to provide and obtain information relevant to all alerts. In addition, improved access to these alerts will improve the likelihood of detection of people and objects wanted for law enforcement purposes.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate</b>
It is not possible to accurately assess the number and type of relevant alerts the UK will received.					3.5%

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of</b>	<b>Measure qualifies</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net: N/A</b>	N/A	N/A

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 Decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining:

- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

SIS II is the new EU database for exchanging alerts between Member States in relation to people and objects wanted for law enforcement purposes. It will also become the main way of transmitting data about people wanted on European arrest warrants (EAWs).

- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II.

This Commission Decision sets out specific and detailed technical requirements as required by Article 4(a) of Council Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II).

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

The EAW provides a mechanism for the surrender of alleged offenders between Member States.

The IA seeks to present the evidence base supporting the rationale for intervention and assesses the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and will have fully implemented the measure by 1 December 2014. This is the point at which transitional controls (as set out in Article 10(1) of Protocol 36) come to an end and Commission enforcement powers, which ultimately include the power to levy fines for wrongful implementation, and the European Court of Justice's jurisdiction take effect.

The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

#### Background

##### The second generation Schengen Information System (SIS II).

SIS II is used for law enforcement, immigration and border controls in the EU and was conceived as a tool to deal to strengthen the fight against terrorism.

All SIS II systems operate on a 'hub and spoke' model where a Central SIS II hub exchanges data from national servers in each participating Member State. The central system receives new alert information from Member States and relays it out to all other national systems several times per second – ensuring that all participating countries have an instantly up to date set of records.

SISII allows competent national authorities to issue alerts in **real time** for:

- persons wanted for arrest for extradition purposes, for which a warrant has been issued (Article 26);

- missing persons who need to be placed under police protection or in a place of safety, including minors and adults not at risk (Article 32);
- witnesses, absconders, or subjects of criminal judgements to appear before the judicial authorities (Article 34);
- people or vehicles requiring specific checks or discreet surveillance (Article 36);
- objects that are misappropriated, lost, stolen and which may be sought for the purposes of seizure or for use as evidence (e.g. firearms, passports etc) (Article 38);

The Central SISII database went live on 9 April 2013. The following countries currently operate SIS II: France, Germany, Belgium, Netherlands, Luxembourg, Portugal, Italy, Austria, Greece, Finland, Sweden, Switzerland, Denmark, Estonia, the Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Liechtenstein, Iceland, Norway, and Switzerland. Ireland, Cyprus, and Croatia, whilst signatories to the Schengen Agreement are yet to implement measures relating to SIS II.

As of 1st February 2014, SISII had just over 51 million records or alerts on the system. This includes the following:

- 900,000 alerts for wanted or missing persons (including approximately 35,000 Article 26 alerts)
- 40 million alerts for identity documents;
- 3 million vehicle alerts; and
- 600,000 Article 24 (refused entry or stay into the Schengen Area) alerts which will not be visible in the UK.

The UK is due to connect to SIS II towards the end of 2014. When the UK connects, SIS II “alerts” will be made available to UK law enforcement officers via the Police National Computer (PNC) and the Border Force equivalent system. The SIRENE Bureau has also been established within the International Crime Bureau of the National Crime Agency (NCA) as the authority with central responsibility for the UK’s exchange of alerts. The NCA SIRENE Bureau when live will operate 24/7 and employ around 120 staff. The SIRENE Bureau will act as the single point of contact for all UK law enforcement agencies (LEA) and have responsibility for liaising with all equivalent Bureaux in other Schengen States.

The Home Office retains the overall management and governance of the UK’s national copy of the SIS II system.

### SIS II networks measure

This measure sets out specific and detailed technical requirements of the communications infrastructure for SIS II. This relates to the connections that transmit data between the central and national copies of SIS II.

### European arrest warrant (EAW)

The EAW provides a system by which individuals sought for trial or service of a sentence are surrendered by one European Union (EU) Member State to another. The National Crime Agency (NCA) is the designated authority for the receipt and transmission of EAWs in the UK (with the exception of Scotland, where it is the Crown Office and Procurator Fiscal Service).

The EAW has been in operation in the UK since 1 January 2004 and is given effect by Parts 1 and 3 of the Extradition Act 2003. The Government amended the Extradition Act earlier this year to reform the operation of the EAW and provide further protection to British citizens. The additional protections inserted into the Act included the following.

### **Proportionality**

The use of the EAW for relatively minor offences has long been identified as a problem, not only by the UK.

New clause 23 requires UK judges to consider – in addition to whether extradition would be compatible with the Convention rights – whether it would be disproportionate, taking into account (so far as the judge thinks it appropriate to do so) the seriousness of the conduct, the likely penalty and the possibility of less coercive measures being taken. This applies in all cases where the EAW has been issued in order to prosecute the person.

### **Absence of prosecution decision**

Parliament has expressed concerns about lengthy and avoidable pre-trial detention, and it is important that these situations are avoided.

New clause 24 addresses this problem. The effect of the clause will be that where it appears to the judge that there are reasonable grounds for believing that a decision to charge and a decision to try have not both been taken in the issuing State (and that the person's absence from that State is not the only reason for that), extradition will be barred unless the issuing State can prove that those decisions have been made (or that the person's absence from that State is the only reason for the failure to take the decision(s)).

### **Request for temporary transfer etc.**

New clause 26 allows the requested person and the issuing State to speak to one another, if they both consent, before extradition takes place. It will allow for the temporary transfer of the person to the issuing State and also for the person to speak with the authorities in that State whilst he or she remains in the UK (e.g. by video link).

In some cases, it is to be expected that the result of this will be the withdrawal of the EAW – e.g. in cases where, having spoken with the person, the issuing State decides that he or she is not the person they are seeking or that he or she did not in fact commit the offence in question. In other cases, where extradition goes ahead, it is to be expected that in some cases the person will spend less time in pre-trial detention, as some of the questions which need to be asked and the processes which need to happen ahead of the trial could take place during or as a result of the temporary transfer or videoconference.

### **Amendments to the definitions of “extradition offence”**

Parliament has also expressed concern about people being extradited for conduct which is not criminal in British law.

To help address these concerns, the definitions of “extradition offence” in the Act – clause 29 – make clear that in cases where part of the conduct took place in the UK, and is not criminal here, the judge must refuse extradition for that conduct. This applies in all EAW cases.

The amendments to the definitions of “extradition offence” also corrected a transposition error, in that they make clear that in cases where the conduct took place outside the requesting State, there is no requirement for the offence to be punishable with imprisonment for a term of 12 months or a greater punishment.

### **Consent to extradition not to be taken as waiver of specialty rights**

Clause 28 ensures that a person who consents to his or her extradition does not lose the benefit of any “specialty protection” he or she would otherwise have. Specialty protection ensures a person is, in general, only proceeded against for the offence or offences listed in the extradition request. This enables those who wish to be extradited to be surrendered quickly without risking being tried for any other alleged offences.

The case of **Hussain Osman** (the failed 21/7 London bomber) demonstrates how fast the EAW can work in comparison to alternative schemes. It took 56 days to return Osman to the UK, whereas in non-EAW cases it can often take many months and sometimes years to return serious offenders to face justice due to the various procedural bars that non-EAW cases face.

Figures on the number of EAWs between 2009 and 2013 are as follows:

**Part 1 (surrenders to another EU Member State from the UK)**

- Between April 2009 and April 2013, 5,184 people were arrested in the UK under an EAW, and 4,005 were surrendered to another EU country;
- Of the people arrested, 259 were British (5%); and of the people surrendered, only 181 were British (4.5% of the total surrenders from the UK);
- Poland was the most prolific issuer of EAWs to the UK; between April 2009 and April 2013, 2,404 people were surrendered to Poland (60% of the total surrenders from the UK).<sup>1</sup>

Following representations from the UK, Poland has taken steps to reduce the number of EAWs that are issued and the overall number of EAWs received from Poland has reduced by approximately 25% between 2009/10 and 2012/13. Legislation is currently being taken through the Polish Parliament and which is anticipated to make further reductions in the number of EAWs issued to the UK. This legislation will amend section 607b of Poland's Criminal Procedure Code so that an EAW can only be issued if it is in the interests of justice to do so.

In addition, the Government's new proportionality clause requires UK judges to consider whether extradition would be disproportionate. This requires a judicial assessment of the seriousness of the conduct, the likely penalty and the possibility of less coercive measures being taken. It is expected that this judicial assessment will reduce extraditions for minor offences.

**Part 3 (surrenders to the UK pursuant to an EAW issued by the UK)**

- Between April 2009 and April 2013, 573 people were arrested in another EU country pursuant to an EAW issued by the UK, and 507 were surrendered to the UK on the request of UK law enforcement and prosecutors;
- Of the people arrested, 297 were British (52%); and of the people surrendered, 277 were British (54% of the total surrenders to the UK).<sup>2</sup>

**2. GROUPS AFFECTED**

The main groups affected by these measures are the NCA (contains the central authority for SIRENE Bureau for SIS II and the Fugitives Unit), Border Force, police forces throughout England and Wales, Police Scotland, Police Service for Northern Ireland, Her Majesty's Courts and Tribunal Service, National Offender Management Service, the Crown Prosecution Service, Crown Office in Scotland, the Police Prosecution Service in Northern Ireland, Her Majesty's Passport Office (HMPO), Her Majesty's Revenue and Customs (HMRC), the UK's Intelligence agencies and other Member States.

**3. RATIONALE FOR INTERVENTION**

Serious organised crime and terrorism pose significant threats to the UK as well as all other Member States. The UK is committed to practical cooperation with other Member States to tackle the threats posed in this regard. The Government is committed to ensuring that UK law enforcement has the tools required to tackle these threats.

**Serious organised crime**

There are an estimated 3600 organised crime groups active within the EU.<sup>3</sup> Serious organised crime is recognised as being fundamentally affected by the forces of globalisation, such as the relative ease of travel and speed of global communications. Serious organised criminals are increasingly networked

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<sup>1</sup> Part 1 (incoming) EAW requests - breakdown by country, offence, and nationality, <https://www.gov.uk/government/publications/european-arrest-warrant-data-2009-2013>

<sup>2</sup> Part 3 (Outgoing) EAW requests - breakdown by country, offence, and nationality, <https://www.gov.uk/government/publications/european-arrest-warrant-data-2009-2013>

<sup>3</sup> Serious Organised Crime Threat Assessment 2013



across borders and do not recognise nation state boundaries. 70% of these groups are estimated to be composed of members of multiple nationalities.<sup>4</sup>

### International terrorism

The global threat from terrorism remains high and continues to diversify. There were 17 deaths in the EU as a result of terrorist activity of all types in 2012,<sup>5</sup> including a bomb attack at Burgas airport in Bulgaria and shootings by a lone gunman in France. The threat continued in 2013, including two terrorist incidents in Great Britain, which caused two fatalities. Globally, the nature of the threat is more diverse now than in the past, and more dispersed across a wider geographical area. The most significant development in connection with global terrorism since 2013 has been the growing threat from terrorist groups in Syria, supported by rapidly increasing numbers of foreign fighters - many from Europe. The UK is concerned about the threat to Europe from Syria-based groups and returning European foreign fighters.

### Improving law enforcement access to real time information on persons and objects of interest

The UK currently receives and shares law enforcement information with European partners through bilateral arrangements and through Interpol channels. Processes rely on Member States directing information to appropriate law enforcement agencies in the UK in order for action to be taken. These processes do not allow for real time access to alerts and rely on UK law enforcement manually updating systems (e.g. the PNC). This incurs significant resource burdens on law enforcement agencies as well as impairing the UK's ability to detect individuals and objects of interest.

### Secure the UK Border

Securing the border is a key priority for the Government and security is a primary focus. Over 100 million passengers arrive in the UK each year and in total there are around 200 million passenger journeys across the UK border. Providing border staff with the right information to stop potential threats before they can enter the UK is vital.

The EAW speeds up the process of extradition within the EU whilst protecting the fundamental rights of those subject to a request. Recent changes to UK have added additional protections for British citizens. The EAW system recognises the increase in cross border criminality and supports the security of UK citizens in an era of free movement of people, goods and services within the EU. Law enforcement agencies are clear that it is a vital tool in protecting the public against serious criminality across the EU.

SISII, through the use of real-time information, will enable the UK to better combat domestic and transnational crime and protect the border. It will also strengthen public protection by extending the reach of UK law enforcement across Europe through enhanced information sharing and increased operational effectiveness.

## **4. OBJECTIVES**

The Government's overarching policy aims are to:

- secure the border and effectively tackle cross-border criminality;
- ensure that the UK has strong and efficient extradition arrangements;
- improve information sharing within the EU.

### **BASE CASE (OPTION 0) – DO NOTHING**

Do not seek to rejoin SISII or the EAW (do nothing).

### **Persons wanted for arrest for extradition purposes**

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<sup>4</sup> Serious Organised Crime Threat Assessment 2013

<sup>5</sup> EU Terrorism Situation and Trend Report 2013

## Inbound

In the event that the UK did not seek to rejoin the EAW, it is likely that the UK would fall back on the 1957 European Convention on Extradition (ECE).

Legislative changes would be required in UK law to operate under the ECE. This would involve re-designating all EU Member States from Part 1 of the Extradition Act 2003 ("The Act"), to Part 2. Part 2 of the Act governs extradition arrangements between the UK and non-EU extradition partners. This process would significantly increase the time taken to execute an inbound extradition and the unit cost involved. The unit cost of a Part 2 extradition is assessed to be £62k.<sup>6</sup>

Requests under the ECE are issued by one State and considered by the receiving Member State before a decision is taken on whether to issue the arrest warrant. As a result the ECE is a slower system of extradition. For example, it took the UK 10 years to extradite Rachid Ramda to France using the ECE, where he was subsequently convicted of terrorist offences.

Structural and process changes would be required to operate under the ECE. Part 2 extradition casework is currently managed by specialist staff located within the Judicial Cooperation Unit of the Home Office. The NCA SIRENE Bureau would become defunct and changes may be required to operational structures within Northern Ireland and Scotland.

Reverting to the ECE could also require legislative amendments in some Member States (the impact of changes required is not assessed within this IA). Article 31 of the EAW Framework Decision set out that, from 1 January 2004, the Decision replaced the corresponding provisions of the ECE in the field of extradition in relations between the Member States.

For example, in Denmark, Section 10a of Danish law 433 replaced the provisions of Danish law which dealt with extradition to other Member States on the basis of the ECE, with entirely new provisions which allow for extradition on the basis of the EAW. Accordingly, we believe that law 433 would require amendment, were the UK to operate the ECE. It is presently unclear how long that might take (it would not be in the control of the UK) and the financial costs that would be incurred.

Legislative changes required within Member States may vary. Timings to implement such changes would also vary from State to State, and might range from weeks (where minor changes are needed) to months or possibly years (where more complex legislation is required). For those States where changes would be required, there is the risk of creating an operational gap in extradition arrangements with the UK if the necessary changes could not be implemented before 1 December.

## Outbound

In the event the UK did not seek to rejoin the EAW, we would be likely to fall back on the 1957 European Convention on Extradition (ECE) for outbound extradition requests.

The scope of extradition is more limited under the ECE than the EAW. The ECE allows countries to make a reservation under Article 6 that they can refuse to extradite their own nationals. The following countries have made such a reservation, which we understand still remains in force for any extradition request made under the ECE:

- Bulgaria
- Croatia
- Cyprus
- Estonia
- France
- Germany
- Hungary
- Lithuania
- Luxembourg

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<sup>6</sup> MOJ assumptions

- Netherlands
- Poland
- Portugal
- Romania

In addition, under the ECE, extradition could be barred for a country's own nationals even if a reservation had not been entered, if there is a constitutional bar in place (i.e. a legal barrier to the extradition of a national of that state). The following EU countries still have a constitutional bar in place which we believe could prevent the extradition of their nationals to the UK if we no longer operated the EAW. These are;<sup>7</sup>

- Italy<sup>8</sup>
- Slovakia
- Austria
- Belgium
- Sweden
- Finland
- Latvia
- Czech Republic
- Ireland<sup>9</sup>

There have been some high profile cases where the nationality bar has prevented people being surrendered to the UK to face justice. The Russian Federation's refusal to extradite Andrey Lugovoy (accused of the murder of Alexander Litvinenko) is a notable example of this. While the refusal to extradite a national would not necessarily result in the person going unpunished, in order to prevent this, the proceedings would have to be transferred to the executing state. This is not always possible or desirable (as in the case of Lugavoy) and would place an extra burden on victims and witnesses who would have to travel abroad to see justice done.

In addition, the ECE does not allow for extradition for fraud and tax offences (this is provided for in the protocols which not all countries have ratified). Her Majesty's Revenue and Customs have been involved in 42 cases where people have been surrendered to the UK for tax offences since 2008/09 on a European Arrest Warrant. These figures do not represent all cases involving tax offences, as other EAWs that may include tax offences were not dealt with by HMRC and are not recorded separately.

### **Other alerts**

In the event the UK did not seek to rejoin SIS II, inbound and outbound notifications would continue to be processed through the existing bilateral processes outlined below.

### **Missing persons who need to be placed under police protection or in a place of safety**

#### **Inbound**

Notifications are received manually through a number of channels including Interpol, Europol and the National Crime Agency (NCA). These can be received via email or even fax. The differing channels and methods of receipt may result in efforts being duplicated and are resource intensive. In addition the notifications are not in 'real time' meaning there may be lost opportunities to locate missing or vulnerable

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<sup>7</sup> The UK asked other EU countries for this information, not all countries have responded to this request for information and there may be other countries to add to this list.

<sup>8</sup> Italy has a constitutional bar, but it does not have effect if the surrender of own nationals is provided for by the relevant extradition arrangements [for example a particular bilateral treaty], it is unclear what the position with the UK would be if extradition was not governed by the EAW.

<sup>9</sup> As with Italy, Ireland has a constitutional bar, but it does not have effect if the surrender of own nationals is provided for by the relevant extradition arrangements, it is unclear what the position would be if extradition was not governed by the EAW.

people entering the UK and they cannot be cascaded immediately into our domestic law enforcement infrastructure.

#### Outbound

The NCA issues Interpol 'yellow notices' which are circulated to all other Member States. Law enforcement agencies cannot currently circulate these requests to all the participating SIS II countries in 'real time' therefore there is a time delay before SISII countries receive any notifications from the UK.

#### **Witnesses, absconders, or subjects of criminal judgements to appear before the judicial authorities**

##### Inbound

This is currently a bilateral process from an overseas judicial authority directly to the individual[s] concerned by post. Where the judicial authority is unable to serve directly by post (e.g. because service must be in person), under sections 1 and 2 of the Crime (International Cooperation) Act 2003 a request can be made to a central authority (Home Office or Crown Office) to arrange service. These requests for service of overseas process documents are received by secure post or in some cases unsecure email or fax.

##### Outbound

Under sections 3 and 5 of the Crime (International Cooperation) Act 2003 an outgoing service of process/citation can be posted directly to an individual abroad by a UK court.

#### **People or vehicles requiring specific checks or discreet surveillance**

##### Inbound

Requests are currently received manually throughout secure networks including email and faxes. There is no 'real time' capability to cascade the information into our domestic law enforcement infrastructure such as: PNC, border systems, National Border Targeting Centre or Automatic Number Plate Recognition (ANPR) systems.

##### Outbound

Notices are issued manually by UK authorities bilaterally to other SISII countries. There is no 'real time' capability to cascade the information across all other participating SIS II countries' national law enforcement infrastructure such as their domestic policing, security or ANPR systems.

#### **Objects that are misappropriated, lost, stolen and which may be sought for the purposes of seizure or for use as evidence (e.g. firearms, passports etc)**

##### Inbound

This could be requested through manual mutual legal assistance (MLA). All incoming MLA requests to the UK from Member States are received by a central authority (the Home Office, HMRC, or Crown Office), usually by secure post or in some cases unsecure email or fax. If the central authority accepts the requests they are sent to the relevant executing authority. However, if a court order is required, the executing authority will be directed by the central authority to make an application to the court.

Notifications from the participating SIS II countries are not received in 'real time' and cannot be cascaded immediately into our domestic law enforcement infrastructure.

##### Outbound

The main process is through MLA; the request for assistance must be issued by a court or "designated prosecuting authority" in the UK under section 7 of Crime (International Cooperation) Act 2003. The court or prosecuting authority then transmits the request to a central authority or a specific court/prosecuting authority in a Member State.

These notifications currently cannot be cascaded in 'real time' to the participating SISII countries.

## **OPTION 1 - REJOIN SISII BUT DO NOT SEEK TO REJOIN THE EAW**

### **Persons wanted for arrest for extradition purposes**

In the event the UK did not seek to rejoin the EAW, the UK would need to operate extradition arrangements under the ECE, as in the base case. The SIS II Council Decision permits extradition under the ECE. Norway and Iceland currently operate in this way.

The UK's NCA SIRENE Bureau would process Article 26 alerts issued by Member States. This would require supplementary information to be provided as required by Article 29 of the SIS II Council Decision. An arrest could not be made until a UK court had issued a provisional arrest warrant. This would also be limited to cases where there is a UK connection. The outline process would be as follows:

1. Article 26 alert received by NCA
2. Where it is possible to establish a UK connection we would request extra information and seek a provisional arrest warrant from a judge (all others would be circulated for 'locate/trace')
3. If person identified either at border or by the police then person can be detained for 45 days (maximum) to allow a full extradition request to be made by the other State.
4. In cases where a full ECE request is received in good time extradition processes will continue, in other cases the individual will be released.

## **COSTS**

### **Monetised costs**

Costs are assessed against the baseline position, including any costs that relate to reverting to the ECE.

Future running costs of SISII (post April 2015) are estimated to be approximately £6.92m per year. This includes the cost of the Home Office SISII Policy team, NCA SIRENE Bureau and technical refreshes.

### **Non-monetised costs**

### **Persons wanted for arrest for extradition purposes**

The UK will have access to approximately 35,000 SIS II Article 26 alerts (EAW). With access to a greater pool of extradition requests under SISII, it is expected that there would be a small increase in the number of extraditions compared to the base case. However, due to the slow procedural process under Part 2, and because the majority of Article 26 alerts would have no arrest powers attached to them, Law Enforcement Agencies would not always be able to detain individuals detected at the UK's borders.

This option would incur costs agencies processing the requests and the police, Border Force, and criminal justice system when dealing with any additional arrests and extraditions (estimated at £62k per extradition). The cost of processing the requests by the NCA should already be included in the £6.92m figure above. It is not possible to accurately estimate the difference in number of arrests and extraditions due to uncertainty over the number of extraditions in the base case and the impact of access to the 35,000 Article 26 alerts; as well as the enhanced capability that Border Force will have via SISII, which every person entering the UK will be checked against.

Where a full extradition request under the ECE was not received within the 45 day limit the individual would need to be released. However, he would now be aware that his extradition was sought and this may have the consequence of making it more difficult to locate him again in the future. Under the base case a full ECE extradition request would normally be received at the outset.

## Outbound

Due to the improved access to outbound Article 26 alerts, and the potential increase in alerts being put on the system due to improved awareness, there could be an increase in extraditions back to the UK of people wanted by UK law enforcement agencies for serious crimes. This would lead to costs to the Criminal Justice System, estimated at £29k per case.<sup>10</sup> It is not possible to estimate this increase due to lack of evidence.

## **Other Alerts**

There would also be opportunity costs in actioning any increase in the other SISII alerts, and subsequent downstream costs on the criminal justice system if further action is required. However, the only obligation is to report the person or object has been located in the UK and agree appropriate follow up action. This is the responsibility of the NCA SIRENE Bureau and they would deal with the case management of these additional alerts as the single point of contact to all other SISII Member State SIRENE Bureaux.

## **BENEFITS**

### **Monetised benefits**

N/A

### **Non-Monetised Benefits**

#### **Persons wanted for arrest for extradition purposes (Article 26)**

##### Inbound

Compared to the base case, there is likely to be a small increase in the number of extraditions as a result of improved information sharing under SIS II and access to the pool of 35,000 Article 26 alerts, leading to potential crime prevention benefits if these individuals would have gone on to commit crimes in the absence of extradition. However, the effectiveness of these alerts would be limited at the border as border officers would not have a power to detain in cases where a UK judge has not yet issued a warrant.

##### Outbound

The UK will be able to cascade extradition warrants to all the participating SIS II countries through the NCA SIRENE Bureau. This will increase the UK's capability to locate offenders who have fled British justice; in addition it is likely to reduce the time it takes to locate criminals who have absconded from the UK, especially if their precise location is unknown.

One of the main reasons for this is that the alerts are passed immediately into their individual law enforcement infrastructures where they can be seen directly by law enforcement and prosecution agencies. Under the base case a full ECE request would need to be sent via the Home Office at the beginning of the process and would be sent bilaterally to a central point.

### **Other alerts**

SISII will aid law enforcement officers in the course of their day-to-day duties, by providing them with:

- a) Real-time information from participating countries about wanted persons, missing persons, lost and stolen ID cards, travel documents and lost and stolen vehicles. This information is shared in the form of "Alerts".

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<sup>10</sup> MOJ data

- b) Real time information about people and objects whose movement is of interest to foreign law enforcement officers.
- c) Warning markers if a person is potentially armed, violent or dangerous.
- d) A simple and already standardised means of accessing this information via the PNC.
- e) A simple and standardised means of sending alert information via the PNC to other SIS II users in Member States.

Access to real-time information on the following alerts may increase the UK's ability to detect wanted persons and objects for law enforcement purposes. This could subsequently lead to significant crime prevention benefits in addition to time and efficiency savings due to the faster and simpler processes to obtain this information. Due to a lack of evidence it has not been possible to quantify these benefits.

### **Missing persons who need to be placed under police protection or in a place of safety (Article 32)**

#### **Inbound**

Going live on SIS II will provide access to all missing person requests on the database including 24,300 alerts for adults and 36,500 alerts for minors. This represents a dramatic increase in the information available to UK law enforcement on vulnerable individuals such as victims of trafficking.

Real-time alert information will also be available at the UK border and PNC users. Access to this information will help increase law enforcement's ability to identify individuals being trafficked into the UK by organised crime groups for exploitation. Current understanding of the exact scale of modern day slavery is limited. The only systematic means we have for collecting data is the National Referral Mechanism (NRM<sup>11</sup>) to which potential victims of modern slavery are referred. 1,186 potential victims of modern slavery were referred in 2012 – a 25 per cent increase on the previous year.

Access to these alerts will also enhance the UK's ability to detect traffickers and disrupt criminal gangs exploiting vulnerable people.

#### **Outbound**

Circulating these alerts will increase the UK's ability to detect and locate these individuals, and return them safely. In addition, because we will have a single integrated IT solution where alerts are available through PNC or Border Systems; there may also be an increased chance of locating the individuals before they leave the UK providing a significant resource saving in terms of the opportunity cost of finding these individuals.

The ability to locate trafficked individuals will also enhance law enforcement agencies' ability to track down those responsible and help bring them to justice, through an improved law enforcement response, supported with better information-sharing and intelligence.

### **Witnesses, absconders, or subjects of criminal judgements required to appear before the judicial authorities (Article 34)**

#### **Inbound**

Access to this information in real-time through our domestic law enforcement infrastructure will replace the currently manual process and increase the UK's ability to locate these types of persons. This will also significantly improve the UK's judicial cooperation with participating SISII countries and will lead to efficiency savings through more automated processes. Locating persons subject to these alerts could also increase the detection of domestic offences.

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<sup>11</sup> The National Referral Mechanism (NRM) is an identification and support process for potential victims of modern slavery. It was designed to make it easier for all the different agencies that could be involved in a trafficking case, such as the police, UK Visas and Immigration, local authorities, and designated NGOs to share information about potential victims and to facilitate their access to tailored support

## Outbound

The UK will receive enhanced information on people who have left the UK and are wanted for judicial purposes:

- a) This will speed up the UK's ability to locate witnesses who have left the UK and may be in one of the participating SIS II countries;
- b) Increase the UK's ability to locate persons summoned or persons sought to be summoned to appear before the judicial authorities in connection with criminal proceedings in order to account for acts for which they are being prosecuted;
- c) Increase the UK's ability to locate persons who are to be served with a criminal judgment or other documents in connection with criminal proceedings in order to account for acts for which they are being prosecuted;
- d) Increase the UK's ability to locate persons who are to be served with a summons to report in order to serve a penalty involving deprivation of liberty;
- e) The enhanced information-sharing will simplify the process for distributing information in 'real time' across all participating SISII countries, removing the current manual and paper based process that can take weeks or even months. This will lead to efficiency savings.

## **People or vehicles requiring specific checks or discreet surveillance (Article 36)**

### Inbound

Article 36 of the SIS II Council Decision allows for alerts to be shared between Member States on people or vehicles requiring specific checks or discreet surveillance.

Discreet alerts will be integrated to all of the UK's law enforcement IT infrastructure; access to these alerts will increase and enhance the UK's capability to detect and identify persons who are a threat to both public safety and national security.

Access to these alerts will also significantly enhance the UK's identification and detection of foreign fighters returning from countries such as Syria. This is a major threat to the UK and other Member States. Syria continues to attract growing numbers of foreign fighters from across Europe. Reducing the flow of individuals who may participate in fighting in Syria and intervening with them on their return remains a challenge and a key priority.

Access to these alerts will also increase and enhance intelligence relating to suspicious travel movements of known individuals.

### Outbound

The ability to create these alerts will increase and enhance the UK's capability to detect and identify persons who are a threat to both public and national security including foreign fighters.

A key benefit to the creation of these alerts is that they can be used to detect suspicious travel movements of known individuals. This also simplifies the process for distributing information across all Member States.

Access to these alerts will also increase the detection of persons who are a serious threat to public security and tackling mobile European criminals such as sex offenders who are seeking to exploit EU free movement rules.

## **Objects that are misappropriated, lost, stolen and which may be sought for the purposes of seizure or for use as evidence (e.g. firearms, passports etc) (Article 38)**

### Inbound

The UK will gain access to about 40 million alerts held on SISII for objects, and this will be available in 'real time' to law enforcement officers via the PNC.

This will increase and enhance UK law enforcement agencies' ability to locate and recover for participating SISII countries:

- a) stolen vehicles, boats and aircrafts;
- b) stolen plant equipment;



- c) firearms;
- d) blank official documents which have been stolen, misappropriated or lost;
- e) issued identity papers such as passports, identity cards, driving licences, residence permits and travel documents which have been stolen, misappropriated, lost or invalidated;
- f) vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated;
- g) banknotes (registered notes);
- h) securities and means of payment such as cheques, credit cards, bonds, stocks and shares which have been stolen, misappropriated, lost or invalidated.

Access to these alerts will be circulated in 'real time' to UK law enforcement. This increased information will identify and disrupt criminal gangs who use false ID documents or vehicles to traffic vulnerable people into and out of the UK. This automated system will also reduce the current manual paper based process saving unquantifiable time and resources.

Early detection of individuals using false documents could also prevent abuse of the UK's benefit system and identify further fraudulent crimes (including money laundering). There is also the added benefit of asset recovery from criminals. The scale of organised crime in the UK is such that law enforcement and prosecuting authorities need to deploy all the legal powers and tools at their disposal intelligently in order to maximise the impact of asset recovery on crime reduction.

### Outbound

This will increase and enhance the UK's ability to locate and recover the objects listed above.

These requests will be circulated in 'real time' to all participating SIS II countries assisting UK Law enforcement agencies to better disrupt criminal gangs who use false ID documents or vehicles to traffic vulnerable people into and out of the UK. This automated system will also reduce the current manual paper-based process saving unquantifiable time and resources. There is also the added benefit of asset recovery from criminals. The scale of organised crime in the UK is such that law enforcement and prosecuting authorities need to deploy all the legal powers and tools at their disposal intelligently in order to maximise the impact of asset recovery on crime reduction.

### **NET IMPACT- OPTION 1**

It has not been possible to quantify the net impact of Option 1 due to a lack of evidence of the impact SIS II will have on the UK's ability to detect wanted objects and persons for law enforcement purposes. It has not been possible to assess whether administrative costs will increase or decrease as a result of SISII. There is expected to be increased costs from processing additional alerts but also savings from streamlining the process and moving away from bilateral arrangements. Option 1 does not offer the best value for money as the cost of each additional extradition (£62k) is estimated to be greater than the crime prevention benefit (£29k). However, real-time access to the 51 million alerts on SISII should help the UK to tackle cross-border criminality as well as reducing the likelihood that the UK is viewed as a safe haven for criminals from the EU.

## **OPTION 2 - REJOIN THE EAW BUT DO NOT SEEK TO REJOIN SIS II**

### **Persons wanted for arrest for extradition purposes**

This would, in effect, continue the UK's current extradition arrangements that have been in place since 2004.

#### **Inbound**

Incoming extradition requests are received by the National Crime Agency through secure networks including email, fax and very occasionally hard copy by secure means such as recorded delivery. These are direct copies of the warrant issued in Member States containing details of the offence. There is no legal requirement to provide English translations and many require translation by the issuing state before certification can occur. This process can delay certification by, on average, 48 days.

The NCA also frequently has to obtain a set of fingerprints relating to the person located in the UK from SIRENE Bureau of the Member State that originated the EAW relating to the person located in the UK. Fingerprints are the only way to ensure a high degree of confidence that the person arrested is actually the person cited on the EAW. The process for obtaining a set of fingerprints from Europe is manual and can take as long as a week.

#### **Outbound**

When seeking the extradition of a suspect back to the UK, the Crown Prosecution Service (CPS) decides whether to prosecute a particular case. An application for an EAW (under Part 3 of the Extradition Act 2003) is then made by the police or CPS to the courts who must then certify the warrant. Once the warrant is certified, it is transmitted to the NCA who then administers the process and arranges for enquiries to be conducted abroad to locate fugitives. Subject to final checks, the NCA will issue the EAW to the Member State where the person is believed to be at large.

### **COSTS**

#### **Monetised costs**

N/A

#### **Non-monetised costs**

### **Persons wanted for arrest for extradition purposes**

#### **Inbound**

Using the EAW framework will streamline and improve extradition arrangements. Any increase in the number of criminals brought to justice (for example due to the removal of bars to extradition) would incur costs to law enforcement agencies processing the requests and the police and criminal justice system when dealing with the additional arrests and extraditions, estimated at £13k per extradition.

#### **Outbound**

By removing the nationality bar under ECE, the EAW could lead to a significant increase in extraditions back to the UK. In addition, using the EAW may allow for specialist operations (such as Operation Captura<sup>12</sup>) to track down criminals who have fled the UK.

Any increase in extraditions back to the UK would incur costs to the criminal justice system, estimated at approximately £29k per extradition.<sup>13</sup>

It has not been possible to estimate any increase in extraditions back into the UK due to a lack of information of the base case.

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<sup>12</sup> Operation Captura is a joint initiative between Crimestoppers, SOCA/NCA. Further details are included below.

<sup>13</sup> Estimate based on an MOJ internal paper

## BENEFITS

### Monetised benefits

#### Persons wanted for arrest for extradition purposes

##### Inbound

The EAW will speed up the process of extradition. In terms of surrender from the UK to another country, it would take approximately three months to extradite someone under an EAW. A Part 2 extradition (i.e. extradition to non-EU countries) takes approximately ten months but can, and often does, take considerably longer. Time limits are shorter in the EAW than in the ECE, resulting in shorter times in custody overall.

For example, **Iliran Zeqaz** who was wanted in Albania for two murders and the possession of military weapons, spent 21 months in custody in the UK before he was surrendered to Albania, under the ECE. In contrast, **Tewffik Bouallag** was detained for 10 days after the issue of an EAW before being surrendered from Germany to face terrorism charges.

This leads to lower unit costs for an EAW case (estimated to be £13k per case compared to £62k under Part 2).<sup>14</sup>

The estimated difference between the cost of a Part 2 surrender and Part 1 (EAW) surrender is £49k per surrender.

### Non-Monetised Benefits

#### Persons wanted for arrest for extradition purposes

##### Inbound

Bringing criminals to justice more swiftly as a result of the EAW extradition framework could benefit the UK if the individuals would have committed crimes in the UK and could not be extradited under the ECE. In addition, this may act as a deterrent for offenders deciding whether to enter the UK.

##### Outbound

The UK will only issue an EAW for serious offences or where there is a genuine and compelling public interest reason for a person being brought to justice. It will also only do so for the purposes of conducting a criminal prosecution or the execution of a detention order, as is required by the Framework Decision. In addition, in a prosecution case, the CPS will only issue a warrant where the case is ready to proceed to trial. When issuing an EAW (or when making any other extradition request), the CPS apply strict guidance for crown prosecutors to assess firstly whether there is a realistic prospect of conviction, and secondly whether it would be in the public interest to proceed. This ensures that where an alleged criminal, or person convicted of a serious offence, has fled the UK and it is in the interests of justice to prosecute that person, a warrant can be issued for their return.

The EAW has made it easier to return and prosecute people for serious offences committed in the UK. The case of **Hussain Osman** (the failed 21/7 London bomber) demonstrates how fast the EAW can work in comparison to alternative schemes. It took 56 days to return Osman to the UK, whereas in non-EAW cases it can often take many months and sometimes years to return serious offenders to face justice. In terms of extraditions from the UK, it took the UK 10 years to extradite Rachid Ramda to France under the ECE, where he was subsequently convicted of terrorist offences. By contrast, a number of terrorist suspects wanted in connection with ETA or Al Qaeda have been returned by the UK to Spain under an EAW, for example Farid Hilali, Inigo Maria Albisu Hernandez, Zigor Ruiz Jaso and Ana Isabel Lopez Monge. More recently in June 2014 Fermin Vila Michelena, who was wanted by the Spanish authorities in connection with the Madrid Bombings and was extradited to Spain from the UK

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<sup>14</sup> MOJ estimates,

These cases were all completed much more quickly than the Ramda case. Furthermore, there are examples of alleged terrorist offenders going unpunished under the old regime because of various procedural bars which the EAW has since removed (nationality, dual criminality, statute of limitations).

### **Operation Captura**

Operation Capture is a joint initiative between Crimestoppers, SOCA/NCA and the Spanish Police. It demonstrates the value of the EAW in returning fugitives from British justice who are believed to be resident in Spain.

Fifty five of the 76 people wanted under Operation Captura have now been arrested and brought to justice including the following:

**Martin Anthony SMITH** was wanted in connection with a rape of a child under 16, gross indecency with a girl under the age of 16, indecent assault of a girl under 16 and attempted rape of a girl under 16. He was returned to the UK in 2010 and was convicted of child rape.

**Mark Alan LILLEY** was arrested in July 2013, after he was sentenced in 2000 to 23 years in jail for drugs and firearms offences. Lilley was surrendered to the UK on 5 August and is now detained at Belmarsh prison.

**Markcus JAMAL** was wanted for conspiracy for murder of Nageeb El Hakem in 2005. He was arrested in Spain and returned to the UK in January 2007. Jamal's trial is currently underway at Sheffield Crown Court.

A key benefit of the EAW over the ECE is that the EAW requires all participating States to surrender their own nationals. As noted in the base case there are a large number of States operating the EAW who do not surrender their own nationals under the ECE. The ability for the UK to have citizens of other States returned to the UK has positive justice outcomes and allows victims of crime to see justice being done. An example is:

**David Heiss:** from Limburg, Germany, who murdered British 21-year old British student Matthew Pyke on 19 September 2008. Heiss developed an obsessive infatuation with Pyke's 20 year old girlfriend, Joanna Witton, and travelled to Nottingham in June and August 2008 to meet Witton and Pyke in person. During his last visit to the UK, on the morning of September 19, 2008, Heiss proceeded to kill Matthew Pyke after stabbing him 86 times. An EAW was issued 6 days later on 25 September 2008. Heiss was arrested at his home in Limburg on 27 October 2008. He was surrendered to the UK on 25 November 2008. Heiss was sentenced to a minimum of 18 years in prison. Under the ECE, Heiss would not have been surrendered as Germany does not surrender its own nationals.

A separate benefit is that the ground of refusal based on the statute of limitations is more limited in the EAW than in the ECE. An example is:

**Francis Cullen:** sentenced at Derby Crown Court in March 2014 to 15 years in prison for indecent assaults on children, including attempted buggery, between 1957 and 1991. He fled while on bail in 1991. An EAW was issued to Spain for offences against three of his victims, and as a result of this news, four other victims came forward to report crimes he had committed against them. Without the EAW, Cullen would have been able to evade justice due to the limitation periods on such offences in the Spanish Criminal Code, and the corresponding restrictions in the ECE.

## **Other alerts**

No change from base case.

## **NET IMPACT- OPTION 2**

Option 2 could provide significant savings to the criminal justice system in comparison to the base case due to the lower cost of extradition (£13k from £62k in the base case). In addition, Option 2 could bring significant justice benefits for UK victims of crime by removing bars to extradition and thus increasing the UK's ability to extradite individuals back to the UK to face justice.

## **OPTION 3 - REJOIN THE EAW AND SIS II**

### **COSTS**

#### **Monetised costs**

Future running costs of SISII (post April 2015) are estimated to be approximately £6.92m per year. This includes the cost of the Home Office SISII Policy team, NCA SIRENE Bureau and technical refreshes.

#### **Non-monetised costs**

#### **Persons wanted for arrest for extradition purposes**

##### Inbound

Option 3 is expected to have a significant impact on bringing people to justice compared to the base case. Not only will the request be dealt with under a shorter time frame, the UK will also have real-time access to all of the approximately 35,000 SIS II Article 26 alerts (EAW) both in country and at the border. Whilst the UK should receive the majority of alerts that are relevant to the UK through bilateral arrangements under Option 2, there is a risk that some relevant alerts would not be sent to the UK as there is no obvious UK connection, or that alerts would not be received in time for a successful extradition.

An increase in extraditions would incur costs to law enforcement agencies processing the requests and the police, Border Force, and criminal justice system when dealing with any additional arrests and extraditions, estimated at £13k per extradition, although the cost of processing the requests by NCA should already be included in the £6.92m figure above.

There will be the enhanced capability that Border Force will have via SISII, which every person entering the UK will be checked against.

##### Outbound

The EAW removes the nationality bar present under the base case. The EAW may lead the UK to run more specialist operations (like Operation Captura – see above) to track down criminals who have fled the UK. SISII will disseminate extradition requests across all members of SISII. There may also be a small increase in alerts being put on the system by the UK due to improved awareness.

Each extradition back into the UK could carry a cost to the criminal justice system, estimated by MOJ at £29k per case.<sup>15</sup>

It has not been possible to estimate any increase in extraditions back into the UK due to a lack of information of the base case.

#### **Other Alerts**

There would also be opportunity costs in actioning any increase in the other SISII alerts, and subsequent downstream costs on the criminal justice system if further action is required. However, the only obligation is to report the person or object has been located in the UK and agree appropriate follow up action. This is the responsibility of the NCA SIRENE Bureau and they would deal with the case management of these additional alerts as the single point of contact to all other SISII Member State SIRENE Bureaux.

### **BENEFITS**

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<sup>15</sup> MOJ data

## **Monetised benefits**

N/A

### **Persons wanted for arrest for extradition purposes**

#### **Inbound**

As per Option 2, there would be a benefit of a more efficient extradition process under EAW, saving £49k per extradition. As we have not been able to accurately estimate the difference in arrests and extraditions compared to the base case, the total benefit has not been estimated.

## **Non-monetised benefits**

### **Persons wanted for arrest for extradition purposes**

#### **Inbound**

##### *Increased number of Article 26 alerts*

There is a risk that the UK does not currently receive and circulate all relevant alerts. In 2013/14 the NCA circulated 7,890 certified EAWs on the PNC. There is no published data on the number of EAW alerts placed on SISII each year. As an illustration, the Home Office SISII programme estimated that approximately 18,300 newly created EAW alerts were added to the SIS in 2011/12. It is expected that the inflow has remained relatively static since 2011/12. Some of these additional alerts may be relevant to the UK, increasing the ability to extradite criminals from the UK and therefore potentially leading to significant crime prevention benefits.

##### *Real time access*

Under the base case, extradition requests may come to the UK after significant delay. When we join SISII, we will have almost instant access to all of the alerts put on SISII each year, improving the likelihood of a successful detection both in country and at the border. Reducing the time taken to extradite, and increasing the likelihood of detection, could lead to significant crime prevention benefits. This could also have significant savings if it reduces the time the police have to spend finding these individuals.

In addition, the ability of the UK to receive real-time alerts will help to inform law enforcement of dangerous individuals who should be handled with caution, helping to protect officers and the general public from immediate danger.

##### *Securing the border*

Border Force will be checking SIS II data against advanced passenger information, affording the relevant police forces the opportunity to intercept such individuals before they attempt to cross the UK border. This could lead to significant crime prevention benefits. The ability to detect these individuals at the border could also lead to significant savings as the police will know exactly where the individuals are.

##### *Deterrent effect*

The improved ability to detect criminals at the border and inside the UK and faster extradition times is expected to deter criminals from attempting to enter the UK. This may lead to crime prevention benefits inside the UK.

#### **Outbound**

The UK will be able to cascade extradition warrants to all the participating SIS II countries through the NCA SIRENE Bureau. This will increase the UK's capability to locate offenders who have fled British justice; in addition it is likely to reduce the time it takes to locate criminals who have absconded from the UK, especially if their precise location is unknown.

One of the main reasons for this is that the alerts are passed immediately into their individual law enforcement infrastructures where they can be seen directly by law enforcement and prosecution

agencies. Under the base case a full ECE request would need to be sent via the Home Office at the beginning of the process and would be sent bilaterally to a central point.

With the EAW removing the barriers to extradition such as the nationality bar, and the improved information sharing from SISII, there could be a significant increase in extraditions back into the UK and therefore significant justice benefits (see Option 2 for description of such benefits).

#### *Other alerts*

The benefits here are the same as under Option 1.

### **NET IMPACT- OPTION 3**

It has not been possible to assess whether administrative costs will increase or decrease as a result of SISII. There is expected to be increased administrative costs from processing additional alerts but also savings from streamlining the process and moving away from bilateral arrangements.

The EAW could provide significant savings to the criminal justice system in comparison to the base case due to the lower cost of extradition (£13k from £62k in the base case). Any increase in extraditions as a result of SISII could bring a net benefit to the UK (see *Sensitivity Analysis*).

EAW and SISII could bring significant justice benefits for UK victims of crime by removing bars to extradition and thus increasing the UK's ability to extradite individuals back to the UK to face justice.

Overall, real-time access to the 51 million alerts on SISII should help the UK to tackle cross-border criminality as well as reducing the likelihood that the UK is viewed as a safe haven for criminals from the EU.



## 5. SENSITIVITY ANALYSIS

The following break even analysis is for additional extraditions.<sup>16</sup>

Option	Unit cost of extradition	Theft – not vehicle		Sexual offences	
		Unit cost <sup>17</sup>	No. crimes need to prevent	Unit cost <sup>18</sup>	No. crimes need to prevent
Option 1	£62k		15.1		0.4
Option 2 & 3	£13k	£4.10k	3.2	£165k	<0.1

Under Option 1, if the additional individuals caught are thieves, they would have had to go on to commit at least 15 crimes in the UK in the absence of extradition for the cost to equal the benefits. Under Option 2 and 3, they would have had to commit three crimes in the absence of extradition.

However, if the additional extraditions are for serious offences, such as a sexual offence, 2 in 5 of the offenders would have had to commit a repeat offence in the absence of extradition under Option 1, or less than 1 in 10 under Option 2 and 3, for the cost to equal the benefits.

### **AREAS OF UNCERTAINTY UNDER SISII**

#### **1. Number of relevant EAW alerts that the UK would have access to.**

Including:

- a) The number of wanted persons who are already in the UK without any obvious UK connection who would now be brought to the attention of law enforcement;
- b) The number of individuals travelling to the UK subject to an EAW who would now be picked up at the border;
- c) The deterrent effect at the UK border. Border Force will have enhanced information via SISII, which every person entering the UK will be checked against, making it more difficult for criminals to enter.

#### **2. How any relevant EAW alerts would be dealt with by law enforcement agencies.**

- a) Some alerts will lead to targeted arrests whilst others would be dealt with if the law enforcement come across the individuals for other matters. A number of individuals travelling to the UK subject to an EAW will now be picked up at the border.
- b) A small number of alerts would be locate-trace (as they do not meet the UK's domestic legislation requirements). Therefore, if the police were to come across such an individual they would inform the relevant Member State of their whereabouts but with no further action from UK law enforcement.

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<sup>16</sup> This does not include any capital costs of SISII.

<sup>17</sup> See Annex A

<sup>18</sup> See Annex A

- c) The UK has recently introduced a proportionality bar within the Extradition Act (2003). The new section 21A of the Extradition Act 2003 will apply in Part 1 (EAW) cases where the person is wanted for the purposes of prosecution and will require a UK judge to bar surrender to the issuing State if s/he considers that surrender would be disproportionate (taking into account three factors): (i) seriousness of conduct, (ii) likely penalty if convicted and (iii) possibility of issuing State taking less coercive measures. Cases that were considered disproportionate on the information contained in the alert would be circulated for locate-trace as above.

### 3. Type of criminals extradited

- a) As the pool of EAW related alerts increases they may be for increasingly low-level offenders. We do not have evidence to show what the breakdown of offence type is for all EAWs on SIS II. How we treat these offenders will depend on the proportionality test outlined above.
- b) Re-offending rates for those extradited are unknown in addition to how long they would operate in the UK before being brought to the attention of law enforcement if they were not stopped at the border.

## 6. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	2014
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

**Table 2: specific assumptions and risks associated with them**

Area	Assumption
Costs to Law Enforcement Agencies	Any increase in detections of wanted persons or objects as a result of connection to SISII could lead to an increase in activity for law enforcement agencies. For example, detection of a missing person may lead to the police needing to liaise with other Member States. This increase in activity should be closely monitored to ensure there are not significant impacts on resources.

### OPTION 1 – SISII only

- There may be a risk that this could delay the UK's connection.

### OPTION 2- EAW only

- There is a risk that individuals that pose a public protection risk are not being encountered by UK law enforcement or Border Force in a timely manner due to delays in the UK being provided with EAWs by other Member States.

### **OPTION 3- Both SISII and EAW**

- It is not possible to accurately estimate the impact of rejoining SISII.
- The costs and benefits are dependent on the number and type of relevant alerts we received. Increases in alerts for low-level offences will reduce the scope of the benefits to the UK.

### **7. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We consider that it is unlikely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

### **8. SUMMARY AND RECOMMENDATIONS**

Option 3 is the preferred option. Once SISII and the NCA SIRENE Bureau are operational the UK will have access in 'real time' to all EAWs issued by other Member States and information in relation to all other law enforcement alerts. This would maximise the UK's ability to identify and arrest people who pose a threat to public safety and security and make sure that they are brought to justice.

## Annex A- Crime prevention benefits under Option 2

HO Crime type	Unit cost of crime (2013 prices) <sup>1</sup>	2013/14 Extraditions by crime type <sup>2</sup>	No.	% HO crime types	Avg. no. recorded re-offences per offender <sup>3</sup>	Multiplier <sup>4</sup>	No. re-offences per offender	Unit cost of re-offences in one year	
Serious wounding	£27.3k	Death by Dangerous driving	2						
		Grievous Bodily Harm	126						
		Murder	21	150	26%	0.50	1.5	1	£20.5k
Other wounding	£10.4k	Serious Assault/Grievous Bodily Harm	1						
		Assault Occasioning Actual Bodily Harm	13	13	2%	0.50	1.5	1	£7.78k
Sexual offences	£39.1k	Child Sex Offences	16						
		Rape	23	41	7%	0.31	13.6	4	£165k
		Sexual Exploitation	2						
Common assault	£1.85k	Common Assault	1	1	0%	0.50	7.9	4	£7.32k
Robbery- personal	£9.33k	Robbery	93	93	16%	0.98	4.8	5	£43.9k
Robbery- commercial	£9.93k	Armed Robbery	39	39	7%	0.98	4.8	5	£46.7k
Burglary in a dwelling	£4.16k	Aggravated burglary	3						
		Burglary	2	5	1%	1.45	2.8	4	£16.9k
Criminal damage	£1.12k	Arson	6						
		Criminal Damage - under £5000	2	8	1%	0.67	5.9	4	£4.41k
Theft- not vehicle	£0.808k	Theft	227	227	39%	1.45	3.5	5	£4.10k
		Arms Trafficking	4						
		Counterfeiting	4						
		Driving Whilst Disqualified	1						
		Drugs Offences/trafficking	106						
		E-Crime	1						
		Forgery - Not Currency	2						
		Fraud	175						
		Immigration & Human Trafficking	28	491	N/A	N/A		NK	
		Kidnapping	7						
		Making Threats to Kill	1						
		Money Laundering	3						
		Other	156						
Terrorism	3								

<sup>1</sup> Unit costs taken from the Home Office, "Revisions made to the multipliers and unit costs of crime used in the Integrated Offender Management Value for Money Toolkit" and updated for inflation.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118042/IOM-phase2-costs-multipliers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118042/IOM-phase2-costs-multipliers.pdf)

<sup>2</sup> NCA data

<sup>3</sup> Proven reoffending statistics - April 2011 - March 2012, Violence Against the Person,  
<https://www.gov.uk/government/publications/proven-reoffending-statistics-april-2011-march-2012> A proven re-offence is defined as any offence committed in a one year follow-up period that leads to a court conviction, caution, reprimand or warning in the one year follow-up or within a further six month waiting period to allow the offence to be proven in court

<sup>4</sup> Multipliers taken from the Home Office, "Revisions made to the multipliers and unit costs of crime used in the Integrated Offender Management Value for Money Toolkit".  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118042/IOM-phase2-costs-multipliers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118042/IOM-phase2-costs-multipliers.pdf)

<b>TOTAL</b>	<b>1,068</b>	<b>100%</b>	<b>Avg. no offen ces</b>	<b>3.68</b>	<b>Weigh ted unit cost</b>	<b>£29.3k</b>
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**This is a conservative estimate of the crime-prevention benefits as it only looks at the offences committed over one year and does not quantify the benefits of serious offences such as fraud and drugs offences.**

<b>Title:</b> Council Framework Decision of 13 June 2002 on Joint Investigation Team (2002/465/JHA).  <b>IA No:</b> HO 0122  <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 24/06/2014
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> EU
	<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0m	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
 Due to the cross border nature of organised crime, it is sometimes necessary for police forces in more than one Member State to work together to investigate crime. The need for such multi-national police teams has increased as crime has become more international. A clear legal framework supports this cooperation. This Framework Decision sets out and provides for law enforcement agencies to conduct joint investigations with their counterparts in other EU Member States.

**What are the policy objectives and the intended effects?**  
 The UK policy objectives are:

- To tackle organised crime, specifically where that crime crosses national jurisdictions;
- To work with and use the expertise of other Member States law agencies in order to tackle domestic criminal activity;
- To ensure timely cooperation between European law enforcement agencies on tackling crime that has a cross border element;
- To ensure disruption and deterrence of criminal activity.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Option 1:** Do not seek to rejoin the Framework Decision. Other Frameworks that allow for Joint Investigation Teams (JITs) to be established do not allow for such wide participation (not all Member States have ratified the Second Additional Protocol to the 1959 Convention). Alternatively evidence from abroad would have to be obtained via a Mutual Legal Assistance (MLA). The MLA process is cumbersome and elongates the time required to obtain evidence.  
**Option 2 (preferred):** Seek to rejoin the Framework Decision. This would provide an effective framework to establish a JIT with all Member States. The Framework Decision provides a simple and fast framework for conducting joint investigations. It provides standard terms and conditions for a JIT on issues such as information exchange and the admissibility of evidence. The Framework provides clarity on the rights and duties of foreign team members operating in the host Member State.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) N/A			Traded: N/A		Non-traded: N/A

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

Signed by the responsible Minister: Karen Bradley MP Date: 24 June 2014

**Description:** Council Framework Decision of 13 June 2002 on Joint Investigation Team ("the JITs Framework Decision")

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2014	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £0

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
Best Estimate	N/A		£0	£0

**Description and scale of key monetised costs by ‘main affected groups’**

Framework:

The JITs Framework Decision does not compel Member States to set up or participate in JITs. The measure is entirely voluntary and based on operational needs. Therefore the Framework does not in itself impose any costs on the UK and there are no monetised costs associated with this measure.

**Other key non-monetised costs by ‘main affected groups’**

Operational:

**Volume of JITS:** Participation in the JITs Framework could lead to an increase in the volume of JITs for countries that have not ratified the MLA Convention, as now the UK would have a process for easy cooperation with these countries.

**Criminal Justice System Costs:** Additional JITs may prompt more prosecutions, which could have a downstream impact to the Criminal Justice System. The scale of this cost is dependent on the proportion of additional JITs that actually lead to additional prosecutions. Therefore, the scale of this cost is uncertain.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no monetised benefits associated with this Framework Decision.

**Other key non-monetised benefits by ‘main affected groups’**

Framework: There are no additional Framework benefits of Opting In to the JITs Framework Decision.

Operational: **Admissibility of evidence:** The UK can establish a JIT where the basic principles of information exchange and the position on admissibility of evidence related to the investigation are agreed in advance. **Cost saving:** If a JIT was established, there would be a cost saving associated with running the operation, due to the JITs Framework Decision allowing resource savings through a simpler process in establishment. **Successful criminal justice outcomes:** As there could be an increase in the volume of JITS (discussed in the costs), there could be more cases dealt with, through the Criminal Justice System. **Consistency:** The UK can establish a JIT in a consistent way, where the intent of cooperation is understood by the Member States involved and the circumstances of the rights and duties of foreign team members operating in the host Member State are clear without having to establish or negotiate separate agreements on liabilities.

**Key assumptions/sensitivities/risks**

N/A

3.5%

**BUSINESS ASSESSMENT (Option 7)**

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: N/A	Benefits: N/A	Net: N/A		

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2002/465/JHA) of 13<sup>th</sup> June 2002 on the Joint Investigation Teams, hereafter referred to as the JITs Framework Decision. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The JIT Framework Decision provides for closer cooperation between police forces, customs authorities, prosecutors and other competent law enforcement authorities in the EU Member States. It provides that competent authorities in two or more Member States may agree to set up a Joint Investigation Team (JIT) to carry out criminal investigations in one or more of the Member States setting up the team. It enables the UK to establish a JIT with any Member State, including one that has not ratified the Second Additional Protocol to the 1959 Council of Europe Convention on Mutual Legal Assistance. A JIT also allows for evidence to be obtained from abroad without the need for a Mutual Legal Assistance (MLA) request. MLA is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country. An MLA request requires that formal Letters of Request be sent from one Member State to another.

If an EU Member State has not ratified the 2<sup>nd</sup> Additional Protocol to the 1959 Council of Europe Convention on Mutual Legal Assistance, the United Kingdom may not be able to establish an operation JIT without opting in to the JITs Framework Decision. It would be dependent on the domestic laws of the other Member State as to whether the UK would, in practice, be able to establish a JIT outside the 2<sup>nd</sup> Additional Protocol.

The JITs Framework Decision does not compel Member States to set up or participate in JITs. The measure is entirely voluntary and based on operational needs. Therefore the measure does not in itself impose any costs on the UK and there are no monetised costs associated with this measure. This Framework Decision makes the establishment of a Joint Investigation Team far easier than any alternative methods that could result in the formation of a JIT. This Framework Decision does not impose any extra duties or actions on any Member State.

This joint team of law enforcement personnel from different Member States can:

- Identify, investigate, disrupt and prosecute the individuals within the organised crime group identified by the JIT whether in the UK or overseas;
- Identify, restrain and confiscate criminal assets;
- Reduce criminality by tackling organised crime groups;
- Facilitate the gathering, timely exchange and enhanced use of law enforcement intelligence, information and evidence for an ongoing investigations/ prosecutions;
- Seek analytical support and resources from Europol;
- Facilitate the coordination of the national investigations and any subsequent proceedings;
- Agree an investigation and prosecution strategy, and the appropriate jurisdiction for any proceedings.



## **2. GROUPS AFFECTED**

There are several groups affected:

- a) Police Forces;
- b) Her Majesty's Revenue & Customs (HMRC);
- c) Prosecuting authorities in all UK jurisdictions;
- d) Immigration Enforcement;
- e) Border Force.

These are the bodies that can participate in JITs and which therefore have a legitimate interest in ensuring that the rules for agreeing them are as easy as possible to operate.

## **3. RATIONALE FOR INTERVENTION**

Criminals, particularly those involved in serious and organised crime, increasingly operate across national borders. Government intervention is, therefore, important so that law enforcement agencies from different countries cooperate effectively to disrupt their activities and bring them to justice.

The alternative to the JITs Framework Decision – using the alternative instruments as a legal basis for a JIT (e.g. the Second Additional Protocol) or obtaining evidence via MLA is an inferior option. It would not encounter the time-savings that the JITs Framework offers, and the UK may be unable to establish a JIT with Member States who have not ratified the 2<sup>nd</sup> Additional Protocol to the Council of Europe MLA Convention.

## **4. OBJECTIVES**

The policy objectives are:

- To tackle organised crime, specifically where that crime crosses national jurisdictions;
- To work with and use the expertise of other Member States law agencies in order to tackle domestic criminal activity;
- To ensure timely cooperation between European law enforcement agencies on tackling crime that has a cross border element;
- To ensure disruption and deterrence of criminal activity.

## **5. Base case (Option 0) – Do nothing**

Establishing a JIT outside of the JITs Framework may limit the number of Member States that the UK could establish such a team with. Without the JITs Framework, the UK may not be able to establish or participate in a JIT with any Member State that has not ratified the 2<sup>nd</sup> Additional Protocol to the Council of Europe MLA Convention or the EU MLA Convention (currently Italy, Greece and Cyprus). Bi-lateral cooperation would be on a case-by-case basis – and reliant on the willingness of states to cooperate. It would be dependent on the domestic laws of the other Member State as to whether the UK would, in practice, be able to establish a JIT outside the 2<sup>nd</sup> Additional Protocol.

Alternatively, in the absence of a JIT evidence can be obtained via MLA. Mutual Legal Assistance requests are the formal way in which Member States request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country. An MLA request requires that formal Letters of Request be sent from one Member State to another, a far more time-consuming process than offered by a JIT.

The JITs Framework Decision is the only instrument that allows for a JIT to be formed with every other Member State.

The process for making MLA requests is more specific (to an investigative measure) and formal than that for establishing a JIT. This means that the execution of a MLA request is less flexible than a JIT and the requested investigative measures can take more time to be executed and to produce the requested evidence. This can result in delays that are detrimental to the criminal investigation and proceedings.

## 6. OPTION 1: OPT IN

All Member States are bound by the JITs Framework Decision – only the UK had the power to exercise an opt-out. Due to this, participation in this measure would ensure the UK is able to establish JITs with all Member States. Furthermore this framework for joint investigation is quicker than under alternative instruments and less burdensome than under an MLA request. An MLA request requires that formal Letters of Request be sent from one Member State to another, a far more time-consuming process than offered by the JITs Framework Decision.

This is the only instrument that allows for a JIT to be formed with every other Member State. JITs may also be established under the 2<sup>nd</sup> Additional Protocol to the 1959 Council of Europe Convention (see section A), or evidence can be obtained through traditional MLA channels. This instrument therefore provides assurance of the UK's ability to establish a JIT with any Member States, if required by law enforcement.

### **COSTS**

#### Framework Costs

Given the purpose of this Framework Decision and the fact that the instrument does not oblige Member States to set up a JIT (it sets out a framework through which Member States can agree a JIT), there are no direct ongoing or one off costs associated with being part of the measure.

#### Operational JIT Costs

**Volume of JITs:** Participation in the JITs Framework could lead to an increase in the volume of JITs with countries that have not ratified the MLA Convention, as now the UK would have a simple, more certain process for cooperating with these countries. However for countries who have ratified the MLA Convention, if a crime is serious enough to warrant inter-state cooperation, it would be investigated regardless of participation in the JITs Framework Decision. As such, there could be an increase in the volume of JITs in relation to Member States that had not ratified the 2<sup>nd</sup> Additional Protocol. However the extent of the increase is uncertain, therefore so is the cost implication.

**Criminal Justice System Costs:** Additional JITs may prompt more prosecutions, which could have a downstream impact to the Criminal Justice System. The scale of this cost is dependent on the proportion of additional JITs that actually lead to additional prosecutions. Therefore, the scale of this cost is uncertain.

### **BENEFITS**

#### Framework Benefits

There are no sole framework benefits. All benefits accrue from the establishment and culmination of a JIT.

#### Operational JIT Benefits

**Admissibility of evidence:** The UK can establish a JIT where the basic principles of information exchange and the position on admissibility of evidence related to the investigation are agreed in advance. This ensures that all evidence collected can be used in court.

**Cost saving:** If a JIT was established, there would be a cost saving associated with running the operation, due to the JITs Framework Decision allowing resource savings through a simpler process of establishment. The UK can establish a JIT in a consistent way, where the intent of cooperation is understood by the Member States involved and the circumstances of the rights and duties of foreign team members operating in the host Member State are clear without having to establish or negotiate separate agreements on liabilities. It is not possible to determine the average cost of a JIT – there are

too many variables that would impact upon it. The length and complexity of the investigation; the geographical location, the type of crime being investigated and the overall success of the investigation all affect the cost of a JIT. This means the cost saving per JIT cannot be identified. This consistency in approach can save time and reduce the administrative burden when a JIT is set up.

**Successful criminal justice outcomes:** As there could be an increase in the volume of JITs (discussed in the costs), there could be more cases dealt with, through the Criminal Justice System. The additional number of JITs is unknown, and thus we are unable to monetise the size of the benefit. **Annex 1** shows some examples which show the operation outcome of JITs.

## 7. Net impact

There are no monetised costs or benefits arising directly from the framework. However the process for operating a JIT is simpler if the UK seeks to rejoin JITs, any increase in volume could lead to successful crime justice outcomes and JITs bring a consistent process for all Member States. Thus the non-monetised benefits of JITs are judged to outweigh the non-monetised costs.

## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV), which is presented in the above summary sheets. <sup>1</sup>
<b>Rounding</b>	Costs have been rounded to the nearest 100 (if under £10,000). Volumes have been rounded to the nearest thousand, when referring to volumes over 100,000.
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

<sup>1</sup> HM Treasury (2003)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220541/green\\_book\\_complete.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf)

## **9. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **10. SUMMARY AND RECOMMENDATIONS**

The Government's preferred option is Option 1 (seek to rejoin the Framework Decision). There are no costs to participating in the measure but there are judged to be benefits in terms of the speed and ease of setting up Joint Investigation Teams. In turn, JITs help the UK tackle domestic organised crime and disrupt cross-border crime. The JITs Framework Decision is preferable to establishing a JIT under other measures and far preferable to MLA, as it is less time-consuming and requires less bureaucracy. Participation in this measure would ensure the UK is able to establish JITs with all Member States.

## Annex 1: JIT Outcomes

Below, the table shows the operational outcome of various successful JITs.

JITs	Benefits
<p><b>Operation Golf</b></p>	<p>The JIT was set up to investigate and prosecute the trafficking of Romanian children to the UK to commit crime. Eurojust identified suitable participants for the JIT, drafted and negotiated the JIT agreement and played a key diplomatic role in maintaining good relations between the Romanian prosecutor and the other parties to the JIT.</p> <p>Three coordination meetings were facilitated by Eurojust in The Hague which the CPS prosecutor received funding to attend. Eurojust involvement resulted in:</p> <ul style="list-style-type: none"> <li>• 20 UK investigations and 126 arrests. In addition, 26 vulnerable children were taken into protective custody;</li> <li>• 34 search warrants executed in Romania, 18 people arrested and prosecuted for trafficking 272 minors to the UK;</li> <li>• Over 30 illegal firearms and £ 50,000 seized and 6 houses restrained.</li> </ul> <p>Not only did Operation Golf reduce harm to the public in both countries by breaking up an organised criminal gang, but it provided operational benefit to UK police and prosecutors. Without Eurojust involvement, it is questionable whether the JIT would ever have got off the ground. Eurojust is allowed to access EU funding. That was mostly used for the Metropolitan Police Service (MPS) investigation. Without this funding the MPS would have had to fund the whole investigation itself or scaled down that investigation. In addition, their role in establishing and maintaining relations with Romanian prosecutors played an important part in ensuring the success of the JIT – they had the diplomatic skills and experience to achieve that. Without the JIT there would have been fewer UK prosecutions and convictions, and probably fewer arrests in Romania, which were coordinated by Eurojust.</p>
<p><b>Operation Fry/Geldermassen</b></p>	<p>This was a UK/Netherlands JIT set up to investigate and prosecute the facilitation of illegal immigration by means of sham marriages to Dutch nationals. The challenges faced by investigators/prosecutors in these cases were in respect of coordinating the intelligence and evidence exchange between the Dutch and the UK, a greater need for clarity regarding the phases of the investigation/prosecution and considerations in relation to jurisdiction and deportation. Eurojust provided assistance to overcome these challenges by hosting coordination meetings, facilitating the creation of the JIT, and providing access to funding. As a result the JIT led to:</p> <ul style="list-style-type: none"> <li>• Coordinated arrests in both countries.</li> <li>• 5 EAWS to the Netherlands for arrest and extradition of individuals to the UK for trial.</li> <li>• 10 UK prosecutions which all led to convictions with the defendants receiving significant custodial sentences.</li> <li>• Linked prosecutions are still ongoing in London, Essex and the North West.</li> </ul> <p>Without Eurojust assistance, it is very doubtful whether the investigation would have been launched on the international scale it was as the UK desk were able to arrange coordination meetings, assisted with the drafting and translation of documents and identified suitable investigators and prosecutors in the Member States for liaison. The funding allowed for operational meetings to take place in the UK and overseas which were crucial to the development of effective working relationships between the investigation and prosecution teams in each country. Without the funding it is doubtful whether the JIT and the ensuing second JIT with Portugal and France would ever have taken place. Instead prosecutors would have had to rely on letters of request to the Netherlands, and would not have</p>

	been as effective.
<b><i>Operation Copious</i></b>	<p>This is a JIT with The Netherlands in relation to fraudulently obtained genuine UK passports being used by serious criminals in the UK and The Netherlands. In this case there was a need to coordinate separate investigations and share biometric data. The JIT resulted in:</p> <ul style="list-style-type: none"> <li>• Several high profile arrests.</li> <li>• Access to EU funding for investigation/prosecution</li> <li>• JIT allowed SOCA to have an operational base in The Netherlands.</li> <li>• Security improvements at UK Passport Office</li> </ul> <p>This is another good example where a JIT facilitated by Eurojust has enabled to carry out work much more effectively than through the traditional mutual legal assistance channels as the JIT allowed to progress intelligence and evidential flows in a much more seamless and faster way.</p>
<b><i>Annecy 2012-13</i></b>	<p>The case of the murders in Annecy in France in early September 2012 demonstrates the value of Eurojust. Proactive involvement by the UK and French National Desks at Eurojust helped drive progress in the case. They were instrumental in chairing the meeting and clarifying the legal and procedural options in each country. The creation of a JIT meant that information could be shared between states in real time, and that a direct dialogue – including regularly via Eurojust – could overcome potential misunderstandings arising from diverse legal procedures.</p> <p>This case demonstrates the value of both Eurojust’s role in supporting cooperation and coordination amongst competent authorities in cases of serious cross border crime and the value of JITs.</p>
<b><i>Trafficking in human beings cases 2013</i></b>	<p>The UK desk is increasingly involved in cases involving human trafficking for the purposes of sexual exploitation and forced prostitution. Three of the JITs negotiated this year via Eurojust feature the rescue of female victims and charges being brought in England in two of these cases for offences including rape and human trafficking. Trials in both of these cases started in October 2013.</p>

<b>Title:</b> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime. And Council Decisions <b>2003/659/JHA and 2009/426/JHA.</b> <b>IA No:</b> HO0115 <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> Ministry of Justice	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 24/06/2014			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU			
	<b>Type of measure:</b> EU			
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> N/A

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
-£2.5m	N/A	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Cross-border organised crime increasingly operates without regard for international boundaries. Without a purpose-built system, European law enforcement agencies and prosecuting authorities struggle to communicate effectively when cooperating in the fight against organised crime. Recent increased freedom of movement within Member States has made it easier for organised criminal groups and individuals to operate in multiple jurisdictions. Government intervention is necessary to ensure that law enforcement agencies and prosecuting authorities work together to combat organised crime.

**What are the policy objectives and the intended effects?**  
The Government's objectives are to:

- Tackle and prevent cross-border crime.
- Ensure, where appropriate, the sharing of information between Member States for the purposes of solving criminal cases.
- Ensure effective and timely processes are in place to coordinate efforts to combat cross-border crime.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Option 0 – Do Nothing.** Do not seek to rejoin the measure. If the UK did not to seek to rejoin Eurojust it would lose access to the expertise and coordination functions established by the measure. Whilst bi-lateral cooperation may still be possible in an opt-out situation, it would likely be more time consuming and inefficient.  
**Option 1 – Opt In.** Seek to rejoin only Eurojust. Opting into Eurojust ensures access to the expertise of agencies in other Member States and coordination functions, thus better enabling the investigation and prosecution of cross-border organised crime.  
**Option 2 – Opt in.** Seek to rejoin Eurojust and the European Judicial Network (EJN). This would provide all the benefits set out in option 1 whilst also allowing the UK to access funding for the EJN, **Option 2** is preferred, as it maximises the benefits that Eurojust can offer.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister:

Karen Bradley MP

Date: 24 June 2014

**Summary: Analysis & Evidence**

**Description:** Seek to rejoin the Eurojust Council Decision only.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £-2.5

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.4m	£3.0m

**Description and scale of key monetised costs by ‘main affected groups’**

There is a staff cost of £0.4 million per year, the majority of which is paid for by the UK. This comprises £125,621 for the National Member, £146,561 for the Deputy National Member<sup>1</sup> and £79,939 for the Seconded National Expert; some of the cost for the seconded national expert is funded by Eurojust.

**Other key non-monetised costs by ‘main affected groups’**

There may be an additional downstream criminal justice system cost. The UK may increase its awareness of criminal cases in other Member States which are of interest. If so, the UK may see a rise in prosecutions, which would have downstream costs for the justice system. It is not possible to monetise this as it has not been possible to predict the number of additional cases or how much more quickly they would be solved.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.6	£0.4

**Description and scale of key monetised benefits by ‘main affected groups’**

There is funding available, the level of funding from the Eurojust budget over ten years is:

- For the Seconded National Expert: £0.4 million.
- For Coordination Meetings: £0.1 million.

**Other key non-monetised benefits by ‘main affected groups’**

Eurojust supports the disruption of organised crime. This can lead to improved criminal justice system outcomes. Eurojust provides the setting for the mediation of conflicts of jurisdiction and provides a neutral venue for National Desks of Member States to cooperate. Eurojust hosts coordination meetings that allow Member States to agree a unified approach to tackling organised and international crime and provides specialist expertise and support in the creation and operation of JITs.

<b>Key assumptions/sensitivities/risks</b>	Discount rate	3.5%
<ul style="list-style-type: none"> <li>• This measure receives funding from the EU general budget, to which the UK contributes. If the UK were to opt out of Eurojust, it would not longer receive the funding. Legal advice is that non-participation in this measure will not lead to a return of funds from the EU general budget. It is assumed that the UK funding of this measure will continue whether the UK seeks to rejoin or not.</li> <li>• It is assumed that if the UK only opts into Eurojust and not the associated measure, the UK would no longer have access to the Eurojust funding available for these measures.</li> <li>• For the purposes of currency conversion £1 = €1.20 (source: European Central Bank).</li> </ul>		

**BUSINESS ASSESSMENT (Option 8)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies</b>
Costs: £0	Benefits: £0	Net: £0	No	N/A

<sup>1</sup> The Deputy National Member has family, education and accommodation allowances included in this wage.



**Summary: Analysis & Evidence**

Description: To seek to rejoin the Eurojust Council Decision and associated measures.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £-2.5

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
Best Estimate	N/A		£0.4	£3.0

**Description and scale of key monetised costs by ‘main affected groups’**

There is a staff cost of £0.4 million per year, the majority of which is paid for by the UK. This comprises £125,621 for the National Member, £146,561 for the Deputy National Member<sup>1</sup> and £79,939 for the Seconded National Expert; some of the cost for the seconded national expert is funded by Eurojust. There is an opportunity cost to the United Kingdom if it joins the EJM. The opportunity cost of UK staff attending these conferences amounts to £31,000 (PV) over 10 years.

**Other key non-monetised costs by ‘main affected groups’**

There may be an additional downstream criminal justice system cost. The UK may increase its awareness of criminal cases in other Member States which are of interest. If so, the UK may see a rise in prosecutions, which would have downstream costs for the justice system. It is not possible to monetise this as it has not been possible to predict the number of additional cases or how much more quickly they would be solved.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.06m	£0.5

**Description and scale of key monetised benefits by ‘main affected groups’**

There is funding available, the level of funding from the Eurojust budget over ten years is:

- Funding for Seconded National Expert: £0.4 million.
- Funding for ‘European Judicial Network’ attendance: £30,000.
- Funding for Coordination Meetings: £0.1 million.

**Other key non-monetised benefits by ‘main affected groups’**

Eurojust supports the fight against transnational, serious and organised crime by coordinating investigations and prosecutions and stimulating cooperation across the EU. This can lead to improved criminal justice system outcomes through more prosecutions leading to public protection benefits. Eurojust enables Member States to cooperate (via their National Desks and in a neutral venue) by hosting coordination meetings on specific cases to agree a unified approach, including the establishment of joint investigation teams, helps prevent and resolve conflicts of jurisdiction and facilitates the execution of mutual legal assistance and mutual recognition instruments. Participation in EJM promotes closer cooperation between the relevant national authorities in relation to cross-border crime, leading to a more effective response to crime and improved criminal justice outcomes.

**Key assumptions/sensitivities/risks**

Discount rate 3.5%

This measure receives funding from the EU general budget, to which the UK contributes. Legal advice is that non-participation in this measure will not lead to a return of funds from the EU general budget. It is assumed that the UK funding of this measure will continue whether the UK seeks to rejoin or not.

**BUSINESS ASSESSMENT (Option 9)**

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies
Costs: £0	Benefits: £0	Net: £0		

<sup>1</sup> The Deputy National Member has family, education and accommodation allowances included in this wage.

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and Council Decisions 2003/659/JHA and 2009/426/JHA, referred to hereafter as Eurojust. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and when Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

The Crown Prosecution Service (CPS) reports that many of the cases it now processes have a cross-border aspect involving elements of one or more Member States. This has increased over recent years as greater freedom of movement has allowed organised criminal groups and individuals to carry out criminal activity across jurisdictions. As a result, judicial cooperation between Member States has become an increasingly necessary tool in aiding police and prosecutors to tackle the increase in criminal activity.

The CPS Organised Crime Division (OCD) report that a very high proportion of cases they handle require securing evidence from overseas, particularly in cases of drug trafficking, human trafficking, money laundering and cybercrime. In April 2014, 5,090 arrests made by the Metropolitan Police Service were of foreign national offenders. Roughly 42 per cent of these arrests (2,458) were EU citizens. The highest number of foreign national offender (FNO) arrests in a single day was 240, the lowest 45, with the average being about 180.

High levels of FNO arrests are not exclusive to London. Between September 2013 and February 2014, there were 9,482 FNOs recorded in Scotland which equates to approx 13 percent of offenders in Scotland. A study carried out between 1 October 2013 and 30 November 2013 at Fraserburgh (north east Scotland), St Leonards (Edinburgh) and Cathcart (Glasgow) established that 21 percent, 13 percent and 12 percent, respectively, of arrests were FNOs. Of this number 66 percent were EU Nationals. For Northern Ireland, in the 2012/13 calendar year PSNI recorded 30,013 arrests. Of these, 27,631 (92%) were noted as being from the United Kingdom or Ireland. Of the remaining 2,382 (8%), the highest proportion were EU nationals.

Eurojust is an EU agency and is described as the EU's judicial co-operation unit. It was established by Council Decision 2002/187/JHA, which was subsequently amended in 2003 and 2009. Eurojust has a mandate to 'stimulate and improve' coordination and cooperation between Member States in cross-border criminal investigations and prosecutions. This can involve advising on the requirements of different legal systems, supporting the operation of mutual legal assistance (MLA) arrangements, facilitating the execution of MLA requests and mutual recognition instruments, for example the European Arrest Warrant (EAW), bringing together national authorities in coordination meetings to agree the strategy to be adopting in specific cases, and providing legal, technical and financial support to JITs.

The UK's involvement in Eurojust has brought a number of benefits to UK law enforcement and prosecutors, with the advantage of having in a single EU body the expertise and contacts to facilitate cross-border cooperation across the entire EU. The complex nature of cross-border cases can involve obstacles (including differing legal and procedural systems and languages) but Eurojust provides the facilities, language skills, legal expertise and goodwill required for effective cross-border cooperation. Eurojust also provides expertise and support to law enforcement agencies and prosecutors wishing to

set up JITs. With 28 National Desks co-located in one building and English being the working language, Eurojust is uniquely placed to facilitate quick and effective communication between prosecutors, judicial authorities and law enforcement officers, as well as coordinate meetings. Without Eurojust as a hub, bilateral contact would depend on haphazard lines of communication which break down if key individuals move on. Without Eurojust, multi-lateral communications would be cumbersome and impractical. The co-location of National Desks and availability of 'neutral ground' simplifies organisation: the impetus is to meet rather than not.

Eurojust's core role is to support judicial and law enforcement authorities. To do this, Eurojust functions through National Desks which are small teams of representatives from Member States. Each Member State appoints a National Member, Deputy National Member and Assistant(s), who together comprise a National Desk. These are prosecutors, judges, magistrates or senior law enforcement officers. The National Desks function as single points of contact between the 28 Member States to support multilateral cooperation. Information about cases flows from the Member States to National Desks and the model is designed with the intention that the National Desks help make connections between specific cases. The system as it stands is intergovernmental in nature.

Table 1 presents data on the UK National Desk's operation at Eurojust for the years 2011 to 2013.

**Table 1, Eurojust assistance requests, 2011-2013; Live cases in 2013.**

<b>Requests for assistance</b>	2011	2012	2013
UK requests to Eurojust for assistance	71	80	97
Eurojust requests to the UK for assistance	197	190	186
Total requests of cooperation	268	270	283
<b>Live cases</b>			
UK desk, formally opened at Eurojust			349
Opened by the UK to other Member States			93
Opened by other Member States to the UK			256
UK, other live cases <sup>1</sup>			17

<sup>1</sup> Note: in accordance with Eurojust policies and procedures these cases have not been formally 'opened' by the Eurojust College (all Member States together).

The UK requested Eurojust's assistance in 71 cases in 2011, in 80 cases in 2012 and in 97 cases in 2013, whereas UK assistance was requested through Eurojust in 2011 in 197 cases, in 2012 in 190 cases and in 2013 186 cases.

The UK Desk is currently working on 349 live operational cases, formally 'opened' at Eurojust, 93 opened by the UK to other Member States, and 256 opened by other Member States to the UK. Additionally, the UK has 17 other live cases, which in accordance with Eurojust policies and procedures have not been formally 'opened' by the Eurojust College (all Member States together).

The following Eurojust functions are of particular benefit to the UK:

**Hosting Coordination meetings** - Coordination meetings are structured meetings that bring law enforcement and prosecutors/investigating judges together from relevant Member States (and/where necessary and possible, third countries) in a particular case to agree how the relevant parties will work together and to exchange information. These meetings can help overcome legal issues which arise when working across multiple jurisdictions such as who is best placed to prosecute, whether procedural or investigation deadlines necessitate early intervention, whether to set up a JIT or whether parallel investigations are more appropriate. These meetings can also help establish and build relationships, make processes and communications more efficient (including through simultaneous interpretation) and break down cultural barriers that might otherwise hamper the case.

The meetings are designed to support efficient decision-making about when, where and how enforcement and judicial action in cross-border cases law should take place.

<b>Coordination Meetings</b>	
<b>Year</b>	<b>Number of Meetings</b>
2009	47
2010	52
2011	58
2012	60
2013	44

Coordination meetings are useful in helping to understand other Member States' legal systems and procedures (particularly in multilateral cases). They help overcome language barriers that could otherwise be a practical obstacle to cooperation (through translation support) and help build mutual trust in what can be difficult investigations. The meetings are useful in preventing and providing early resolution of conflicts of jurisdiction.

**Funding for translation and interpretation** - The facilities and resources available through Eurojust to set up multi-jurisdictional coordination meetings are outstanding and not available to that level within UK law enforcement or prosecution authorities. Multi-jurisdictional meetings are usually held in The Hague, although in exceptional cases they can be held elsewhere where the needs of a case demand it. This includes provision of translation and interpretation, access to the specialist knowledge and expertise available through our and other national desks.

**Provision of information about legal systems** - Eurojust provides a quick and effective means of obtaining information on particular aspects of other Member States' legal systems and this has been used by the UK National Desk to assist prosecutors and courts.

**Raising the profile of different areas of crime** - Eurojust is active in raising the profile of different areas of crime and new threats. This has included hosting a strategic seminar on extremism, of which Animal Rights Extremism (ARE) formed a major part. This led to raising the profile of investigating and prosecuting ARE and it being taken more seriously in other jurisdictions. It also strengthened the links between Eurojust and Europol on this topic and led to a CPS prosecutor being invited to a Europol intelligence sharing meeting (the first time that a prosecutor had been invited to a police meeting on the issue) and to a Europol conference that followed and involved the industry and the USA. The prosecutor does not believe any of this would have happened without the UK's involvement in Eurojust and Europol. In 2013 Eurojust hosted a strategic seminar on environmental crime, with a particular focus on the involvement of organised crime groups in 2013 and is currently planning a strategic seminar on cybercrime.

**Provision of a neutral venue** - The provision of a 'neutral' venue to discuss cases may not be an obvious benefit but cannot be underestimated, especially where relationships between parties are strained or have broken down, for example, where conflicts of jurisdiction arise or where the action of one Member State may have jeopardised the success of an investigation or prosecution in another Member State. The neutrality of the venue can provide a different and more conducive environment to discuss difficult issues.

The UK Desk is able to speed up the acceptance and execution of UK issued mutual legal assistance (MLA) requests (the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country), some of which would have probably not have been answered, saving time and money. The UK National Desk registered 248 new cases at Eurojust from 2011 to 2013, amounting to 5 per cent of the total new cases registered in that period. Over the same period, the UK National Desk was approached by other National Desks to be involved in 573 other cases. This relates to 13 per cent of the total new cases registered in that period. Therefore the percentage of new cases at Eurojust from 2011 to 2013 involving the UK was around 18 per cent.

## **2. GROUPS AFFECTED**

The groups that would be affected by the policy include:

- Law enforcement agencies;
- Prosecuting authorities;
- The public.

### **3. RATIONALE FOR INTERVENTION**

Greater freedom of movement has allowed organised criminal groups and individuals to commit crime in different jurisdictions more easily. As such, a significant and increasing proportion of UK serious and organised crime casework has a cross border dimension; the majority of these involve other EU countries. The UK is affected when organised crime groups operate within its territorial borders – increasing crime rates.

Judicial cooperation between Member States has become an increasingly important tool for police and prosecutors to tackle criminal activity. Eurojust is an agency that facilitates exactly this sort of judicial cooperation.

### **4. OBJECTIVES**

The Government's objectives are to:

- Tackle and prevent cross-border crime;
- Ensure, where appropriate, the sharing of information between Member States for the purposes of solving criminal cases; and
- Ensure effective and timely processes are in place to coordinate efforts to combat cross-border crime.

### **5. Base case (Option 0) – Do nothing**

If the UK did not seek to rejoin Eurojust it would lose access to the expertise and coordination functions established by the measure. In this case the UK may wish to expand its network of Liaison Magistrates (LM) in other Member States, but this would be expensive as LMs each cost the UK £150,000 to £200,000 per year.

Whilst bi-lateral cooperation may still be possible in an opt-out situation, in complex cross border cases it would likely to be more time consuming and inefficient for the cases where cooperation occurs. It is likely that there would be less cooperation in the base case, as the additional resource to cooperate would outweigh the benefits in cooperating on that investigation. Under this option funding for the UK's involvement in the European Judicial Network (EJN) would be stopped.

### **6. OPTION 1: OPT IN**

Opting in to Eurojust ensures access to the expertise of agencies in other Member States and the agency's coordination functions, thus better enabling the investigation and prosecution of cross-border organised crime. This could mean that:

- a) The UK will seek cooperation for more cases in relation to the base case;
- b) The UK will benefit from the several functions that Eurojust performs, which has benefits compared to any cooperation in the base case.

## **COSTS**

### **Monetised costs**

#### **Cost for running the UK desk**

The total cost of running the UK desk in the Hague is £352,121 per year. This includes the cost for the seconded national expert (£79,939), the deputy national member (£146,531) and the national member (£125,621). Some of the cost of the seconded national expert is met through funding provided by Eurojust (see benefits below). The UK would not have a 'UK desk' in the opt out situation.

## **Non-monetised costs**

**Cost to the Criminal Justice System:** Seeking to rejoin Eurojust would have two impacts:

- a) There are more cases that the UK seeks cooperation on, which may not have been looked at in the base case.
- b) Cases can be solved more quickly than in the base case.

As a result of (a) and (b), there could be a rise in prosecutions, which may have additional downstream costs for the criminal justice system.

It has not been possible to accurately monetise this due to:

- The difficulty in predicting how many additional trials would arise solely due to Eurojust involvement;
- How much more quickly an investigation could be solved in comparison to an opt-out situation;
- The number of additional prison places that will be required as a result of the increase in the number of convictions solely attributed to this policy.

**Opportunity cost of attending coordination meetings:** There would be an opportunity cost for those who attend the coordination meetings; staff who attend would take two days out of the office. As the staff attending coordination meetings can vary in seniority and role, depending on the case, we are unable to monetise this cost.

**Cooperating on more cases:** As the UK is likely to seek Eurojust assistance more often than we would have looked for Member State cooperation in an opt-out situation, there may be a cost associated with an increased number of cases – relative to the base-case. However, the extent of this impact is uncertain as it is not possible to quantify how many investigations / operations would not have been undertaken in the base-case.

## **BENEFITS**

**Funding:** Eurojust provides several funding streams; opting out of the policy would mean that the UK would no longer receive this funding. The funding which can be separately identified for this is:

- a) **Funding for Seconded National Expert:** Eurojust provides funding for the Seconded National Expert: £0.4 million (PV) over ten years, which equates to £44,000 per year;
- b) **Funding for coordination meetings:** Eurojust meets the costs of UK prosecutors and law enforcement authorities attending coordination meetings. The Eurojust budget in 2013 shows that expenditure allocated for coordination and tactical meetings was 750,000 Euros (£625,000). Eurojust figures state that in 2013:
  - This equates to approximately: £15,900 per year. If it is assumed that this remains constant through the period, the net present benefit is £0.1 million (PV) over 10 years.

## **Non-monetised benefits**

Through work with stakeholders on the benefits of participation in Eurojust it is clear that there are a number of operational examples involving Eurojust in tackling serious and organised crime. However, many examples are not easily quantified. There are two impacts when considering opting into Eurojust:

- a) There are **more cases** that the UK seeks cooperation on, which may not have been looked at in the base case (too costly/not proportionate for cooperation).
- b) Cases can be solved **more quickly**, than in the base case

There are several reasons why the benefits cannot be easily monetised:

- a) It is not possible to estimate how many cases the UK would no longer request assistance for in the base case, and thus the additional benefits in dealing with more cases cannot be monetised.
- b) The UK is unable to predict how many additional benefits would be realised solely due to Eurojust involvement

- c) The wide scope of Eurojust activities, as well as the different types of cases it deals with, means that it is hard to attribute specific case benefits more widely.
- d) The support Eurojust provides is highly dependent on the case nature, and request of the Member State.

**Criminal justice outcome** – Eurojust provides an effective means of judicial cooperation between jurisdictions, facilitating good working relationships and the speedy execution of MLA requests, which would be slow and time consuming in the base case, this can lead to positive criminal justice outcomes in two respects:

- a) Quicker culmination of investigations and prosecutions.
- b) For the cases that are not considered in the base case, Eurojust’s role in supporting judicial cooperation could mean a criminal justice outcome where there would not have an outcome previously.

MLA requests are already bilateral matters but the involvement of Eurojust in MLA requests can make the process faster (because it can reduce delay and ensure that court hearings are effective) or in some cases render it unnecessary (because Eurojust can help identify alternative ways of obtaining evidence). An example of this facilitation is a meeting at Eurojust with Spanish prosecutors in respect to a drugs operation from Gwent. The presence of a Spanish lawyer at the meeting gave the UK access to key information much faster than through the MLA route. Additionally, evidence from prosecutors suggests that the work of Eurojust has been very beneficial in leading to UK prosecutions in cross-border cases, giving the UK access to colleagues in the jurisdictions involved and enabling them to obtain evidence much more quickly and effectively than through direct bilateral/multilateral working.

Prosecutors have cited a number of examples where the UK national desk has helped support their work. These include:

- Prosecution of Animal Rights Extremists: Eurojust hosted liaison meetings between the relevant European jurisdictions. This allowed for evidence to be obtained that demonstrated the existence of an international conspiracy to blackmail the suppliers and customers of Huntingdon Life Sciences to be used in the UK trial.
- After the conclusion of the prosecution on animal rights extremism and the imprisonment of the leadership, the criminal activity moved to Europe and the same conspiracy was continued by others both in the UK and in The Netherlands. Eurojust hosted a coordination meeting involving the Member States concerned, which resulted in the identification of prosecutors in each jurisdiction and their counterparts. This allowed them to ensure that intelligence and evidence was shared between jurisdictions as the criminal activity took place. Therefore events occurring on the same night but either side of a border were investigated and dealt with in a coordinated way rather than in isolation.

**Information sharing:** Eurojust arrange and host coordination meetings, which bring representatives together from relevant Member States during the investigation or prosecution stages, in order to agree how best to work together and exchange intelligence.

Without Eurojust there would be limited scope for such coordination meetings to take place, both in terms of for cases where cross border cooperation would not occur, and for cases where there is limited cross border cooperation.

In 2013 the UK was involved in 44 coordination meetings involving a range of law enforcement agencies, prosecutors and crime types, these may have not occurred without Eurojust.

During the horse meat fraud investigation of 2013, Eurojust gave valuable support to UK law enforcement and prosecutors, making immediate contact with the relevant prosecutors in the CPS to offer assistance. Eurojust provided information on investigations being carried out across Europe, enabled them to make direct contact with European partners, identified common themes arising out of a complicated supply chain and facilitated the consideration of pan-European evidential opportunities and potential lines of enquiry. In another example of information sharing, the CPS requested assistance in obtaining crucial evidence of a foreign conviction for a rape trial the next working day. The UK Desk was able to obtain the information via the Lithuanian Desk at Eurojust, which allowed the case to continue

and meant a serious offender was convicted who otherwise could have been released and may have posed a threat to the UK public.

**Time saving:** For all the cases where assistance is requested, there could be a time saving by seeking to rejoin Eurojust.

The UK desk has the capacity to access information on legal and procedural matters that saves prosecutors a great deal of time and resource, compared to purely bilateral means. This function is of particular use to the UK whose legal system is often very different from those on the continent. For example, a UK prosecutor, working to the Home Office team on the implementation of intercept as evidence, was able to obtain the information from Eurojust on various Member States' use of intercept in criminal proceedings in their jurisdiction very quickly. Information such as this can ensure clarity for other Member States, and is quicker than the options set out in the base case, where a national contact point would have to contact Member States separately.

Another aspect of time saving is that Eurojust is able to prevent conflicts of jurisdiction arising from early involvement, via coordination meetings. Early Eurojust involvement has meant that jurisdiction issues are resolved quickly. Eurojust, when acting as a College, is able to provide non-binding opinions in cases of conflicts of jurisdiction between Member States, however this is rarely necessary.

Eurojust also hosts days of coordinated action where simultaneous arrests and searches take place in different countries. This is of particular help in complicated cross-border operations where Eurojust is able to provide on the spot legal advice and assistance throughout. It is not possible to monetise the value of this function but the coordination and assistance provided by Eurojust is judged by practitioners to be of considerable value to the smooth running of these inter-jurisdictional operations.

**Funding for translation and interpretation** – It is not possible to quantify the value of the translation and interpretation service provided by Eurojust. However, the Eurojust Budget (2013) showed that the Budget allocated for interpretation services was €900,000 (£750,000)

The base fee to hire one interpreter for a day is £425 (2013/14 cost). The actual cost of the interpreters' service will vary depending on the time they are needed for and the numbers of languages they speak. For a meeting with two languages, two to four interpreters are needed (per language usually two interpreters), which would equate to a base fee of between £950 and £1,900 per day plus their daily allowance, travel costs and hotel costs. There were 44 meetings in 2013 which involved the UK where translation was required, this equates to between £41,000 and £86,000. This figure only represents the base rate for interpreters; the UK can also request funding for a daily allowance, travel costs, hotel costs and travel time allowance for the interpreter. If the UK were to opt out, there would be no such funding available from this source.

**Savings to the criminal justice system:** Eurojust involvement in cases could lead to savings as a result of shorter court proceedings for cases which would have not had cooperation in the base case. As information and evidence is obtained and shared more quickly, it is expected to result in more effective court hearings. In 2012/13, the cost per sitting day in the Crown Court was £1,635 (2012/13 costs and 2013/14 prices). This cost is based on average judicial and staff costs and it is assumed that a sitting day is 5 hours. Reliable data on the savings derived from participation in Eurojust is not available. For example, if two days of court time were saved in each of the 97 cases in which Eurojust assistance was requested, this would amount to a cost saving to the UK of £0.3 million (PV) over 10 years.

**Deterrence:** There could also be savings to the Criminal Justice system in terms of deterrence. Eurojust should increase information sharing and positive criminal justice outcomes relative to the base case. As such, individuals – to the extent they are aware of the potential for Eurojust to increase the possibility of apprehension - could be deterred from criminal activity. There is, however, no specific evidence on deterrence in this context and in general, evidence on the presence and scale of any deterrence effect is mixed. It is therefore not possible to quantify the likely scale of any deterrence impact, although any which does occur could have a downstream positive impact on the Criminal Justice System.



## **7. OPTION 2: SEEK TO REJOIN EUROJUST AND EUROPEAN JUDICIAL NETWORKS**

Opting into Eurojust as well as the associated measures ensures the benefits of Eurojust as set out in Option 1, and additionally provides a source of funding for the EJM, which aims to increase judicial and legal cooperation between Member States across the EU. The full costs and benefits of the EJM are set out in Impact Assessment HO 0112.

### **Additional Costs**

#### **Additional monetised costs**

EJM:

- a) There is an opportunity cost to the United Kingdom if it joins the EJM. The opportunity cost of UK staff attending these conferences amounts to £31,000 (PV). The opportunity cost arises when staff are out of the office attending conferences and are therefore unable to carry out their everyday duties.

### **Additional Benefits**

#### **Additional Monetised Benefits**

**Funding:** Eurojust provides for certain funding streams in relation to other EU instruments, for example:

- European Judicial Network – Total funding for attending the National Correspondent meeting (G7) and the Tools Correspondent meeting (HEO) is around £700 per year, plus flights. Additional funding for three UK Contact Points at G7<sup>2</sup> each attending a Plenary meeting for two days per year (total of 12 days) is, on average, £2,100.

#### **Additional Non Monetised Benefits**

EJM:

**Close cooperation:** Participation in this decision promotes close cooperation between the relevant national authorities in relation to cross-border crime, leading to a more effective response to crime and improved criminal justice outcomes.. Membership of the EJM increases the speed of judicial communications between Member States. EJM is referred to explicitly by other Mutual Recognition measures, helping to expedite finding the correct contact points.

**Criminal Justice System:** EJM cooperation could lead to savings as a result of shorter court proceedings. This is due to information being available and being shared more quickly; evidence gathering as part of the court process could be quicker.

## **8. NET IMPACT**

Option 2 is preferred. It costs £0.4 million per year to run the UK's commitments under Eurojust; this figure is judged to be outweighed by the benefits of being a member. The UK receives funding through Eurojust which amounts to £0.1 million per year. There are several non-monetised benefits to joining Eurojust and the EJM. It maximises the benefits in terms of judicial cooperation and the UK's ability to influence, brings tangible benefits to law enforcement authorities and their ability to successfully identify and prosecute criminals.

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<sup>2</sup> A Grade 7 is a Home Office senior manager.

## 9. ASSUMPTIONS AND RISKS

**Table 1, General Assumptions**

<b>Area</b>	<b>Assumption</b>
<b>Geographical Coverage</b>	As the opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year.</b>	2013/14
<b>Appraisal period:</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

**Table 2: Specific Assumptions & Risks**

<b>Area</b>	<b>Assumption</b>
Funding	This measure receives funding from the EU general budget, to which the UK contributes. Legal advice is that non-participation in this measure will not lead to a return of funds from the EU general budget. Therefore it is assumed that the UK funding of this measure will continue through the general budget whether the UK seeks to rejoin or not.
Funding – Option 1	We assume that if we were to only opt into Eurojust, there would be no funding available for the Genocide Network and European Judicial Network. Funding is only available to policies which are currently funded by or whose funding is administered by Eurojust.
Seconded National expert	Assume that the funding for the seconded national expert stays the same throughout the appraisal period. Any change in the level of funding, or cost for the seconded national expert will impact on the annual cost.
Funding for policies	Assume that the funding for the policies Eurojust funds stays the same throughout the appraisal period. Any change in the level of funding, or cost for the seconded national expert will impact on the annual cost.
Interpretation	The cost for the interpreters fees is a base rate only to hire the interpreter, fees could vary which would have an impact on scale of funding that the UK receive for interpretation services. There is also an assumption that roughly half of the interpretation the UK would pay for, this is based on no data and is solely to give an idea of scale.
Joint Investigation Teams	Eurojust has provisionally earmarked £541,000 for Joint Investigation Teams (JITs) (for the year 2014). The UK would be able to claim some of this amount to fund JITs. There is currently uncertainty as to the continued funding of JITs. It is not known which organisation, if any, will continue to provide funding. Due to this, JITs funding has been excluded from the calculations in this Impact Assessment. However, it is recognised that there may be monetised benefits (from JITs funding) if it was provided by Eurojust.

## **10. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **11. SUMMARY AND RECOMMENDATIONS**

It is recommended that the UK seek to rejoin Eurojust and the European Judicial Network (EJN). This measure has the additional benefit that it acts a source of funding to the EJN. The agency provides the facilities, language skills, legal expertise and goodwill required for effective cross-border cooperation. The benefit it brings through better international cooperation and assistance securing cross border investigations, operations and prosecution is judged to be far greater than the running costs.

<b>Title:</b> 2006/960/JHA – On simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union – (the ‘Swedish Initiative’).  2007/845/JHA - Concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime. <b>IA No: HO 0114</b>  <b>Lead department or agency:</b> Home Office <b>Other departments or agencies:</b> Asset Recovery Offices	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 24/06/2014				
	<b>Stage:</b> Final				
	<b>Source of intervention:</b> EU				
	<b>Type of measure:</b> EU				
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk					
<b>Summary: Intervention and Options</b>					<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
£0m	N/A	N/A	N/A	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Cooperation between Member States to combat organised crime, particularly in relation to the tracing of illicit proceeds and other property that may become liable to confiscation, has historically been poor. Government intervention is necessary to ensure effective, efficient cooperation between law enforcement authorities in Member States. ARO and the Swedish Initiative will underpin practical cooperation between Member States, supporting international efforts to recover the proceeds of crime – both domestically and internationally.

**What are the policy objectives and the intended effects?**  
The policy objectives in this area are to:

- prevent and tackle financial crime;
- simplify and improve the exchange of information and intelligence between law enforcement authorities, for ongoing investigations or criminal intelligence operations.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Option 0** – Do not seek to rejoin either Asset Recovery Offices (ARO) and the Swedish Initiative. The National Crime Agency (NCA) would still have an Economic Crime Command with functions relating to asset recovery and an Intelligence Command dealing with financial intelligence and information relating to crime and criminals. Without the Swedish Initiative, there is no obligation for other Member States to cooperate with our requests for information at all, let alone within an 8 hour timeframe.  
**Option 1 - Seek to rejoin.** AROs will be able to utilise the Swedish Initiative to act upon time-sensitive intelligence in order to disrupt criminal activities. Any requests for information through ARO, through the Swedish Initiative will be processed within 8 hours – 24 hours a day. Option 1 is preferred. Opting into both ARO and the Swedish Initiative will underpin practical cooperation between Member States, supporting international efforts to recover the proceeds of crime – both domestically and internationally.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister:

Karen Bradley MP

Date: 24 June 2014

Description: To seek to rejoin the Swedish Initiative (2006/960/JHA) and ARO (2007/845/JHA).

**FULL ECONOMIC ASSESSMENT**

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			N/A	N/A	Best Estimate: £0
2013/14	2015	10			

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
Best Estimate	£0		£0	£0

**Description and scale of key monetised costs by ‘main affected groups’**

There are no monetised costs associated with this measure.

**Other key non-monetised costs by ‘main affected groups’**

There is potential that the number of requests dealt with by the NCA would increase, relative to the base-case, and the UK would be expected to deal with requests from other Member States, regardless of quality. Moreover there is an opportunity cost in relation to staff having to deal with requests before other work as the Swedish Initiative imposes a time limit on responses to requests.

Additional intelligence may prompt more prosecutions, which could have a downstream impact to the Criminal Justice System. The scale of this cost is dependent on the proportion of additional requests which would lead to additional prosecutions. Therefore, the scale of this cost is uncertain.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	£0		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no key monetised benefits to this measure.

**Other key non-monetised benefits by ‘main affected groups’**

Creates an EU-wide culture of sharing of information and best practice transfer between Member States. This will promote asset recovery across the EU and build closer working relationships between practitioners in different jurisdictions. Other Member States will be required to deal with UK requests for information. Furthermore, the time-benefits of the Swedish Initiative are almost exclusively realised by the Asset Recovery Offices. The element of uniformity provided by the ‘Swedish Initiative’ helps to maintain the quality of the information. There could also be savings to the Criminal Justice system in terms of a deterrence effect on criminals.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
Staff – A dramatic increase in requests would require additional staff to process them.		

**BUSINESS ASSESSMENT (Option 10)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies</b>
<b>Costs:</b> £0	<b>Benefits:</b> £0	<b>Net:</b> £0	No	N/A

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2006/960/JHA – On simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, hereafter referred to as the “Swedish Initiative”, and Council Framework Decision 2007/845/JHA - Concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime – hereafter referred to as “ARO”. The IA seeks to present the evidence base supporting the rationale for intervention and assesses the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The EU requires that each Member State has an Asset Recovery Office (ARO) whose primary aims are to investigate and analyse the financial trails of criminal activity and to freeze and confiscate the proceeds of crime. The ‘Swedish Initiative’ enhances the ARO through the use of standardised forms and strict deadlines. It enhances the exchange of existing basic law enforcement information.

These measures together allow information to be freely and quickly shared between AROs. The main purpose of these measures is to increase and simplify the level of cooperation and sharing of best practice between Member States in the area of asset recovery.

Both these measures support the wider work on combating serious and organised crime (an aim of the UK Government as illustrated by the publication of the Serious and Organised Crime Strategy in October 2013). The existing law under the Proceeds of Crime Act 2002 and the Crime and Courts Act 2013 already provides the basis on which the Asset Recovery Office measure can be implemented into UK law.

The principle behind the ARO Framework Decision is that information available without judicial authorisation to a Member State's law enforcement authorities should also then be made available, without judicial authorisation, to the law enforcement authorities in another Member State. It therefore does not place any requirements to make information available to another Member State that would not be available domestically. Doing so respects the integrity of national legal systems.

The UK has been party to this measure since 2006. In 2006, international cooperation in relation to asset recovery information (and criminal finance intelligence and other practical assistance more generally) was poor. This has improved, in particular in the past three years. This measure and other international agreements together with a greater recognition and tackling of the international nature of crime have led to this improvement. The Serious and Organised Crime Strategy has a specific commitment relating to the recovery of hidden assets overseas and this measure is an important component. It is difficult to predict the position the UK would be in if it were not in the measure due to the general improvement in international cooperation since 2006, but the existence of AROs and the cooperation and general communication between them has been a part of the reason for increased assistance that Member States now afford each other.

## **2. GROUPS AFFECTED**

The main groups affected would be the law enforcement bodies within the UK, notably the NCA as the body with statutory functions under the Proceeds of Crime Act 2002. The NCA would be designated as the Asset Recovery Office for England and Wales. The Swedish Initiative is a law enforcement authority tool, open to use across all Member States. In the UK it is used almost exclusively by the UK's Asset Recovery Office (ARO) to exchange information with other Member States' AROs.

## **3. RATIONALE FOR INTERVENTION**

Cooperation between Member States to combat organised crime, in particular in relation to the tracing of illicit proceeds and other property that may become liable to confiscation, has historically been poor. Government intervention is necessary to provide a legal basis to ensure effective, efficient cooperation between law enforcement authorities in Member States. The ARO and the Swedish Initiative will underpin practical cooperation between Member States, supporting international efforts to recover the proceeds of crime – both domestically and internationally. These measures will improve this by ensuring effective communication, and fast turnaround which is often of critical importance in progressing a case in particular with time-sensitive operations. This will therefore assist in disruption of criminal activities by recovering the profits from crime and, equally importantly, denying criminals access to funding for further activity. The UK can either opt in to these measures, which allow close cooperation between law enforcement authorities; or remain opted out and lose the benefits of cooperating with other Member States.

## **4. OBJECTIVES**

The policy objectives in this area are:

- To prevent and tackle financial crime;
- To simplify and improve the exchange of information and intelligence between law enforcement authorities, for ongoing investigations or criminal intelligence operations.

## **5. Base case (Option 0) – Do Nothing**

Opting out of both Asset Recovery Offices and the Swedish Initiative would likely lead to reduced cooperation between law enforcement agencies in Member States. The ability to assist other Member States under these measures has been in place since 2006 when international cooperation more generally in the area of asset recovery was poor; this has improved. The existence of AROs is a readily identifiable and successful means of operating the exchange of information; it is likely that the UK not having such an office would cause confusion and be a discouragement in ready communication between the UK and Member States in relation to asset recovery. The deadlines set by the Swedish Initiative would not apply and so it is likely that requests for information would be processed but this could take months or longer. If the UK did not have an ARO, the National Crime Agency (NCA) would still have an Economic Crime Command with statutory functions relating to asset recovery conferred by the Proceeds of Crime Act 2002 and an Intelligence Command dealing with aspects of financial intelligence and information relating to crime and criminals. However, the NCA would not necessarily receive cooperation from the AROs of other Member States. Without the Swedish Initiative, there is no obligation for other Member States to cooperate with our requests for information at all, let alone within an 8 hour timeframe.

## **6. OPTION 1: OPT IN**

Opting into both ARO and the Swedish Initiative will underpin practical cooperation between Member States, supporting international efforts to recover the proceeds of crime – both domestically and internationally. Any requests for information raised through the Swedish Initiative by ARO will be processed within 8 hours – 24 hours a day. AROs will be able to utilise the Swedish Initiative to act upon time-sensitive intelligence in order to disrupt criminal activities.



## **Costs**

There are no additional monetised costs associated with opting into these measures.

### **Non Monetised Costs**

The NCA is already operationally designed to perform the tasks required under the measure. They are required under domestic law to receive reports of suspicious financial activity and have a criminal intelligence function to gather, store, process, analyse and disseminate information to combat crime. Importantly for the measure, the NCA also has the ability to liaise with other countries, which it does on an operational basis. There will therefore be no set-up or one-off costs associated to rejoining this measure, as the structure would exist in the absence of an opt-in decision.

**Requests:** There may be an increase in the number of requests for information being made to the UK that we are obligated to process. However, whilst an increase in cases would increase the amount of time that staff spend on these requests overall, we do not anticipate a large rise in requests. The reason for this is primarily that other Member States already make approaches to NCA and other law enforcement for information and intelligence that they require, albeit that it may not be through a central formalised system as provided in this measure.

The UK currently sends more ARO requests than it receives.<sup>1</sup> The UK may see an increase in ARO requests from other Member States compared to the base case if it opts in. Numbers or a general trend are difficult to predict as the UK has been in the measure since 2007 and the focus on the international dimension of criminal finance has only developed since that date –therefore there is a lack of any meaningful comparative figures of when the UK was in and out of the measures. We note however that most requests will be a data mining of existing intelligence and so would only need a small time to process, that can be as little as 15 minutes. Therefore it is anticipated that any additional costs will be minimal.

**Criminal Justice System:** Additional information may prompt more prosecutions and confiscation cases, which could have a downstream impact to the Criminal Justice System. The scale of this cost is dependent on the proportion of additional requests which would lead to additional prosecutions. Therefore, the scale of this cost is uncertain.

NCA would still need to have a team fulfilling this role in both options. However, as the Swedish Initiative puts a time limit on requests, there is an opportunity cost in relation to staff having to deal with requests before other work.

## **Benefits**

There are no monetised benefits associated with these measures.

### **Non-Monetised Benefits**

**Timely response to requests:** For the UK's Asset Recovery Office, the standardised request form and its obligatory reply deadline is an extremely useful tool for typically complex cases. The UK's ARO make regular use of the form for outgoing inquiries. It is not considered an overly cumbersome document for their needs, despite its length. Its sections allow highly complex and technical data to be easily laid out and it does provide some clarity around minimum standards expected to enable securing meaningful replies. The use of the Secure Information Exchange Network Application (SIENA) adds to the speed of delivery. SIENA is a state-of-the-art tool designed to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence between Europol, Member States and third parties that have cooperation agreements with Europol.

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<sup>1</sup> Internal National Crime Agency figures.

**Recovery of proceeds of crime:** All Member States would be required to cooperate within the terms of the measure. The increased cooperation should lead to further proceeds of crime being identified and recovered – this would lead to an increase in seizures of criminal assets (whether that be retained by the UK or the other Member State involved, or shared). The increase in asset recovery, particularly in relation to assets that a criminal has moved from one Member State to another, will support the integrity of asset recovery efforts. The measures will also support the UK’s aim of asset recovery, and disrupting money laundering and criminal finances.

**Reputational benefits:** The ability to successfully pursue and seize the proceeds of crime in the UK relating to criminals in other Member States is a reputational matter for the UK. By seeking to rejoin this measure, the UK would publicly show that we take this matter seriously. There could also be savings to the Criminal Justice system in terms of a deterrence effect on criminals.

## 7. Net Impact

The UK’s involvement with AROs and the Swedish Initiative does not have monetised costs or benefits. However, it is judged that the non-monetised benefits outweigh the non-monetised costs, and that the net impact is most likely to be positive.

## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	Geographical coverage: The IA aims to set out the best estimates of the policy impacts using the available evidence. As the Opt in decision is for the whole of the UK. This IA covers England, Scotland Wales and Northern Ireland
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

**Table 2: Policy Specific Assumptions**

Area	Assumption
<b>Staff</b>	We have assumed that the rise in requests will be managed within current resource. A dramatic increase in requests would require additional staff to process them.

## 9. Wider Impacts

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **10. SUMMARY AND RECOMMENDATIONS**

Being in the measure will allow the UK's ARO to continue its work to disrupt and isolate the proceeds of crime, as assets, as quickly as possible, before said assets are liquidated or moved out of the UK. The ARO regards the Swedish Initiative as a highly useful tool to assist them in their duties. It is recommended that the UK seeks to rejoin both the ARO and Swedish Initiatives.



**Summary: Analysis & Evidence**

Policy Option 1

**Description:** Join measure relating to the mutual recognition of confiscation orders.

**FULL ECONOMIC ASSESSMENT**

<b>Price Base Year</b> 13/14	<b>PV Base Year</b> 2015	<b>Time Period Years</b> 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low:</b> N/A	<b>High:</b> N/A	<b>Best Estimate:</b> 0.0

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price)</b>	<b>Years</b>	<b>Average Annual (excl. Transition) (Constant)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	N/A	1	N/A	<b>N/A</b>
<b>High</b>	N/A		N/A	<b>N/A</b>
<b>Best Estimate</b>	£10,000		N/A	<b>£10,000</b>

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

There will be a one-off cost of £10,000 for training (delivered by NCA) and familiarisation in Year 1. This is mainly designing and delivering training, attending training and completing the required development exercise.

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

There is likely to be an increase in future volumes of confiscation orders requests, both inbound and outbound. This would have increased resource implications for the Crown Prosecution Service, courts and the UK Central Authority (in the Home Office).

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price)</b>	<b>Years</b>	<b>Average Annual (excl. Transition) (Constant)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	N/A	1	N/A	<b>N/A</b>
<b>High</b>	N/A		N/A	<b>N/A</b>
<b>Best Estimate</b>	N/A		N/A	<b>N/A</b>

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

There are no monetised benefits associated with this measure.

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

The measure is intended to lead to more asset recovery action and therefore increase the value of assets recovered back to the UK. This results in a better criminal justice outcome for the courts, law enforcement and the public. Other Member States will be required to process UK requests to confiscate the proceeds of crime, which means that asset recovery could increase relative to the base case

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
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It is assumed that there will be an increased caseload both from and to the UK.  
A risk is the practical use of the measure in detail once implemented. This is a radical measure that attempts to harmonise Member States' approaches to confiscation so that they can interact easily with each other.

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> Negligible	<b>Benefits:</b> £0	<b>Net:</b> Negligible	No	N/A

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 Decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining 2006/783/JHA on the Application of Mutual Recognition of Confiscation Orders, referred to hereafter as Confiscation Orders. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction take effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

Criminal organisations operate without regard for international borders. In relation to convicted criminals, the UK court can serve a confiscation order which requires the guilty party to pay an amount equal to their benefit from the crime. It may be that the defendant has property or assets located outside the UK; the value of this property can still be calculated into the amount set on the confiscation order. If a defendant does not pay their confiscation order, then action can be taken on their property, including that which is located abroad. The UK also can enforce confiscation orders from Member States which relate to property located in the UK.

A snapshot taken in 2011-12 identified that over £6 million worth of assets relating to outstanding UK confiscation orders was located in other Member States. These measures will assist in recovering some of that and new assets. Historically, a country which enforced a confiscation order retained the assets/money (rather than they being returned to the country that made the request). 2006/783/JHA requires that if the amount confiscated is €10,000 or more then it will be shared 50/50 between the issuing state and the executing state.

The Proceeds of Crime Act 2002 allows for asset recovery from criminals independent of this measure, however international cooperation in confiscating the proceeds of crime has historically been very poor. The UK has recently improved its performance in assisting other countries in respect of relevant assets located in the UK and in pursuing assets overseas linked to our domestic cases. However in 2013-14, the UK only received 29 freezing or confiscation cases from Member States and the UK made 61 such requests. In 2012-13, the UK received 31 freezing or confiscation cases from Member States and the UK made 52 such requests. These were processed under the existing, more burdensome UK law relating to international cooperation on recognising and enforcing confiscation orders.

Government intervention is necessary to ensure the UK is able to enforce a confiscation order and recover the proceeds of crime against property or assets located in another country. Council Framework Decision 2006/783/JHA established the Mutual Recognition of Confiscation Orders between Member States in order to address this issue by introducing a standard process to recognise and enforce confiscation orders from each Member State. In effect it means that one Member State must recognise and enforce a confiscation order issued in another Member State if it relates to property located in its country.

The UK has not operated this measure previously, but there is a system which is based on domestic legalisation in place which has been used to date. Mutual recognition should create a streamlined, quicker and more effective process that will also encourage a greater number of cases.

## **2. GROUPS AFFECTED**

**Prosecution agencies:** Most notably the Crown Prosecution Service (CPS) and Serious Fraud Office (SFO), who would be either conducting a UK case where relevant assets have been located in another Member State or where they are tasked with processing another Member State's confiscation order.

**Financial institutions:** Financial institutions (notably banks) that hold an account or other financial product of the criminal could be served with a confiscation order, but this would only have a negligible impact on the institution. Assets held by a third party but owned by an individual subject to a confiscation order, would also be seized.

**HMCTS (Her Majesty's Courts and Tribunal Service):** The recognition of a confiscation order will be a judicial matter in the Crown Court. The application for recognition will be made by the relevant prosecution agency.

The **National Crime Agency** would also be affected.

## **3. RATIONALE FOR INTERVENTION**

Criminal organisations operate without regard for international borders. They either hold assets in other jurisdictions as part of their criminal activity or seek to hide their assets beyond the reach of the authorities. These assets are the proceeds of crime and can be used to facilitate further crime; their confiscation has serious public protection benefits. Government intervention is necessary to ensure the UK has the ability to enforce a confiscation order and recover the proceeds of crime against property located in another country. This measure speeds up and simplifies the process and is an improvement on the current system. .

## **4. OBJECTIVES**

The UK Government's objectives in this area are to:

- To identify and confiscate the assets of criminals, both to recover the amount they owe to court and to prevent further crime.
- To support the aims of the Serious and Organised Crime Strategy. This is specifically to attack criminal finances by making it harder to move, hide and use the proceeds of crime which includes a commitment in relation to recovery of hidden assets abroad.

## **5. BASE CASE (OPTION 0) – REMAIN OPTED OUT**

Do not seek to rejoin this measure. The UK would retain the ability to deal with incoming and outgoing confiscation orders on an informal and uncoordinated basis. This is currently provided for in respect of incoming requests by The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 and outgoing requests by sections 74, 141 and 222 of the Proceeds of Crime Act 2002. The UK already has the ability to freeze criminal assets. However, the current process is slow and cumbersome for UK to request out and for other Member States to request in, and results in relatively few orders being processed.

Through informal discussions in several meetings with other Member States, it is thought that under the current domestic legalisation, some Member States are unwilling to make requests to the UK due to the perceived inability of current UK law to assist (effectively); joining the measures would address that impasse. Other Member States have also expressed difficulty in understanding the detail and terms of current UK requests that they receive to confiscate. As such, there is a risk that other Member States may not so readily cooperate with the UK to our requests to confiscate property in the base case, as there is no requirement on them to do so. This could lead to assets of criminals being

relatively safe from confiscation, if they are moved abroad. Criminals may also become aware of the UK's inability to cooperate and this may change their behaviour, either by encouraging them to remove assets from the UK that would be targeted by UK authorities, or to move assets targeted by European authorities into the UK.

## **6. OPTION 1: OPT IN**

This measure puts in place a simplified, effective and quicker approach to confiscating the proceeds of crime if in another Member State, which should lead to better mutual legal cooperation. This would result in the faster processing of requests to confiscate which will lead to more effective international relations within the EU and the most equitable criminal justice outcome in recovering proceeds from criminals.

### **COSTS**

#### **One-off monetised cost**

**Training and familiarisation costs:** The National Crime Agency (NCA) would be required to provide training and familiarisation of these new provisions. The NCA have estimated these costs to be in the region of £10,000 in Year 1. The costs include the cost of delivering these courses (per person), any reprinting of training material, provision of soft and hard copies of material.

#### **Non-Monetised Costs**

**Processing requests:** There is no meaningful average cost of processing a mutual legal assistance (MLA) request within the Home Office as cases can vary in size and type, but it is not expected that equivalent unit costs of processing will change in either option. We would expect an increase in the volume of requests, due to 2 reasons:

- a) A simpler process for mutual recognition which means that requests are easier to make. For outbound requests, the anecdotal evidence from the CPS suggests that they will be making more requests with this measure;
- b) A requirement that Member States deal with the requests that are made.

The extent of the rise in volume is uncertain. The only data available is from other countries who have implemented the Confiscation Orders suggests increase in cases will occur (current evidence from other Member States suggests less than 20 per year).

**Court costs:** After a request is processed, the next stage in the process is for the order to be issued. This occurs at a Crown Court. The average cost of a Crown Court sitting day is £2,150. A typical case should take no longer than half a day, under the current law and arrangements, so the cost to courts to issue an order purely for the sitting in court would be £1,075. It has not been possible to predict the volume of the potential increase in court requests so it is not feasible to predict the total additional cost due to an increase in court requests. However, if there was an increase of 20 cases, then the annual cost for the courts could be in the region of £40,000.

**Costs to the prosecuting agency –** The CPS and SFO already deal with these types of cases. The CPS indicate that the process will only change slightly, and thus the cost to them will not change, although there will be minimal familiarisation costs.

**Financial cost:** Under this new measure, confiscation revenue made in the UK (for other Member States) will have to be shared between the two parties, whereas before the UK would have kept the whole revenue. This implies that for each confiscation of this nature, the UK will lose 50% of the revenue. The overall fiscal impact for this kind of confiscation is uncertain, as a higher volume of requests is expected.

### **BENEFITS**

**Supporting asset recovery:** Being part of a multilateral measure will address problems that Member States face in asset recovery as part of the base case. Member States can be unwilling to make



requests and some have difficulty in understanding the terms of current request. Seeking to join this measure would have several benefits in terms of asset recovery:

- a) **Time saving:** It would be easier for Member States to make and receive requests, as all Member States would have the same process.
- b) **Financial benefits:** This could lead to financial benefits to the UK compared to the base case as we would be recovering more due to:
  - a) An increase in the level of requests made from Member States.
  - b) A requirement that all requests are deal with
  - c) 2006/783/JHA also requires that if the amount confiscated is €10,000 or more then it will be shared 50/50 between the issuing state and the executing state. Historically, a country which enforced a confiscation order retained the assets/money (rather than they being returned to the country that made the request). There is still over £6 million worth of assets relating to outstanding UK confiscation orders was located in other Member States (taken from a snapshot in 2011-12)
- C) **Criminal Justice outcomes:** Increased asset recovery can lead to better criminal justice outcomes: Identifying and recovering criminal assets is an important component of the right outcome in respect of offenders; as it would put the individual back into the financial situation they would have been before committing a crime.
- D) **Reputational benefits:** The ability to freeze and confiscate the proceeds of crime in the UK relating to criminals in other Member States is a reputational matter for the UK. By seeking to rejoin this measure, the UK would still be seen as taking this issue seriously.

## **7. NET IMPACT**

The costs and benefits are mostly non-monetised, due to the uncertainty relating to future volume of requests and uncertainty around unit costs. There may be an increase in total costs due to an increase in the number of cases. However, an increase in the value of the proceeds of crime recovered from criminals from these additional requests could bring large benefits. The net impact is judged to be positive as the overall additional costs arising are negligible over a 10 year period, but there are benefits associated with an increase in the number of assets which are recovered. The measure will also engender further efforts to encourage international cooperation in tracking down the assets of criminals and reducing the threat and harm from domestic, transnational and international crime.

## **8. ASSUMPTIONS AND RISKS**

### **GENERAL ASSUMPTIONS AND DATA**

**Table 1: General assumptions and risks**

<b>Area</b>	<b>Assumption</b>
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Rounding</b>	Costs have been rounded to the nearest 100 (if under £10,000). Volumes have been rounded to the nearest thousand, when referring to volumes over 100,000.

**Table 2: Policy specific assumptions**

<b>Area</b>	<b>Assumption</b>
<b>Volume of cases</b>	If the UK joined this measure, the number of cases may increase
<b>Assets recovered</b>	As it is likely that the UK would be able to deal with more cases, it is assumed that more money would be recovered from criminals.
<b>Operational issues</b>	The harmonisation of Member States' legislative approaches to the extent that mutual recognition is possible is a significant and ambitious step which may have difficulties in the detail of its operation. We would expect any initial problems to be addressed quickly and for the process to then operate in a timely, effective and smooth manner.

## **11. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **9. SUMMARY AND RECOMMENDATIONS**

This measure should lead to the confiscation of a greater volume of criminal assets. This has both a criminal justice impact, in that criminals will be deprived of their proceeds, and an economic benefit in that money will be recovered for use for other purposes. Opting-in to the measure will also clearly indicate to the international community and individual partners the importance that the UK places on recovering the proceeds of crime.



Description: Seek to rejoin measure regarding European Judicial Networks

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: Negligible

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
Best Estimate	N/A		Negligible	£0.03

**Description and scale of key monetised costs by ‘main affected groups’**

There is an opportunity cost to joining Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network of £31,000 (PV).

**Other key non-monetised costs by ‘main affected groups’**

Cost to the Criminal Justice System - Through improved international cooperation it is expected that cases will be solved more quickly. This could mean a rise in prosecutions, which may have additional downstream costs for the criminal justice system.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0	£0

**Description and scale of key monetised benefits by ‘main affected groups’**

If the UK opts into Council Decision 2008/976/JHA (‘the EJM’), travel, accommodation and subsistence would be covered by the Eurojust (HO 0115) budget.

**Other key non-monetised benefits by ‘main affected groups’**

Participation in this decision promotes close cooperation between the relevant national authorities in relation to cross-border crime, leading to a more effective response to crime and improved criminal justice outcomes.

Savings to the criminal justice system – EJM cooperation could lead to savings as a result of shorter court proceedings. This is because as information is available and shared more quickly; evidence gathering as part of the judicial process could be quicker.

**Key assumptions/sensitivities/risks**

**Discount rate**

3.5%

If the UK does not rejoin this decision, it is assumed that UK representatives could no longer obtain funding to attend meetings and may not be able to attend meetings at all. The UK would may lose access to the network. However, where relationships currently exist, it is assumed that the UK would retain contact with EJM experts outside of the network.

**BUSINESS ASSESSMENT (Option 11)**

Direct impact on business (Equivalent Annual) £m:	In scope of	Measure qualifies
Costs: £0	No	N/A
Benefits: £0		
Net: £0		

## **Evidence Base (for summary sheets)**

### **1. INTRODUCTION**

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (EJN), referred to hereafter as the European Judicial Network. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

The purpose of Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network is to improve judicial cooperation between EU Member States at a practical level in order to combat crime. It establishes a network of contact points who are experts in Mutual Legal Assistance (MLA) and the European Arrest Warrant (EAW), as well a National Correspondent and Tool Correspondent for each Member State who oversee the functioning of the network. The network seeks to improve cooperation between Member States in relation to cross-border criminal investigations and prosecutions.

Joint Action 98/428/JHA of 29 June 1998 first set up the EJN by establishing a network of judicial contact points between Member States. The joint action was repealed by this decision (Council Decision 2008/976/JHA) on 24 December 2008. The need to replace the joint action arose from developments in the implementation of the principles on mutual legal assistance and mutual recognition of judicial decisions in criminal matters. The EU enlargements of 2004 and 2007 further heightened the need to strengthen the network. In addition, it was necessary to clarify the relationship between the network and Eurojust, and to facilitate their communication.

### **2. GROUPS AFFECTED**

The groups affected would be:

- Home Office.
- National Crime Agency (NCA).
- Metropolitan Police Service (MPS).
- Crown Prosecution Service (CPS).
- Serious Fraud Office (SFO).
- Public Prosecution Service for Northern Ireland (PPSNI).
- Ministry of Justice (MOJ).
- Crown Office and Procurator Fiscal Service.
- Scottish Government Justice Directorate.
- Attorney Chambers of Crown Dependencies.

### **3. RATIONALE FOR INTERVENTION**

As crime increasingly operates across borders, practical international cooperation is required in order to disrupt criminal activities. Government intervention is necessary in order ensure that there is effective

cooperation across borders to tackle and prevent crime. This includes improving communication between the judicial authorities of Member States.

Opting in to the European Judicial Network will enable the UK to liaise with other Member States more effectively, saving time and potentially increasing the prosecution of criminals. Decentralised judicial systems in other Member States make it difficult for Member States to find the appropriate contacts.

#### **4. OBJECTIVES**

The EJM aims to facilitate the successful undertaking of mutual legal assistance requests.

The UK policy objectives are to:

- Tackle and prevent organised crime.
- Work with other Member States in order to secure prosecutions in cases that cross international jurisdictions.

#### **5. BASE CASE (OPTION 0) – DO NOTHING**

It is unlikely that the UK would still be able to obtain funding to participate in these meetings and may not be able to attend meetings at all if it does not opt back in. The UK would still be able to speak to various experts connected with the European Judicial Network (EJM) and access some of the information on the EJM website.

#### **6. OPTION 1: OPT IN**

Choosing to opt back into this measure is likely to be welcomed by other Member States. It will ensure the UK has the best possible judicial cooperation with Member States (MS) and is fully able to share and take part in discussions on the key issues facing the fight against cross-border crime within the EU. Each Member State nominates specific contact points with expertise in the field of judicial cooperation. These contacts are invited to attend conferences (in The Hague or other EU MS), organised around specific themes. Each year there are two Plenary Sessions (attended by three UK Contact Points), one meeting for the National Correspondent and one meeting for the Tools Correspondent.

Contact points from each Member State who are experts in mutual legal assistance (MLA) and the EAW are appointed, as well as a National Correspondent and a Tools Correspondent for each MS. The EJM National Correspondent arranges and coordinates EJM-specific meetings and tasks, and the EJM Tools Correspondent is responsible for maintaining and updating the UK pages of the EJM website. In the UK, both of these responsibilities are based in the Judicial Cooperation Unit (JCU) at the Home Office and are incorporated into wider job roles within JCU.

There are currently at least four meetings each year:

- Tools Correspondent (TC) Meeting in The Hague attended by a Higher Executive Officer (HEO)<sup>1</sup> lasting two days.
- National Correspondent (NC) Meeting in The Hague attended by a senior manager (or equivalent) lasting two days.
- Two Plenary Sessions per year in the Member State which holds the Presidency attended by a senior manager (or equivalent) lasting two days. Funding is available for up to three Contact Points per plenary. These are hosted in the capital of the incumbent Presidency of the Council of the EU.

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<sup>1</sup> Higher Executive Officer (HEO) is an example of a civil service grade as is a 'senior manager.'

Under this decision the principal task of the EJM is to facilitate judicial cooperation in criminal matters between MS. The decision defines the composition of the EJM as being made up of central authorities responsible for international judicial cooperation and the judicial or other authorities with specific responsibilities within the context of international cooperation.

## Costs

There is an opportunity cost to the United Kingdom if it joins the European Judicial Network and attends meetings. The opportunity cost of UK staff attending these conferences amounts to £31,000 (PV)<sup>2</sup> (see Annex 1). The opportunity cost arises when staff are out of the office attending conferences and are therefore unable to carry out their everyday duties.

## Benefits

Any monetised benefits relating to funding from Council Decision 2008/976/JHA are accounted for in the Eurojust Impact Assessment (HO 0115). Eurojust will fund the travel, subsistence and accommodation of UK attendees if the UK opts-in to the European Judicial Network.

The costs of attending the National Correspondents and Tools Correspondents meetings at The Hague would be £6,100 (PV). Both the National Correspondent and Tools Correspondent meetings are two day events at The Hague. One member of staff attends each meeting. The total cost of subsistence and accommodation at The Hague is £178 per day. Therefore, the Eurojust budget would spend £357 on each meeting for two days of subsistence and accommodation. Flights would also be covered by the Eurojust funding.

The cost of attending the Plenary Sessions would be £17,700 (PV) over the same 10 year period. Annex 2 provides a more complete explanation of the associated costs that would be covered by the Eurojust budget. These meetings are held in the capital of the incumbent Presidency of the Council of the EU – this changes biannually. Due to the differing subsistence and accommodation rates across Member States, the costs differ for each Session.

Total benefit (accounted for in the Eurojust Impact Assessment (HO 0115): £6,100 + £17,700 = £23,800, or £24,000 rounded up.

Benefits		Funded By?
Opt In to EJM	£24,000	Eurojust (HO 0115)

## Non-Monetised Benefits

Participation in this decision promotes close cooperation between the relevant national authorities in relation to cross-border crime, leading to a more effective response to crime and improved criminal justice outcomes. The European Judicial Network increases legal and judicial cooperation between Member States.

Membership of the European Judicial Network increases the speed of judicial communications between Member States. Furthermore, EJM is referred to explicitly by other Mutual Recognition measures – helping to expedite finding the correct contact points. EJM cooperation could lead to savings as a result of shorter court proceedings. This is due to information being available and being shared more quickly; evidence gathering as part of the court process could be quicker.

For example, the Lord Advocate's Office in Scotland estimates that in a given two week period they would expect to use the EJM on 12 independent occasions. The EJM Secretariat recently issued a report on the 'Operation and Management of the European Judicial Network' which states that between 2011 and 2012 EJM contact points dealt with 15,196 requests.<sup>3</sup>

<sup>2</sup> PV – Present Value

<sup>3</sup> [http://www.ejforum.eu/bi-annual/EJM-Report-on-operation-and-management\\_2011-12\\_MAY-2014.pdf](http://www.ejforum.eu/bi-annual/EJM-Report-on-operation-and-management_2011-12_MAY-2014.pdf)

One such request was the case of Grzegorz Gamla, a Polish national living in Edinburgh, who murdered fellow Polish national Maciej Ciana, before fleeing the country. The Scottish authorities cite the EJM as helping significantly in dealing with the Polish authorities in this particular case. The network facilitates regular contact with prosecutors and judges in other jurisdictions. In this case Scottish authorities, suspecting the individual may have fled to his native country made contact with the judicial authorities in Poland, to ensure that when an arrest warrant was ready the Polish police were available to execute it immediately. The investigation had been commenced in advance of receipt of the warrant, in order to identify where the suspect was. The result was that the individual was arrested within five hours of the arrest warrant leaving Edinburgh. Gamla was sentenced to life imprisonment.

Another example is that of a German National who was sought for extradition for an alleged serious assault in Glasgow. The two EJM contact points involved worked together to ensure they utilised each others knowledge of their respective procedures and evidence. They discussed all the options and ensured that they could effectively prosecute the individual. The individual was successfully convicted and sentenced to four years.

As a final example, there is the case of a male in UK custody who was awaiting extradition on murder charges. UK authorities received a letter from Polish authorities incorrectly advising that the EAW had been withdrawn. Through close and swift cooperation under EJM, it was very quickly established that the letter had been sent in error and the accidental release of the individual was prevented.

## 7. NET IMPACT

For the reasons set out above the UK would seek to continue judicial cooperation between Member States through opting in to the European Judicial Network. UK delegates would not be able to attend EJM meetings if the UK was not opted-in to this measure. Therefore the preference is to opt in to Council Decision 2008/976/JHA in which all costs are covered by the EU budget.

## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	2013/14
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

## 9. WIDER IMPACTS

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.



## **10. SUMMARY AND RECOMMENDATIONS**

The European Judicial Network seeks to improve judicial cooperation between EU Member States both at the legal and practical level by bringing together experts in mutual legal assistance and judicial process. To opt in would bring a net benefit, through non-monetised benefits, over 10 years; the recommendation is therefore to opt-in to Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.

## Annex 1 – Opportunity Costs of Opting In to European Judicial Network

### Total Cost

	Days	Day Rate (with on-cost)	Total Cost (£)
Grade 7	14	235	3,284
HEO	2	140	279
			<b>3,563</b>

## **Annex 2 – UK ACCOMODATION AND SUBSISTENCE RATES**

<b>Member States</b>	<b>Subsistence Rate</b> Euro per day (€)	<b>Room Rate</b> Euro per day (€)	<b>Total Rate</b> GBP (£)
Austria	88	122	170
Belgium	76	164	195
Bulgaria	109	153	213
Croatia	58	134	156
Cyprus	94	108	164
Czech Republic	47	126	140
Denmark	120	160	227
Estonia	60	116	143
Finland	82	145	184
France	116	199	256
Germany	72	166	193
Greece	68	154	180
Hungary	52	136	153
Ireland	99	149	201
Italy	90	170	211
Latvia	43	115	128
Lithuania	74	93	135
Luxembourg	122	239	293
Malta	74	115	153
Netherlands	71	149	178
Poland	93	115	169
Portugal	75	107	147
Romania	54	147	163
Slovakia	54	111	133
Slovenia	65	148	173
Spain	102	176	226
Sweden	102	215	258
UK	N/A	N/A	N/A
<b>AVERAGES</b>	<b>€80</b>	<b>€145</b>	<b>£183</b>

## Presidency of the Council of the European Union

				<b>Subsistence</b>	<b>Individual</b>	<b>Cumulative Total</b>	<b>Yearly</b>
				Per Day (£)	(£)	12 G7s (£)	(£)
2014	Jan– Jun	T5	Greece	180	359	1078	2341
	Jul– Dec	T6	Italy	211	421	1263	
2015	Jan– Jun		Latvia	128	255	766	2527
	Jul– Dec		Luxembourg	293	587	1761	
2016	Jan– Jun	T7	Netherlands	178	357	1071	1871
	Jul– Dec		Slovakia	133	267	800	
2017	Jan– Jun		Malta	153	306	919	919
	Jul– Dec	T8	United Kingdom	No subsistence	No subsistence	No subsistence	
2018	Jan– Jun		Estonia	143	286	858	2134
	Jul– Dec		Bulgaria	213	425	1276	
2019	Jan– Jun	T9	Austria	170	340	1019	1999
	Jul– Dec		Romania	163	327	980	
2020	Jan– Jun		Finland	184	368	1105	2203
	Jul– Dec	T10	Unknown	183	366	1098	
2021	Jan– Jun		Unknown	183	366	1098	2196
	Jul– Dec		Unknown	183	366	1098	
2022	Jan– Jun	T11	Unknown	183	366	1098	2196
	Jul– Dec		Unknown	183	366	1098	
2023	Jan– Jun		Unknown	183	366	1098	2196
	Jul– Dec	T12	Unknown	183	366	1098	

<p><b>Title:</b> 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, 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 and 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.</p> <p><b>IA No:</b> HO 0117</p> <p><b>Lead departments or agencies:</b> Home Office and Ministry of Justice</p>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 24/06/2014			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU			
	<b>Type of measure:</b> EU			
<b>Contact for Enquiries:</b> <a href="mailto:2014decision@homeoffice.gsi.gov.uk">2014decision@homeoffice.gsi.gov.uk</a>				

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	
-£7.98m	N/A	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
 Non-UK nationals can be sentenced in the UK without their offending history from outside the UK being taken into account. UK nationals however, whose offences will most likely have been in the UK, will have their offending history considered when before a court. There is therefore an inherent inconsistency and a lack of fairness in the system. This can have an impact on public protection if individuals are not appropriately sentenced or inappropriately provided bail. Government intervention is required to ensure that the offending history of EU nationals is available to ensure consistent and fair sentencing. This intervention will also allow the EU offending history of non EU nationals to be sought (and provided should it exist) in those cases in which we know that a non-EU national has lived in another EU Member State.

**What are the policy objectives and the intended effects?**  
 The Government's objectives in this area are:  
 a) To ensure a fair and consistent sentencing framework for EU and non-UK nationals;  
 b) To maintain public protection.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base case (Option 0) - We do not seek to rejoin any of the three instruments.** In this case the UK will be unable to seek the previous convictions of EU national being prosecuted in the UK other than by issuing letters of request. Member States would not be told about the previous convictions of UK nationals being prosecuted abroad. There would be a much lower level of conviction exchange concerning UK nationals convicted in the EU and EU nationals convicted in the UK.

**Option 1 – Seek to rejoin ECRIS (Two measures).** The UK would have access to the ECRIS system which provides a legal, quick and efficient way of obtaining convictions, of UK and EU nationals, from EU countries. We would therefore have significantly more information available for public protection purposes and also for use in court.

**Option 2 – Seek to rejoin ECRIS and Taking Account of Convictions (TAC):** TAC provides legal certainty that foreign convictions will be used in UK courts and that UK convictions are taken into account in foreign proceedings. Option 2 is the preferred option, as it would provide legal certainty though TAC, as well as the maximum public protection benefits of set out in option 1.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister

Karen Bradley MP

Date: 24 June 2014

# Summary: Analysis & Evidence

Policy Option 1

**Description:** Seek to rejoin Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -27.2	High:-7.98	Best Estimate: -8.3

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		£0.92m	£7.98m
High	N/A		£7.37m	£63.3
Best Estimate	N/A		£0.92m	£7.98m

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

The volumes of notifications/requests processed and requested by the central authority are predicted to be higher than that in the base case. When applying the volumes to the reduced unit costs, the net present cost (in addition to the base case) for ten years is predicted to be between £7.98 million and £63.3m million (PV); the best estimate scenario predicts a net present cost of **£7.98 million**.

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

**Criminal Justice System costs:** The CJS will be impacted by any increase in the number of Requests out. 30% of requests 'out' return responses indicating an offending history. This could have two main downstream CJS impacts. As courts would now have the full European offending history of the defendant, they can sentence with past offences in mind. If custodial sentence lengths increase or more offenders are given probationary (instead of fines) or custodial sentences following information on offending histories, there would be downstream cost implications for National Offender Management Services. Secondly, knowledge of past offences could lead to some additional cases being passed to the Crown Prosecution Service, and if this led to additional prosecutions there would be downstream cost implications for the wider CJS.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A			
High	N/A			
0	0		NK	NK

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

It has not been possible to monetise any benefits associated with these Framework Decisions.

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

**Consistent Sentencing:** Through the outgoing requests the UK makes, the UK is gaining access to EU criminal records which allow EU nationals being prosecuted in the UK to be treated similarly to UK nationals (as the court will have access to complete criminal record history). **Public protection:** Through incoming notifications, criminal record exchange allows us to access the EU convictions of British nationals. These can be used for Offender Management and the Violent and Sex Offender Register (ViSOR) purposes. **Criminal Justice:** As a defendant is now tried with knowledge of previous court convictions, as a result of outgoing requests made by the UK, it could be more likely that the defendant pleads guilty than without this information being known by the court. This could bring benefits to HMCTS (shorter trials), legal aid (lower legal aid cost associated with a guilty plea trial) and NOMS (early guilty pleas have an impact on, for example, the length of a prison sentence).

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>
How exchange works, volume of future requests, criminal justice system costs, staff costs for processing notifications and requests as set out in the assumptions and risks section of the IA. Implementation of ECRIS did not require funding from the EU general budget, though running ECRIS does. This IA assumes that the UK funding to run ECRIS will continue through the general budget whether the UK seeks to rejoin or not.	3.5%

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	N/A



# Summary: Analysis & Evidence

Policy Option 2

**Description:** Seek to rejoin Framework Decision 2009/315/JHA, Council Decision 2009/316/JHA (ECRIS) and 2008/675/JHA (TAC)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -27.2	High:-7.98	Best Estimate: -7.98

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	£0.92m	<b>£7.98m</b>
High	N/A	£7.37m	<b>£63.3</b>
Best Estimate	N/A	£0.92m	<b>£7.98m</b>

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

The volumes notifications/requests processed and requested by the central authority are predicted to be higher than that in the base case. When applying the volumes to the reduced unit costs, the net present cost (in addition to the base case) for ten years is predicted to be between £7.98 million and £63.3.2m million (PV); the best estimate scenario predicts a net present cost of **£7.98 million**.

**Other key non-monetised costs by 'main affected groups' Criminal Justice System costs:** The CJS will be impacted by any increase in the number of Requests out. 30% of all requests 'out' return responses indicating an offending history. This could have two main downstream impacts on the CJS. Firstly, as courts now have the full European offending history of the defendant, they can sentence a guilty individual with past offences in mind. If custodial sentence lengths given increase or more offenders are given probationary (instead of fines) or custodial sentences following information on offending histories, there would be downstream cost implications for National Offender Management Services. Secondly, knowledge of past offences could lead to some additional prosecutions; this would have downstream cost implications for the wider CJS.

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

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

It has not been possible to monetise any benefits associated with these Framework Decisions.

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

**Consistent Sentencing:** Through the outgoing requests the UK makes, the UK is gaining access to EU criminal records which allow EU nationals being prosecuted in the UK to be treated similarly to UK nationals (as the court will have access to complete criminal record history). **Public protection:** Through incoming notifications, criminal record exchange allows us to access the EU convictions of British nationals. These can be used for Offender Management and the Violent and Sex Offender Register (ViSOR) purposes.

**Criminal Justice:** As a defendant is now tried with knowledge of previous convictions by the court, as a result of outgoing requests made by the UK, it could be more likely that the defendant pleads guilty than without this information being known by the court. This could bring benefits to HMCTS (shorter trials), legal aid (lower legal aid cost associated with a guilty plea trial) and NOMS (early guilty pleas have an impact on, for example, the length of a prison sentence). The legislation to implement the TAC provides the UK with legal certainty that foreign conviction can be used in UK courts. It guarantees what has to date, been a haphazard and inconsistent process.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
How exchange works, volume of future requests, criminal justice system costs, staff costs for processing notifications and requests as set out in the assumptions and risks section of the IA. Implementation of ECRIS did not require funding from the EU general budget, though running ECRIS does. This IA assumes that the UK funding to run ECRIS will continue though the general budget whether the UK seeks to rejoin or not.		

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> 0	<b>Benefits:</b> 0	<b>Net:</b> 0	No	N/A

# Evidence Base (for summary sheets)

## 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of Council Framework Decision 2009/315/JHA, Council Decision 2009/316/JHA, referred to hereafter as ECRIS and Council Framework Decision 2008/675/JHA, referred to hereafter as TAC. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented these measures by 1 December 2014. This is the point at which (i) transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and (ii) European Court of Justice's jurisdiction take effect.

ECRIS (European Criminal Record Exchange Information System) was created in 2009 by EU agreements 2009/315/JHA and 2009/316/JHA. ECRIS was set up to standardise the exchange of criminal records between Member States. ECRIS is not a central criminal records database; it is instead an electronic exchange system which through which notifications and requests can be sent between Member States. The agreements improve the previous exchange mechanisms via Article 13 and 22 of the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.

The main aims of ECRIS are to ensure that Member States are aware of all the convictions of their nationals and to ensure that Member States prosecuting a national of another Member State are able to find out the previous convictions of that person. A secondary aim is to ensure that an EU national who is applying for his or her criminal convictions (say for employment vetting purposes) is able to obtain, from the country of residence, both convictions in the country of residence and those held in the Member State of nationality. The Member State of nationality would be notified of all previous convictions which may have occurred in other Member States.

Notifications are where the UK tells another country that one of their national has been convicted of a recordable criminal offence or where another country tells us that one of our nationals has been convicted of a criminal offence. In the latter case we will also record, on PNC any offence which would have been recordable had it been committed in the UK. Requests are where we ask another Member State for the previous convictions of one of their nationals being prosecuted in the UK or where a Member State asks the UK for the convictions of a UK national being prosecuted abroad.

The TAC (Taking Account of Convictions) Framework Decision requires courts in Member States to take account of a defendant's previous convictions in any other Member State "to the extent previous national convictions are taken into account". ECRIS provides a mechanism to quickly and easily check the criminal records of an individual, whilst TAC ensures that it is used to its fullest extent across all Member States.

## 2. GROUPS AFFECTED

- Home Office
- Police Forces
- Ministry of Justice.

- Criminal Justice System: including the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunal Services (HMCTS), the Legal Aid Agency (LAA) and National Offender Management Services (NOMS).
- Employers – disclosure of previous convictions and so suitability to take up employment.
- Disclosure and Barring Service – provision of previous convictions to individuals seeking employment with children and/or vulnerable adults.

### **3. RATIONALE FOR INTERVENTION**

Without ECRIS non-UK nationals can be sentenced without their offending history outside the UK being available to the court whereas UK nationals, whose offending will tend to be in the UK, will have their offending history available. Individuals are thus sentenced inconsistently and there is a lack of fairness in the system. This has an impact on public protection.

Government intervention is required to ensure that non UK national offending history is available and so to ensure consistent and fair sentencing. This is done through the use of ECRIS and through the legal certainty provided by the implementation into UK law of the TAC Framework Decision.

### **4. OBJECTIVES**

The Government's objectives in this area are:

- a) To ensure a fair and consistent sentencing framework for EU and non UK nationals;
- b) To maintain public protection.

### **5. Base case (Option 0) – Do nothing**

If the UK did not seek to rejoin ECRIS and TAC, we would lose access to the mechanism that allows the UK to quickly exchange criminal records between Member States. If we were not to participate in ECRIS, the UK would mostly likely revert to terms of the 1959 Council of Europe (CoE) convention of Mutual Assistance in Criminal Matters.

The provisions of Articles 13 and 22 of the 1959 Convention mean that the UK will have an obligation to send notifications and will continue to receive incoming notifications as other Member States (all of whom are parties to the 1959 Convention) will also have an obligation to send us notifications of UK nationals convicted in other EU countries. Thus the assumption made for the base case is that notifications out and in will remain the same. There is uncertainty in the assumption for notifications in; sensitivity analysis has been carried out in **Annex 1**.

In the base case, we would rely on Article 13 of the 1959 Convention allows Contracting Parties to request previous convictions. This would be done by sending a formal letter of request issued by the Crown Prosecution Service, a court or another designated prosecuting authority. This is significantly more time consuming, complicated and expensive than the ECRIS procedure. Instead of one electronic message being sent a Crown Prosecutor would be required to draft a full letter of request, get it signed by the Branch Crown Prosecutor and then send it to the Criminal Records Authority in the requested state. In the period before the setting up of the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) the UK made virtually no requests to other Member States for details of the previous of those being prosecuted here. As a result the UK knew virtually nothing about the offending history of EU nationals being prosecuted in the UK and did not have any of the public protection benefits that come with having conviction information. Without ECRIS and TAC this is likely to be the case, thus the assumption for the volume of future requests (in and out) in the base case will stay at 0 throughout the appraisal period.

Remaining opted out of TAC would mean that the UK would still retain in statute the principle that criminal convictions from other Member States should be taken into account in the same way as domestic convictions. However, it would be necessary to make a technical change to legislation in Scotland, because the implementing legislation makes reference to the Framework Decision.

The unit costs in the base case (provided by the UK Central Authority for the Exchange of Criminal Records) are higher for requests and notifications because the UK would revert to a more expensive paper based system. The cause of the additional expense for requests is explained above, for notifications we would not have the ability to interface directly with the Police National Computer, would not have the ability to auto-translate information received and would have the additional postal costs relating to sending information. There would be no benefits for consistent sentencing or potential savings to the Criminal Justice System as there are no requests in or out forecasted in the base case.

A full explanation of the base case including the detailed assumptions used to generate the future volume and costs are included in **Annex 1**.

## 6. OPTION 1: OPT IN TO ECRIS

Participation in ECRIS would mean that the UK can continue to exchange information under the current legal and operational framework.

### COSTS – monetised

**Central Authority:** The Central Authority in each country processes and sends requests and notifications. The unit cost covers the full on costs (which include the costs for training, pensions etc) for this work. The system is electronic, which means that unit costs are lower in this option than they would be in the base case. A manual process forgoes the benefits of automatic translation and automated extraction of information from the Police National Computer. The 1959 Convention requires information to be sent to the UK Central Authority for Mutual Legal Assistance: there will be a cost of transferring the information and also postal costs for sending notifications. The unit costs are in the below tables. These are 2012/13 costs in 13/14 prices, provided by the Central Authority:

**Table 1:** Costs of processing and making requests and notifications,

	Unit Cost Rejoin	Unit Cost Remain opted out	Saving Rejoin
Requests In	£12	£31	£20
Requests Out	£44	£112	£68
Notifications In	£26	£84	£58
Notifications Out	£3	£6	£2

**Note** – costs may not sum exactly due to rounding

If we rejoin ECRIS, even though the unit costs are lower, the volumes are predicted to be higher than that in the base case. The table below shows the total volumes for the ten year appraisal period solely for the central scenario, **Annex 1** shows the volumes for the base case, and **Annex 3** shows the high and low scenario volumes. The additional volumes (the below table taken from the volumes in Annex 1) and the difference in the cost between the manual and ECRIS system are the basis for the net present cost calculation below the table

**Table 2:** Annual Volumes, Best estimate (2015 – 2024)

Type	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Requests In	8,400	9,600	10,700	11,900	13,100	14,300	15,400	16,600	17,800	18,900
Requests Out	43,100	45,000	46,800	48,700	50,600	52,400	54,300	56,200	58,000	59,900
Notifications In	15,900	17,600	19,200	20,900	22,500	24,200	25,800	27,500	29,100	30,800
Notifications Out	44,400	47,200	50,000	52,900	55,700	58,500	61,300	64,200	67,000	69,800

When applying the each volume scenario to the reduced unit costs, the net present cost for ten years is predicted to be in the range of £7.98 million and £63.3 million for 2015 -2024, the central scenario predicts a net present cost of £7.98 million.

**Table 3 – Net present costs for each scenario**

	Low Volume	Central Volume	High Volume
Requests	£15.5m	£20.6m	£72.30m
Notifications	-£7.12m	-£12.6m	-£9,64m
Total	£8.35m	£7.98m	£63.3m

Note each scenario (Low/Middle/High) incorporates:

- a) Savings from a reduction in the cost of notifications achieved by opting in.
- b) Costs from increased volume of requests in and out.

The central volume scenario predicts higher costs relating to requests and greater savings arising from notifications, as the volumes are greater, than the low estimate. The scale of the volumes has resulted in the overall cost for the best estimate of the likely volumes being lower than estimated for the low volume scenario. However, the best estimate is based upon the most likely volumes for both notifications and requests; hence it is considered to be the best estimate.

**Annex 3** explains how the total costs are generated, and presents the underlying assumptions.

### **COSTS - non monetised**

**Criminal Justice System costs:** The CJS will be impacted by any increase in the number of Requests out. 30% of all requests 'out' return indicating conviction histories. The additional impact on the criminal justice system would come two areas:

- 1) Additional prosecutions and convictions:** Additional requests may result in more prosecutions. This is because a portion of the requests (c30%: provided by the Central Authority in 2013-14) come back with convictions. Knowing that a person has previous convictions may lead to additional prosecutions that would not have occurred in the base case. It may also lead to cases that were already prosecuted being dealt with in court as opposed to out of court. This is because the previous convictions would have been the factor that made it clear to the police and the CPS that the person was not a first time offender and thus an inappropriate case for an out of court disposal.

The scale of this potential cost is unknown, as it is not possible to predict how many additional prosecutions/convictions there would be from 30% of requests coming back with an offending history. However, the average estimated cost to the criminal justice system per additional prosecution is £6,100. This incorporates an average cost to the CPS (£700<sup>1</sup>), 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 internal estimates provided by the Ministry of Justice

These costs are weighted costs that accounts for the proportion of defendants tried in the magistrates' court versus the Crown Court; the proportion of offenders sentenced to each disposal; and the average time those sentenced to a custodial sentence spend in prison. For full information about the risks and assumptions used to generate the cost, please see **Annex 2**.

- 2) Sentencing:** As courts now have the full European offending history of the defendant, they can sentence a guilty individual with past offences in mind, meaning that an offender will receive a more appropriate sentence linked to the level of risk posed by that individual. This may have a downstream impact on the CJS, including: Prisons (opting in could increase a defendant's sentence length, or mean an offender gets a prison sentence instead of another disposal) or Probation (a defendant may

<sup>1</sup> This excludes advocacy costs in the Crown Court which could be substantial.

have stricter terms on their community sentence). The scale of this impact is highly uncertain, as it would be dependent on offending history of an individual, and the reaction of the Judge.

## **BENEFITS – non monetised**

**Consistent Sentencing:** Through the outgoing requests the UK makes, the UK will gain access to the criminal record of EU nationals as held in the country of nationality. This allows EU nationals being prosecuted in the UK to be treated similarly to UK nationals (as the court will have access to full criminal record held in the country of nationality). If the UK were to remain opted out, it is highly unlikely we would request any information, and as such defendants could be treated inconsistently through the trial/sentencing, as is the case now. Consistent treatment is likely to result in more appropriate sentences for persistent offenders, which will also lead to enhanced public protection. Furthermore, receiving information back from outgoing requests, previous convictions can be used as evidence of bad character may result in a conviction that would not otherwise have been possible.

Anecdotal evidence suggests that evidence of previous bad character can have a significant impact in securing a conviction. For example, an individual was arrested in the UK on suspicion of rape. A request for conviction data identified that he had a previous conviction for rape. Just prior to the trial, this individual disputed the conviction but through close liaison with the Member State's Central Authority and its UK Police Liaison Officer, a set of fingerprints relating to the conviction was obtained and proved the conviction beyond doubt when they matched against the defendant. An application to use the previous conviction as bad character evidence was made and received. The individual was convicted of four counts of rape, one count of false imprisonment, two counts of assault by penetration and one count of Actual Bodily Harm in 2010. On the same day he was given an indeterminate prison sentence with a recommendation that he serves at least 11 years in jail as he presents a "high risk" of further sexual offences. The investigating officer said: "The use of foreign conviction data can be of great importance to police investigations. In my case I was able to draw on their professionalism and expertise to secure details of the individuals' previous conviction for rape which was put before the court and used as bad character evidence. This information undoubtedly assisted in providing a successful outcome, convicting a dangerous offender who will now spend a considerable number of years behind bars."

**Public protection:** In addition to more appropriate sentences for persistent offenders, through incoming notifications, criminal record exchange allows us to access the EU convictions of those residing in the UK. These can be used for Offender Management and the Violent and Sex Offender Register (ViSOR) purposes and in criminal record disclosure by the UK disclosure agencies. This minimises the risk to the public of violent and sexual offenders being unmonitored in the community and allows employers to make appropriate employment decisions.

**Criminal Justice:** Under the opt-in decision a defendant will now be tried with knowledge of previous convictions by the court so there could be an increased likelihood of the defendant pleading guilty. Evidence from the UK Central Authority for the Exchange of Criminal Records in 2008 showed that at least one major trial was significantly shortened by the provision of previous convictions which led to guilty pleas. This led to some legal aid savings as there was no longer a need to provide legal aid for 17 defendants in a major (6 week +) trial.

Therefore, there are several possible benefits from guilty pleas:

- a) **HMCTS:** Shorter trials will mean that a court room is free sooner than it would have been previously, which could lead to savings for courts. This is an opportunity cost saving, as the court is likely to be used for a different trial instead. The scale of this benefit is unknown, as it is dependent on the extent of the behavioural change.
- b) **Legal aid agency:** A defendant pleading guilty in a trial means they no longer require the level of legal representation that would be required in a full trial (i.e. where a defendant pleads 'not guilty').
- c) **NOMS:** Those offenders who enter an early guilty plea will get a sentence reduction. This could bring savings to the CJS in terms of a reduction in prison costs. This impact could be felt for other disposals, such as for a community sentence.

## **7. OPTION 2: OPT IN TO ECRIS AND TAC (PREFERED)**

Opting into ECRIS and TAC ensures the benefits of ECRIS as set out in Option 1 and provides the legal certainty that it will be used to its fullest extent. Foreign convictions will be used in UK courts and UK convictions will have to be taken into account in foreign proceedings. It improves and legal requires what has, to date, been a haphazard and inconsistent process.

### **Additional Costs**

There are no additional costs associated to this option, above those set out in option one. The addition of TAC merely provided legal certainty to the processes set out in option 1. TAC does not require any MS to seek data, it just requires an MS to use it if available, and thus we would expect no change in volume for notifications or requests as a result of TAC.

### **Additional Benefits**

Rejoining TAC as well as ECRIS ensures the benefits of using ECRIS are fully realised. ECRIS improves the process by which this information is exchanged and TAC ensures it is taken into account in all Member States in their criminal proceedings.

## **8. NET IMPACT**

ECRIS brings a host of public protection benefits as well as increased fairness to the criminal justice system. TAC provided the legal certainty that these benefits are fully realised. It is judged that the benefits associated to option 2 outweigh the costs.

## **9. ASSUMPTIONS AND RISKS**

**Table 4:** General Assumptions

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Rounding</b>	Costs have been rounded to 3 significant figures. Volumes have been rounded to the nearest 100, when referring to volumes over 1,000.
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

### **Sensitivity Analysis**

There is some uncertainty regarding whether or not there would be 100% of notifications received in the remain-opted-out base case. This is because:

- a) Many MSs will have designed systems based around electronic exchange and will not wish to revert to manual systems.
- b) There is risk around this assumption because Member States may choose to send all notification by post or may choose, as there are no sanctions for non-compliance with the requirements of the 1959 Convention, to send no notifications.



As such to show the sensitivity present in this assumption, there below scenario's show the impact of 50% of incoming notifications (compared to each scenario) being received as opposed to 100%.

**Table 5: Costs (Present Value, 2015 -2024)**

	Total Cost <i>Seek to rejoin</i>	Total Cost <i>Remain opted out</i>	Additional cost of seeking to rejoin
Low Volume	£19,3m	£6,4m	£12,9m
Central Volume	£27,2m	£10,7m	£16,5m
High Volume	£77,8m	£7,93m	£69,9m

### **Breakeven analysis**

ECRIS is increasing the information available to the UK through outgoing requests; there is an increased likelihood of the police/court holding the offending history of an EU national.

Opting into the ECRIS and TAC may result in:

- a) More defendants convicted, which may mean future crime is prevented;
- b) More appropriate sentencing. This could mean that for prison sentences, as offenders are incarcerated for longer there could be less crime committed. Note, however, it may just delay the crime taking place rather than prevent future crime;
- c) More supervision post prison sentences than would have been the case;
- d) Deterring offenders from offending again.

As such and increase in points a-d above could then lead to a reduction in the level of crime. The average cost of crime for sexual offences in 2013 was £39,143.<sup>2</sup> This includes the costs in anticipation of crime, costs as a consequence of crime and costs in response to a crime. It includes costs to the victim and the criminal justice system. Costs to the offender are not taken into account. For ECRIS to breakeven, solely on reducing sexual offences, there would need to be roughly 200 of these offences prevented over the appraisal period (this is based on the central volume scenario). This roughly equates to 1%<sup>3</sup> of the forecasted number all sexual offences crimes committed by EU nationals in the UK over the appraisal period.<sup>4</sup>

## **10. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

<sup>2</sup> This figure has been updated for the physical and emotional component for changes in nominal GDP per capita. The rest of the components have been updated for inflation. This cost is based on a figure from:

<http://webarchive.nationalarchives.gov.uk/20100413151441/http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr3005.pdf>

<sup>3</sup> This was generated by applying the proportion of sexual offences over recorded crime (Source: Crime in England & Wales, year ending December 2013 - Bulletin table) and applying this to the projections of crimes committed by EU nationals in the UK over the length of the appraisal period.

<sup>4</sup> To predict the number of crime EU nationals could commit in the future, we have used a calculation of the domestic crime rate, and applied this to the number of EU nationals in the UK. We have then assumed that the number of EU nationals that commit crime in the UK is proportional to the population of the UK, thus the estimated proportion of EU nationals who commit crime can be applied to the UK population projections (Source: Office for National Statistics).

## **11. SUMMARY AND RECOMMENDATIONS**

It is recommended that the UK seeks to rejoin both ECRIS and TAC. Participation in ECRIS provides the UK with the full offending history of UK national and the serious offending history of EU nationals. This information can be used in court to determine sentencing or the granting of bail. It further supports public protection in regards to deportation and removals and in determining if individuals should be, or are already on the sex offender register. It allows employers to run pre-employment checks and to check the history of those working with children and vulnerable adults. TAC provides legal certainty that foreign conviction will be used in UK courts and that UK convictions are taken into account in foreign proceedings.

## Annex 1: Remain opted out (CoE is the only legal backing)

### Baseline volume Assumptions and risks:

- A) **Requests in and out will be zero annually.** The reasoning behind this that prior to ECRIS in 2006, we made and received no requests (Source: Central Authority). We may also have different systems in place make it operationally difficult to request, or receive requests. We would have no obligation to respond to or make requests. If there are more requests than this the costs and benefits of rejoining ECRIS could be impacted.
- B) **Notifications out** will stay at current levels. Article 22 of the 1959 Convention on Mutual Assistance in Criminal matters requires the UK (at least once a year) to send details of convictions to the country of nationality. We thus have a legal obligation to send notifications.

**Notifications in** will stay at current levels. We do not have statistics for the number of incoming notifications received under the 1959 Convention; however, there is a requirement for Member States to notify the Member state where the offender is a national.

### Baseline volumes

**Table 6:** Central Scenario, Annual Volume (2015 -2024), rounded to nearest 100

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Requests In	0	0	0	0	0	0	0	0	0	0
Requests Out	0	0	0	0	0	0	0	0	0	0
Notifications In	15,900	17,600	19,200	20,900	22,500	24,200	25,800	27,500	29,100	30,800
Notifications Out	44,400	47,200	50,000	52,900	55,700	58,500	61,300	64,200	67,000	69,800

**Table 7:** High Scenario, Annual Volume (2015 -2024), rounded to nearest 100

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Requests In	0	0	0	0	0	0	0	0	0	0
Requests Out	0	0	0	0	0	0	0	0	0	0
Notifications In	17,600	17,700	17,800	17,900	18,000	18,200	18,300	18,400	18,500	18,600
Notifications Out	134,000	134,900	135,800	136,700	137,600	138,500	139,300	140,200	141,000	141,800

**Table 8:** Low Scenario, Annual Volume (2015 -2024), rounded to nearest 100

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Requests In	0	0	0	0	0	0	0	0	0	0
Requests Out	0	0	0	0	0	0	0	0	0	0
Notifications In	12,600	12,600	12,600	12,600	12,600	12,600	12,600	12,600	12,600	12,600
Notifications Out	38,800	38,800	38,800	38,800	38,800	38,800	38,800	38,800	38,800	38,800

### Base line cost assumptions and risks

Area	Assumption and Risks
<b>Volume Assumptions</b>	<ul style="list-style-type: none"> <li>The volume assumptions in the base case are based on the evidence available, they are uncertain. Any change to these forecasts would have an impact on the costs and benefits in the decision to seek to rejoin both TAC and ECRIS option.</li> </ul>

<b>Central Authority costs.</b>	<ul style="list-style-type: none"> <li>• Costs for paper exchange, as required by the base case are based on a cost multiplier relating back to low volume manual exchange costs in 2009. Costs may not be accurate, as there are no recent manual cost figures available on which to draw.</li> <li>• Costs for electronic exchange are current costs.</li> </ul>
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### Baseline costs

- a) The change in the unit costs in relation to the base case compared to option 1 stem from differences in processing costs for the Central authority. The unit costs for processing requests and notifications are below. These are presented in 13/14 prices, and were provided by the Central Authority.

**Table 9: Unit costs**

Type	Unit cost (08/09 costs, 13/14 prices) (rounded to nearest pound)
Notifications in	£84
Notifications out	£6
Requests in	£31
Requests out	£112

Source: UK Central Authority for the Exchange of Criminal Records

The total net present cost, based on volume assumptions and the unit costs above range from £11.0m to £68.5m, with a central estimate of £19.3 m. These costs are compared with the total costs to the rejoin ECRIS, and rejoin ECRIS and TAC options to calculate additional net present cost of opting in.

### Baseline benefits

As there are no requests out there are no non-monetised benefits which stems from the requests. The benefits which could not be realised are:

- a) **Consistent Sentencing**
- b) **Criminal Justice:** Under the base case, a defendant will not be tried with knowledge of previous convictions by the court; there could be an increased likelihood of the defendant pleading guilty.

## Annex 2: Assumptions and Risks, Criminal Justice System costs

There are several assumptions and risks relating to the costs to the criminal justice system. The below table explains the assumptions made to generate these CJS costs, and the risks related to these assumptions.

Assumption	Risks/Limitations
<p>Progression of a case through the CJS (e.g., proportion tried in each court, proportion sentenced to immediate custody):</p> <ul style="list-style-type: none"> <li>We assume that 50% of cases will be tried in the Magistrate's court and 50% in the Crown Court.</li> </ul> <p>Source: MoJ internal analysis, 2014 (agreed with HO policy and analysts).</p> <ul style="list-style-type: none"> <li>We use data from all offences in 2012 to estimate the proportion of defendants sentenced to immediate custody and probation (community/suspended sentences). The data shows that approximately 7% of cases result in a custodial sentence and 13% of cases in a probationary sentence.</li> </ul> <p>Source: MoJ Criminal Justice Statistics, 2013 (found at: <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220090/criminal-justice-stats-sept-2012.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220090/criminal-justice-stats-sept-2012.pdf</a>)</p>	<ul style="list-style-type: none"> <li>For simplicity, we used data for all offences. For certain categories or individual offences the number of defendants tried in each court and those sentenced to custody or probation may be substantially different from the average considered.</li> <li>There is a risk that more/fewer defendants will be tried in each court.</li> <li>There is a risk that more/fewer defendants will be sentenced to immediate custody.</li> <li>There is a risk that more/fewer defendants will be sentenced to probation.</li> </ul> <p>Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.</p>
<p>Average Custodial; sentence length(ACSL) given</p> <ul style="list-style-type: none"> <li>We use data from all offences in 2012 to estimate the ACSL given. Data shows that across all offences, the ACSL was approximately 14.5 months.</li> </ul> <p>Source: MoJ Criminal Justice Statistics, 2013 (found at: <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220090/criminal-justice-stats-sept-2012.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220090/criminal-justice-stats-sept-2012.pdf</a>)</p>	<ul style="list-style-type: none"> <li>There is a risk that the ACSL given will be longer or shorter.</li> </ul>
<p>CPS costs:</p> <p>The average CPS costs used do not include several categories, and in particular advocacy costs are excluded from Crown Court costs, which in some cases can be significant. Therefore, CPS costs are expected to increase as we work with the CPS to agree advocacy costs. Current CPS costs are based on Activity Based Costings (ABC), the primary purpose of which is resource distribution. The key limitation of the ABC model is that it is built purely on staff time and excludes</p>	<ul style="list-style-type: none"> <li>The key limitation of the ABC model is that it is built purely on staff time and excludes accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): <a href="http://www.cps.gov.uk/publications/finance/abc_guide.pdf">http://www.cps.gov.uk/publications/finance/abc_guide.pdf</a>.</li> </ul>

Assumption	Risks/Limitations
<p>accommodation and other ancillary costs (e.g. those associated with complex cases and witness care). It also relies on several assumptions. This could mean there is a risk that costs are underestimated. For further information about how CPS ABC costs are calculated please see the following CPS guidance (CPS, 2012): <a href="http://www.cps.gov.uk/publications/finance/abc_guide.pdf">http://www.cps.gov.uk/publications/finance/abc_guide.pdf</a>.</p> <p>Source: CPS, 2013.</p>	<ul style="list-style-type: none"> <li>• Advocacy costs for the CC are excluded.</li> </ul>
<p>HMCTS costs:</p> <p>Magistrates Courts Costs</p> <p>To generate the average costs for cases in the MC, HMCTS timings data across all offence types was applied to court costs per sitting day. Magistrate's court costs are £1,220 per sitting day in 2013/14 prices. A sitting day is assumed to be 5 hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and updated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>). HMCTS timings data from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process.</p>	<p>Timings data for offence categories:</p> <ul style="list-style-type: none"> <li>• The timings data are based on the time that a legal advisor is present in court. This is used as a proxy for court time. Please note that, there may be a difference in average hearing times as there is no timing available e.g. when a DJ (MC) sits.</li> <li>• Timings do not take into account associated admin time related with having a case in court. This could mean that costings are an underestimate. There is some information is available on admin time, however we have excluded it for simplicity.</li> <li>• The timings are collection of data from February 2009. Any difference in these timings could influence costings.</li> <li>• The timings data also excludes any adjournments (although the HMCTS ABC model does include them), and is based on a case going through either one guilty plea trial (no trial) or one effective trial. However a combination of cracked, ineffective and effective trials could occur in the case route. As a result the costings could ultimately be underestimates.</li> <li>• Guilty plea proportions at the Initial hearing from Q2 in 2012 are used based on the Time Analysis Report. As these can fluctuate, any changes in these proportions could influence court calculations (effective trials take longer in court than no trials (trials where there was a guilty plea at the initial hearing)).</li> </ul> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>• HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>

Assumption	Risks/Limitations
<p>HMCTS costs:</p> <p>Crown Courts Costs</p> <p>Timings data for types of case (e.g., indictable only, triable either way) were applied to Crown court costs per sitting day. This was added to the cost of the initial hearing in the Magistrates, as all criminal cases start in the Magistrates courts. Crown Court cost is £1,640 per sitting day in 2013/14 prices, assuming a sitting day is 5 hours. The HMCTS costs are based on average judicial and staff costs, found at HMCTS Annual Report and Accounts 2012-13 and uprated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>).</p>	<p>Timings data for types of cases:</p> <ul style="list-style-type: none"> <li>The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.</li> <li>Timings do not take into account associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</li> <li>The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.</li> <li>Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</li> </ul> <p>HMCTS average costs per sitting day:</p> <ul style="list-style-type: none"> <li>HMCTS court costs used may be an underestimate as they include only judicial and staff costs. Other key costs which inevitably impact on the cost of additional cases in the courts have not been considered; for example juror costs.</li> </ul>
<p>Legal Aid costs:</p> <p>We assume an eligibility rate of 50% for cases in the magistrates' courts and 100% in the Crown Court.</p> <p>The average legal aid cost in the Magistrates assumed was around £500, and £5,000 in the Crown Court (based on Crime Lower Report and Crime Higher Report, Legal Aid Agency and uprated in line with the GDP deflator of 2% (<a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266322/GDP_Deflators_Autumn_Statement_December_2013_update_v2.xls</a>)).</p>	<ul style="list-style-type: none"> <li>There is a risk that variance in the Legal Aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</li> <li>Assuming 100% eligibility for Legal Aid in the Crown court carries several risks. Firstly, an individual may refuse legal aid. Secondly, an individual may contribute to legal aid costs. Lastly, the size of this contribution can vary. This could mean that the costings provided are a slight overestimate.</li> </ul>
<p>Prison costs:</p> <p>We assume that the ACSL given for any additional convictions will be the same as the ACSL given across all offences in 2012. Data shows that in 2012 the average custodial sentence given was approximately 14.5 months. (MoJ Criminal Justice Statistics 2012).</p> <p>We assume that only 50% of the given ACSL is served in custody.</p> <p>The cost per prison place is £29,000 in 2013/14</p>	<ul style="list-style-type: none"> <li>There is a risk that offenders will serve more/less than half of their given sentence.</li> <li>The cost of additional prison places is also dependent on the existing prison population, as if there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low due to existing large fixed costs and low variable costs. Conversely, if the current prison population is running at or over capacity</li> </ul>

Assumption	Risks/Limitations
<p>prices (NOMS management accounts addendum (2012/13).</p>	<p>then marginal costs may be significantly higher as contingency measures will have to be found.</p>
<p>Probation costs:</p> <p>We assume that offenders given a custodial sentence of 12 months or more will serve half of their sentence in custody, and the other half on post-release licence. For offenders given less than 12 months we assume that they serve half their sentence in custody and serve no post-release licence.</p> <p>We also assume that independent probationary sentences consist of community orders and suspended sentence orders.</p> <p>Costs for probation and community sentences are approximately £2,700 per year in 2013/14 prices.</p> <p>The probation costs are based on national costs for community order/ suspended sentence order, found at NOMS, Probation Trust Unit Costs, Financial Year 2012-Source: MoJ internal analysis, 2013 (uprated in line with inflation).</p>	<ul style="list-style-type: none"> <li>• There is a risk that the post release license costs are underestimated. We expect the new offence to commence after the reforms to probation (as part of the Transforming Rehabilitation Programme), where there will be a top up post-release licence requirement for offenders given a sentence of less than 12 months also.</li> <li>• Costs represent the national average fully apportioned cost based on delivery by 35 Probation Trusts in 2012/13.</li> <li>• Unit costs are calculated from the total fully apportioned cost of relevant services divided by starts in that year and do not consider which elements of cost are fixed and which will vary based on service volumes. Major changes to the volume, length or content of community sentences or the characteristics of the offender population could affect the unit cost.</li> <li>• The costs consist of costs for both (a) managing the sentence and (b) delivering court-ordered requirements. Excludes centrally managed contract costs for Electronic Monitoring and Sentence Order Attendance Centres.</li> </ul>
<p>Fines</p> <p>Data shows that the average fine given across all offences in 2012 was around £235.</p> <p>The payment rate that should be used for appraisal purposes is that recorded in the most recent published version of Court Statistics Quarterly main tables B2 (and should be sourced as such) which can be found at the following:  <a href="https://www.gov.uk/government/organisations/ministry-of-justice/series/courts-and-sentencing-statistics">https://www.gov.uk/government/organisations/ministry-of-justice/series/courts-and-sentencing-statistics</a> For Q3 2011 this was 55% after 18 months. It should be noted that this is the percentage by value paid by after 18 months and that additional payment may be received beyond the 18 months period. It should also be noted that the published payment rate covers all financial impositions.</p>	<ul style="list-style-type: none"> <li>• There is a risk that the average fine given is higher/lower.</li> <li>• There is a risk that the fine payment rate is higher/lower.</li> </ul>



### Annex 3: Policy specific assumptions and future volume assumptions (Opt in)

**Table 10: Policy specific assumptions [Opt in to ECRIS/Opt into ECRIS and TAC]**

Area	Assumption
<p><b>Generating the volume of future requests</b></p>	<p>The volume of future requests and notifications are based on:</p> <ul style="list-style-type: none"> <li>a) Low – The low scenario forecasts that there is no change in volume from the last full year of data we have (2013).</li> <li>b) Central – the central scenario takes an average of the annual increase over the past 5 years (2008 -2013); it predicts a linear increase for the 2015- 2024.</li> <li>c) The <b>high scenario</b> represents the highest number of requests and notifications possible based on estimates of the number of EU nationals in the UK that are predicted to commit crime, and UK nationals in other EU Member States committing offences that would be recordable had they been committed in the UK.</li> </ul> <p>The high scenario for volumes of requests in and out should be the number of individuals (EU/UK nationals) who are arrested in the UK or in the rest of the EU. The upper bound for the volume of notifications in and out, is the total number of convictions for recordable offences by EU individuals in the UK and the total number of convictions which are recorded on EU systems by UK nationals in the EU.</p> <p>In predicting the upper bound (high estimate) for the future, we have assumed that the number of EU nationals that commit crime in the UK, and the number of UK nationals that commit crime across the EU is proportional to the population of the UK, thus the estimated number of UK and EU nationals who commit crime can be applied to the UK population projections (Source: Office for National Statistics) to generate the high volume of requests. The domestic conviction rate of the UK is then applied to notifications to obtain the volume of requests out (as you would only notify another Member State if there was a conviction).</p> <p>There are several calculations that were made to generate these forecasts, based on data from 2010, as these were the latest available for all data sets required:</p> <ul style="list-style-type: none"> <li>a) <b>The proportion of a population that will commit crime.</b> To calculate this, the recorded crime figures for the UK were used<sup>5</sup> and divided by the UK population. It is assumed that UK and EU nationals have the same propensity to commit crime.</li> <li>b) <b>The number of EU nationals in the UK that commit crime –</b> this proportion was applied to the number of EU nationals in the UK for 2010.<sup>6</sup></li> <li>c) <b>The number of UK nationals in the EU that commit crime –</b> this proportion was applied to the number of UK nationals living in EU Member States to get this figure.</li> <li>d) <b>(b) and (c) are divided by the population in 2010</b> to give the two percentages.</li> </ul> <p>These volume projections are tentative, and are sensitive to several underlying assumptions, detailed in Annex 3.</p>
<p><b>Criminal Justice System</b></p>	<p>A full list of risks and assumptions is available in Annex 2.</p>

<sup>5</sup> Source: <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-june-2013/stb-crime-in-england-and-wales--year-ending-june-2013.html>

<sup>6</sup> Sources: Ratha and Shaw (2007) updated with additional data for 71 destination countries as described in the Migration and Remittances Factbook 2011.

<b>costs</b>	
<b>Criminal Justice system assumptions</b>	It is assumed that the sentencing patterns (i.e. the proportions who get convicted, the sentence length given on custodial sentences etc.) for England and Wales are akin to that of the UK as a whole.
<b>Requests out</b>	It is assumed that other MSs will respond to requests. If other MSs do not reply to requests within deadlines they face the possibility of infraction by the European Commission for poor implementation of the Framework Decision. If MSs do not respond to requests, the UK may not receive as much data, which could impact on an offenders sentencing.
<b>Staff costs</b>	It is assumed that the Central Authority will be able to deal with requests without the need to hire further staff. However, there is a risk that the cost of servicing requests and notifications exceeds the resources available to service this work. This may mean there is a need to hire staff which would come with a resource cost.
<b>Data on Notifications and requests</b>	The data on notification and requests covers all of the UK. The data is manually inputted, and is only available for the 5 years. There are several anomalies found in the data, which have been explained in the annex. Inconsistencies in the data, it will impact on the accuracy of any future modelling forecasts, which could impact on the scale of costs for the policy.

**Table 11: Specific assumptions to generate the Low scenario**

<b>Area</b>	<b>Assumption/Risk</b>
<b>Future growth</b>	It is assumed that volumes will remain the same as the last year there is data for requests and notifications. The last year we have data for is 2013.

**Table 12: Specific assumptions to generate the Central scenario**

<b>Area</b>	<b>Assumption/Risk</b>
<b>Future growth</b>	The historic average for 5 years is used to forecast constant annual increase.  Any change to the volumes which mean that a future exponential growth could occur would mean that the central forecast is an underestimate.

**Table 13: Assumption to generate the High scenario**

<b>Area</b>	<b>Assumption/Risk</b>
<b>Conviction rate</b>	Assumption that the conviction ratio for England and Wales is applicable to UK nationals who commit crime in the EU, and vice versa.  This is a simplifying assumption, any variation in the conviction rate could affect the accuracy of the high scenario
<b>Crime rate</b>	Assume that the crime rate per person of the UK (calculated by the total recorded crime divided by population), will be the same for EU nationals living the UK, and UK nationals living across the EU.  This is a simplifying assumption, any variation in the conviction rate could affect the accuracy of the high scenario
<b>Recorded crime</b>	Assumption that each recorded crime has one criminal involved. This is a simplifying assumption.  This assumption is prone to risk, as one person can commit more than one crime/more than one person could be part of the committing of one crime. Thus any change in this rate could mean that the high scenario is an under/over estimate.
<b>Population growth</b>	We assume that any population growth in EU nationals in the UK and UK nationals in the EU leads to equivalent changes to the number of convictions and requests needed to seek information on people arrested/proceeded against.

	A change in the crime level of these groups could mean that the high scenario is an under/overestimate
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**Table 14:** Annual volumes for the low scenario (rounded to nearest 100)

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Requests In	6100	6100	6100	6100	6100	6100	6100	6100	6100	6100
Requests Out	39400	39400	39400	39400	39400	39400	39400	39400	39400	39400
Notifications In	12600	12600	12600	12600	12600	12600	12600	12600	12600	12600
Notifications Out	38800	38800	38800	38800	38800	38800	38800	38800	38800	38800

**Table 15:** Annual Volumes for the high scenario (rounded to nearest 100)

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Requests In	100,200	100,900	101,600	102,200	102,900	103,500	104,200	104,800	105,400	106,000
Requests Out	161,200	162,300	163,400	164,500	165,500	166,600	167,600	168,600	169,600	170,600
Notifications In	17,600	17,700	17,800	17,900	18,000	18,200	18,300	18,400	18,500	18,600
Notifications Out	134,000	134,900	135,800	136,700	137,600	138,500	139,300	140,200	141,000	141,800

Annual volumes for the central scenario are presented in the cost section of the Impact Assessment

<b>Title:</b> Council Decision 2009/371/JOHAN establishing the European Police Office (Europol) and its associated instruments  <b>IA No:</b> HO 0116  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> UK law enforcement agencies	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 24/06/2014	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> EU	
	<b>Type of measure:</b> EU	
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
-£19.4m	N/A	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
 Serious organised crime and terrorism are global threats that do not recognise national borders, with an estimated 3,600 organised crime groups within the EU. Our response needs to include cross-border cooperation between governments, law enforcement and other agencies. Europol supports action in this area by providing a structure within which Member States can cooperate and share information; in particular, by providing analytical resource and data sharing/management systems. Tackling serious organised crime and terrorism is a priority for the Government.

**What are the policy objectives and the intended effects?**  
 The Government's overarching policy aims are to:

- Tackle organised crime.
- Tackle terrorism.
- Enhance cooperation between EU Member States on these issues.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Base case (Option 0):** Do not seek to rejoin the Europol Council Decision and associated instruments necessary to support practical operability. If the UK is not bound by the Europol Council Decision and associated instruments, then it will not have access to Europol's analytical resource and systems –for example, the Europol Information System (EIS) and the Secure Information Exchange Network Application (SIENA).  
**Option 1:** Seek to rejoin the Europol Council Decision and associated instruments. Option 1 is the preferred option. The UK is already fully compliant with the Europol Council Decision and associated instruments. Therefore there would be no additional costs associated with rejoining this measure beyond operating costs. In practical terms, rejoining would enable the UK to maintain its access to Europol's systems and extensive analytical resource.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) N/A			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister

Karen Bradley MP

Date: 24 June 2014

Description: Seek to rejoin Europol Council Decision and associated instruments

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: - £19.4
2013/14	2015				

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
Best Estimate	N/A		£2.3	£19.4

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

Membership of Europol costs the UK £2.3 million per year on top of the any annual contribution. This estimate comprises UK staff costs, costs of running the UK National Unit and Liaison Bureau and IT infrastructure costs.

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

**Arrests and Criminal Justice System impacts:** Europol should increase information sharing and will give a deeper insight into serious and organised criminality and terrorism, There may be an increase in arrests, leading to an additional downstream criminal justice cost. It has not been possible to monetise this as there is uncertainty around offence types, additional cases and how quickly cases would be solved.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	Not Known

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

It is not possible to monetise any benefits associated with this Council Decision as there is uncertainty around how much of the benefit would solely be due to Europol operations and infrastructure.

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

**Criminal Justice Outcomes:** There is more data accessible to the UK than there would be with informal and uncoordinated cooperation, which could lead to an increase in successful criminal justice outcomes. **Time saving:** Using a database which has information for all Member States on it would be quicker than in the base case where a body in the Member State would contacting each Member State separately. **Secure transfer of information:** This minimizes any risk of data leaks and ensures that the UK can access secure data in a timely manner. **Criminal Justice outcomes: Facilitating cross border activities:** This can lead to time saving and improving UK investigations and operations: Through access to experts, analytical tools and shared intelligence with other Member States who have relevant information and/or intelligence and experiences, the UK is able to enhance its ability to combat serious and organised crime and terrorism. **Funding:** UK law enforcement operational actions and meetings with European and third countries can be coordinated and funded by Europol utilising the state-of-the-art facilities and equipment in its new headquarters.

**Key assumptions/sensitivities/risks****Discount rate**

3.5%

Due to the already agreed EU budget for 2014-20, the UK is committed to spending £8.4 million per year on Europol membership up to 2020 regardless of whether the UK rejoins the Europol Council Decision and associated instruments or not. There is an assumption that the costs given for 2012/13 will be fixed throughout the appraisal period, any change in costs could change the net present value. That there is uncertainty in the base case, increasing the network of liaison magistrates in the base case, could mean there are savings of £35.7 million if we opt into Europol. It is not possible to predict how many additional cases would be brought to light due solely to this policy, as there are often several bodies involved in the area of serious organised crime and terrorism including Eurojust, police forces and investigation teams from other Member States and the national centre for Child Exploitation and Online Projection (CEOP).

**BUSINESS ASSESSMENT (Option 12)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of</b>	<b>Measure qualifies</b>
<b>Costs: £0</b>	<b>Benefits: £0</b>	<b>Net: £0</b>	<b>OITO?</b>	<b>as</b>
			No	N/A

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 Decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the following instruments, referred to hereafter as Europol.

#### **Council Decision 2009/371/JHA establishing the European Police Office (Europol) – ('the Europol Council Decision')**

The Europol Council Decision establishes the European Police Office ("Europol") and is the cornerstone of UK participation in Europol.

#### **Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information**

This implementing decision details the rules governing Europol's relations with partners (for example, third countries and other EU bodies) particularly in respect of the exchange of personal data and classified information.

#### **Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files**

This implementing decision details the rules governing the handling of Europol analysis work files. Analysis work files are detailed criminal information and data from Member States and third party cooperation partner investigations, divided into thematic areas.

#### **Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information**

This implementing decision establishes the security measures to be applied to all information which is processed by or through Europol.

The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

Serious organised crime and terrorism are global threats that do not recognise national borders. Large-scale criminal and terrorist networks pose a significant and ongoing threat to the internal security of the EU. The biggest security threats come from terrorism, international drug trafficking, money laundering, organised fraud and people smuggling. However new dangers are continually developing, notably in the form of cybercrime and trafficking in human beings. This is a multi-billion pound industry, which is quick to adapt to new opportunities and resilient in the face of traditional law enforcement measures. The response of Member States needs to include supporting and promoting cross-border cooperation between governments, law enforcement and other agencies. To this end Europol was established by Council Decision 2009/371/JHA.

Europol aims to make Europe safer through the provision of support and assistance to Member States in the fight against organised crime and terrorism. It is mandated to combat specific forms of serious crime and, in accordance with the annex to the Europol Council Decision, to deal with specific crimes such as drug trafficking, trafficking in human beings and money laundering. It also has a vital role in assessing threats from a cross-border perspective, producing relevant threat assessments and strategic analyses. This is important in identifying priority threats at EU level, which informs the coordination of practical cooperation amongst Member States. The agency acts as an analysis hub for data and information on serious international crime and terrorism and takes a key role in working with national law enforcement agencies to coordinate action between Member States. Europol also works closely with other non-EU partner states such as Australia, Canada, the USA and Norway.

## 2. BACKGROUND

Europol's most important functions are:

- Acting as an intelligence hub,
- The provision of threat assessments.
- Operational and technical support, for example through liaison officers and the European Cybercrime Centre (EC3).

### Intelligence Hits

Europol's aim is to become the information hub for law enforcement cooperation in the EU. In accordance with its mandate, Europol regularly assists UK law enforcement by supporting investigations and providing analytical support for operational activity across crime areas. It does this through the use of a number of key information systems, see Table 1.

A simple direct check on Europol systems allows UK law enforcement access to intelligence from all other Member States and third parties. Europol also produces operational, tactical and strategic analysis from the information gathered. This helps to inform both the operational and strategic direction of EU level and UK specific action to tackle threats

When information is submitted to Europol it is checked against all the available systems, allowing the UK law enforcement agencies to expedite investigations and arrest individuals for offences committed in the UK or abroad. Law enforcement can also be coordinated by Europol across the EU with arrests being made in different countries as part of a joint operation. Europol also facilitates action across the globe especially against drugs, cybercrime, fraud and other crime that is trans-national in nature.

Table 1 presents several 'data hit' examples.

**Table 1 Europol 'data hit' examples.**

<b>Data hit 1</b>	In 2011, basic checks of an individual against Europol systems identified links between an investigation in Northern Ireland and an investigation in Portugal. This in turn led to a large scale investigation of a West African organised crime group operating across Europe, West Africa and South America. Over 25 coordinated arrests and seizures have taken place across Europe
<b>Data hit 2</b>	In 2012, a UK law enforcement agency received intelligence regarding a threat against an individual's life in another Member State, with a probable suspect in a third Member State. Checks across Europol systems enabled the speedy identification of both the intended victim and a potential suspect. Information held on Europol systems enabled law enforcement authorities to take action to prevent threat to life.
<b>Data hit 3</b>	Exchange of information via Europol data systems enabled the development of an investigation into organised immigration crime. The investigation was supported and coordinated by Europol (and Eurojust). On a named day police officers in five countries took coordinated action against a number of criminal networks involved in smuggling



	illegal immigrants. The countries involved in the operation were France (19 arrests made), Germany (8 arrests made), Czech Republic (2 arrests made) and the UK (1 arrest made). In total 30 suspected criminal facilitators were arrested. Simultaneously, a similar action took place in Hungary where 5 suspects were arrested.
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**Table 2, Europol database descriptions.**

<b>Database</b>	<b>What it is</b>	<b>What it does</b>
Europol Information System (EIS)	An EU-wide central database of criminals and suspects involved in serious crime.	Member States use EIS to upload information about organised criminals. This allows information held by other Member States to be identified which ultimately leads to developing opportunities for joint action. In practice this means the UK and Member States can immediately identify if another Member States holds any information on a particular individual or concern (within the relevant data protection framework).
Analysis Work Files (AWFs)	Detailed criminal information and data from Member States and third party cooperation partner investigations, divided into thematic areas.	Member States are able to upload information and run checks to identify crossovers with information held by other Member State. Europol Analysts provide analytical support, identify crossovers and common threads between information provided by Member States, and enhance the information and advice on development opportunities.
Secure Information Exchange Network Application (SIENA)	Secure messaging system via which Member States search for and can transmit intelligence bilaterally, multilaterally or solely to Europol to conduct checks.	It provides for the quick and secure exchange of information between UK agencies and Europol, as well as between UK law enforcement authorities and law enforcement authorities in 28 Member States and 7 non-EU countries. Access to Europol’s SIENA system enables direct law enforcement intelligence exchanges with EU Member States and third parties at ‘Restricted’ marking. There is no other equivalent secure dedicated system.

**Source:** Europol  
**Threat Assessments**

Europol provides threat assessments and these are beneficial to the UK. To give Member States and other Europol partners a deeper insight into the criminal problems they are dealing with, Europol produces regular assessments which offer comprehensive and forward-looking analyses of crime and terrorism in the European Union. Whilst these are accessible to the public, only members of Europol may contribute to the assessment. There are two types of threat assessment, which are beneficial to the UK as they help combat the threat or serious organised crime and terrorism:

- **SOCTA** - As part of the EU Policy Cycle, Europol drafts the EU Serious Organised Crime Threat Assessment (SOCTA). This document identifies priority threats to the EU which inform Justice and Home Affairs Council agreement on setting crime priorities at EU level. Following this, EU ‘Strategic Goals’ are agreed for each priority area and operational Member State-led projects (known as ‘EMPACT’ projects) set up to collaboratively target each priority area of organised crime. By influencing the EU SOCTA through UK law enforcement intelligence contributions to Europol, the UK is contributing to setting the direction of EU activity in tackling organised crime.
- **EU Terrorism Situation & Trend Report (TE-SAT)** - The TE-SAT report is beneficial to the Home Office as it presents trends and new developments in terrorism in a European context, combining contributions from all Member States. We therefore judge that we should continue to work with Europol and others to continue to produce TE-SAT

## **Operational Support**

Europol's operational support services range from facilitating meetings through to coordinating enforcement operations.

## **Liaison Officers**

The UK has a number of liaison officers based at the UK Liaison Bureau (UKLB) at Europol. The UKLB represents and supports all UK law enforcement and facilitates the exchange of information on behalf of all UK law enforcement agencies with EU partners and third-party cooperation partners in accordance with Europol's mandate.

Liaison Bureau staff can:

- Help to set up operational meetings quickly, without travel costs.
- Organise face to face communication allowing complex enquiries to be explained in detail (and in English, thus avoiding translation costs).
- Liaise with their counterparts in other Member States Liaison Bureaux to clarify enquiries and requests and ensure there is a common understanding of what is being asked for and what can be provided.
- Ensure flexibility in tailoring requests to the needs of individual Member States' different processes. Member States' systems may be different.
- Ensure that a point of contact is quickly identified within a country.
- Support to build networks and relationships with Member States has enhanced joint working and operations; for example the MPS involvement in JITs is driven forward through the UKLB posting. Furthermore, the checking of MPS arrest data against Europol data systems leads to the identification of crossovers and existing information on criminal groups or individuals. Through databases, they can enable key UK law enforcement agencies continuous access to Europol's capabilities, systems and Analysis Work Files resulting in the increased exploitation of law enforcement intelligence and identification of more operational opportunities for cooperation. For example, Scotland, through Police Scotland and ACPOS, plays a role in the UKLB. If it did not have access to Europol then its ability to directly engage with many EU Member States would be impaired or made extremely difficult. Owing to the posting of Police Scotland at Europol, its profile and reputation within Europe is significantly enhanced, and therefore the cooperation that is harnessed is much more effective than it otherwise would be.

## **European Cybercrime Centre**

The agency also hosts the EC3, which officially commenced its activities on 1 January 2013. It has a mandate to tackle the following areas of cybercrime:

- That committed by organised groups to generate large criminal profits such as online fraud.
- That which causes serious harm to the victim such as online child sexual exploitation.
- That which affects critical infrastructure and information systems in the European Union.

EC3 aims to become the focal point in the EU's fight against cybercrime, through building operational and analytical capacity for investigations and cooperation with international partners in the pursuit of an EU free from cybercrime.

## **3. GROUPS AFFECTED**

The main groups affected would be police forces and other law enforcement bodies that exchange intelligence with Europol, including the National Crime Agency (NCA), Police Forces throughout England and Wales, Ministry of Justice, Police Scotland, Police Service Northern Ireland (PSNI) and Her Majesty's Revenue and Customs (HMRC).

#### **4. RATIONALE FOR INTERVENTION**

Serious organised crime and terrorism pose significant threats to the UK as well as to all other Member States.

##### Serious organised crime

There are an estimated 3,600 organised crime groups active within the EU.<sup>1</sup> Serious organised crime is recognised as being fundamentally affected by the forces of globalisation, such as the relative ease of travel and speed of global communications. Serious organised criminals are increasingly networked across borders and do not recognise nation state boundaries. 70 per cent of these groups are estimated to be composed of members of multiple nationalities.<sup>2</sup>

##### International terrorism

The global threat from terrorism remains high and continues to diversify. There were 17 deaths in the EU as a result of terrorist activity of all types in 2012,<sup>3</sup> including a bomb attack at Burgas airport in Bulgaria and shootings by a lone gunman in France. The threat continued in 2013, including two terrorist incidents in Great Britain, which caused two fatalities. Globally, the nature of the threat is more diverse now than in the past, and more dispersed across a wider geographical area. The most significant development in connection with global terrorism during 2013 has been the growing threat from terrorist groups in Syria, supported by rapidly increasing numbers of foreign fighters, many from Europe. The UK is concerned about the threat to Europe from Syria based groups and returning European foreign fighters.

Government intervention is required to help tackled against both serious organised crime and International terrorism. Europol, through its databases, threat assessments and facilitation meetings, seeks to support in tackling both serious organised crime and international terrorism.

#### **5. OBJECTIVES**

The Government's overarching policy objectives are to:

- Tackle organised crime;
- Combat terrorism;
- Enhance cooperation between Member States on these issues.

#### **6. Base case (Option 0) – Remain opted out**

If the UK did not seek to rejoin Europol, we would lose access to its significant analytical resource, specialist expertise and intelligence systems. The UK would no longer receive Europol's support in bilateral and multilateral operations. Europol would also no longer provide the UK with a centralised picture of criminal activity across Europe or information on criminals and their methods.

Non-participation risks the UK not being party to intelligence from other Member States that could be of use in preventing terrorism or tackling organised crime. It also runs the risk of not being able to identify trends or connections due to a lack of analytical resource.

For the purpose of this Impact Assessment, we have assumed that if we remained opted out of Europol the UK will do nothing beyond informal and uncoordinated cooperation. This is the base case for which the option to seek to rejoin will be compared to.

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<sup>1</sup> Serious Organised Crime Threat Assessment 2013

<sup>2</sup> Serious Organised Crime Threat Assessment 2013

<sup>3</sup> EU Terrorism Situation and Trend Report 2013

However, there is the possibility that the UK may wish to increase the number or size of the National Crime Agency (NCA) liaison offices it runs in Member States. It is uncertain whether this would occur, but if it does there would be implications on the net impact. To highlight uncertainty, there is sensitivity analysis provided in the 'Assumptions and Risks' section of this Impact Assessment.

## 7. OPTION 1: OPT IN

The UK is already fully compliant with the Europol Council Decision and its associated instruments. Therefore there would be no additional monetised costs associated with rejoining this measure beyond the operating costs presented below. In practical terms, rejoining would enable the UK to maintain its access to Europol's systems and extensive analytical resource.

### COSTS

The overall cost to the UK of being part of Europol is estimated at £2.3 million per year. Table 3 provides a breakdown of the component costs.

**Table 3, Summary of annual costs as a consequence of being part of the Europol Council Decision**

Cost Type	2013/14 prices, £
Total annual UK Europol staff costs <sup>4</sup>	1,629,319
Total annual running costs (Europol National Unit and UK Liaison Bureau)	362,100
Total travel and subsistence for strategy and governance meetings	37,707
Total annual IT infrastructure costs	183,060
Total annual training	22,951
Total annual cost of security clearance	6,931
Total annual contribution to OCTA/ SOCTA	3,290
Total annual contribution to TE-SAT	3,376
<b>Total UK cost of being part of Europol</b>	<b>2,248,735</b>

Source: National Crime Agency

When compared to the base case, the total discounted cost to the UK of being part of Europol is estimated to be **£19.4 million (PV)** over 10 years.

### Non-monetised costs

**Arrests and Criminal Justice System impacts:** Europol should increase information sharing and will give a deeper insight into serious and organised criminality and terrorism. There may be an increase in arrests, which could lead to an additional downstream criminal justice cost. It has not been possible to monetise this because:

- It is not possible to predict how many additional cases would be brought to light due solely to this policy, as there are often several bodies involved in the area of serious organised crime and terrorism including Eurojust, police forces and investigation teams from other Member States and the national centre for Child Exploitation and Online Projection (CEOP).
- It is not possible to predict how much more quickly cases would be solved in relation to the base case, as there is uncertainty around how long varying requests would take in the base case, and how much time this would save in relation to the base case.

<sup>4</sup> These are 2014 costs which have been provided by the NCA. They include on costs (plus the non-salary costs, for example National Insurance and pensions). See Annex B for further detail.

- There are several offence types which have different costs to the criminal justice system depending on how they flow through it.

## BENEFITS

It is difficult to produce comprehensive monetised benefits of the UK's membership of Europol. This is because:

- It is not possible to predict how much of the benefit is realised due solely to this policy; as there are often several bodies involved in the area of serious organised crime and terrorism including Eurojust, police forces and investigation teams from other Member States and CEOP.
- The scope of Europol's work is so broad that it is not possible to accurately predict the types of operations it will deal with in the future. Annex A presents various case studies to show the impact Europol has.
- Operations where Europol has provided support will have involved two or more EU Member States or a third party; therefore it is difficult to define precisely the boundaries of operations that have impacted on the UK and therefore the benefits accruing to the UK.

### Non monetised benefits

The four main non-monetised benefits include:

- Access and input into cross border data systems.
- Supporting Law enforcement.
- Facilitating cross border operations.
- Funding.

### Access and input into cross border data systems

Through input and access into several data systems, such as the analysis work files, SIENA and EIS systems, the UK can interrogate data to identify connections between criminals and investigation leads, thereby assisting UK law enforcement investigations. Europol also regularly assists UK law enforcement by supporting investigations and providing analytical support for operational activity across crime areas through several databases. Case study 2 shows some evidence (**Annex A**) how the use of Europol's data analysis in an international Drugs and Firearms operation, led to the arrest of 32 individuals and the seizure of considerable amounts of contraband.

Europol gives the UK analytical support which would not be achieved through informal and uncoordinated cooperation. Opting in means that the UK would be on the same system as all other Member States, which supports the transfer of information. There are several benefits from the access to and the analysis of data:

- Time saving:* Using a database which has information for all Member States on it would be quicker than in the base case where a body in the Member State would contact each Member State separately for information and agreeing secure data sharing agreements for every time data is required. On time saving benefits alone, it is unlikely that Europol would break even. The annual cost of a Europol staff member varies depending on grade and their role in the liaison bureau. The average salary for all staff members from the Europol National Unit is £45,200, equating to a day rate of approximately £200.<sup>5</sup> If all ten members of staff were to save 1 day a year, then the time saving amount could be £2,000 per year.
- Secure transfer of information:* Compared to the informal and uncoordinated cooperation, these databases give the UK abilities for the secure sharing of information. This minimizes any risk of data leaks and ensures that the UK can access secure data in a timely manner.
- Criminal Justice outcomes:* There is more secure data accessible to the UK than there would be with informal and uncoordinated cooperation, which could lead to an increase in successful criminal justice outcomes. Access and analysis of the databases on Eurojust would mean that we

<sup>5</sup> 260 weekdays in a year and assuming 25 days annual leave and 8 bank holidays

have more information about suspects than in the base case, where there would be informal and uncoordinated cooperation. As this would aid detection, this could mean could mean that:

- a) An individual is convicted when they wouldn't have been in the base case;
- b) An individual would not be able to offend whilst serving a longer prison sentence to that in the base case;<sup>6</sup>
- c) An individual could get more provision post sentence than in the base case.

It is not possible to monetise this benefit, as there is uncertainty in relation to how many more defendants would be convicted as a result of solely Europol and how much longer prison sentences could be for those who are more appropriately sentenced with Europol in place.

## Supporting Law Enforcement

Europol staff and programmes aim to support the knowledge and investigation available in several areas of crime. Europol is involved in supporting counter terrorism, tackling organised crime, and, through its databases, encouraging deterrence and criminal justice outcomes. There are several examples of this:

- a) *Supporting counter terrorism*: UK access to Europol Threat Products informs and improves Counter Terrorism (CT) strategy and coordination of practical cooperation amongst Member States and third party authorities. We would not have access to this in the base case. The key report to note is the TE-SAT report which presents trends and new developments in terrorism in a European context, combining contributions from all Member States.. This supports counter terrorism as it highlights threats to the UK as early and quickly as possible.
- b) *Tackling organised crime*: Europol's Serious Organised Crime Threat Assessment (SOCTA) is compiled from intelligence submissions from all Member States. It places the threat to the UK in the European context and enables the UK to help shape the European response to organised crime. Without Europol, we would not be involved in this and will not be able to shape the European strategy in tackling crime.
- c) *Increasing financial security*: UK financial security is improved by the work of Europol's Counterfeit Monitoring system. Europol has been designated as the European Union's central office for combating euro counterfeiting; it cooperates closely with EU Member States, the European Central Bank, European Commission, the European Anti-Fraud Office (OLAF), Interpol and other partners. Europol actively supports law enforcement authorities by gathering, analysing, disseminating and facilitating exchange of criminal intelligence, as well as providing other expertise and knowledge to assist investigations. Among other things, it provides forensic support to law enforcement agencies to determine the origin of materials and devices used for the manufacturing of counterfeits.
- d) *Cyber crime*: The UK is better able to tackle the threat from cyber crime because of the work of Europol's Cybercrime expertise. Case study 3 (**Annex A**) highlights how Europol's work in this area helped in Operation Rescue, which was led by the UK and resulted in the identification of hundreds of suspected paedophiles across the world, and the arrest of 121 offenders in the UK alone.
- e) *Supporting asset recovery*: UK Asset Recovery is made more efficient and effective through the use of Europol communication systems. The Europol Criminal Assets Bureau (ECAB) assists Member States' financial investigators to trace worldwide the proceeds of crime, when assets have been concealed outside their jurisdictional boundaries. Europol also hosts the permanent secretariat for CARIN (Camden Assets Recovery Inter-Agency Network), an informal network of judicial and law enforcement asset recovery experts. CARIN assists cross-border cooperation in tracing, freezing, seizing and confiscating criminal assets.
- f) *UK Immigration Enforcement (UKIE)*: The UK Immigration Enforcement's (UKIE) Europol access increases its capacity to tackle organised immigration crime on various levels. It significantly increases the UK's ability to assess the extent of an organised crime group's (OCG) European footprint and identify parallel investigations in Member States. One example was the disruption of a criminal network that was involved in illegally transporting South Asian immigrants into the UK. Europol were able to identify links with the UK based OCG in Germany and France. Coordinated simultaneous operational activities resulted in 18 arrests.

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<sup>6</sup> Note that this could just delay, rather than prevent future offending.

- g) *Deterrence*: As Europol should increase information sharing and coordinate several activities which could result in successful disruption of criminal activity and prosecution of criminals, in the longer term, this may mean individuals are deterred from criminal activity. Studies on deterrence suggest its effect is mixed, so it is not possible to calculate the impact of Europol on the level of deterrence. Any deterrence that does occur could have downstream savings on the Criminal Justice System. The breakeven analysis in the risks and assumptions section illustrates how large this benefit would need to be in order to meet the monetised costs of Europol.

### **Facilitating cross border activities**

UK law enforcement operation actions and meetings with European and third countries can be coordinated and funded by Europol utilising the state-of-the-art facilities and equipment in its new headquarters. This can bring together law enforcement experts from different Member States to facilitate operational cooperation across a number of EU jurisdictions. For example under Project EMPACT, Europol pays for the attendance of the UK project drivers and co-drivers to attend project meetings at Europol. Operation Gulf (**Annex A**) which resulted in the arrest of 126 individuals in the UK and the rescue of 28 trafficked children demonstrates the benefits this sort of facilitation and assistance can bring.

Europol provides access to experts, shared intelligence, and supports in the setting up of Joint Investigation teams (JITS). It facilitates for direct engagement on Europol's secure premises which allows for greater understanding of other Member States' processes, meaning expectations on requests are clear and issues can be resolved promptly, thereby reducing the risk of misinterpretation. This leads to several benefits:

- a) *Time saving*: Through the use of Europol there are several examples of case studies which show that Europol save time over ad hoc cooperation. An example is Europol's support and facilitation of joint investigation teams. Europol has saved time by assisting the facilitation and set up of JITS, whereas without Europol there would not be this support. The existence of Europol ensures a central hub for multilateral communication, as opposed to no or ad hoc cooperation. Case studies in Annex A provide a snapshot of the benefits that Europol operations can bring.
- b) *Improving UK investigations and operations*: Through access to experts, analytical tools and shared intelligence with other Member States who have relevant information and/or intelligence and experiences, the UK is able to enhance its ability to combat serious and organised crime and terrorism.

### **Funding**

UK law enforcement operational actions and meetings with European and third countries can be coordinated and funded by Europol utilising the state-of-the-art facilities and equipment in its new headquarters.

The funding for these meetings allocated in the Europol Budget 2014 was £2 million Euros, which equates to approximately £1.7m<sup>7</sup> a year, which would be available to any of the 28 Member States. The UK would request some of this funding to have operational coordination meetings with European or third countries; however, it has not been possible to separately identify the amount of funding that the UK has received for these meetings.

In summary, operating in Europol provides the advantage of having direct access to all EU Member States and third countries with a physical presence at Europol's Headquarters. Direct and immediate access in this manner would be difficult to replicate without formal bi-lateral agreements, should the UK withdraw from Europol.

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<sup>7</sup> Using a fixed exchange rate of £1 = 1.2 Euros

## 8. NET IMPACT

The monetised costs of joining Europol are £2.3 million per year or £19.4 million (PV) over 10 years. These are primarily staff costs and annual running costs. There are several non-monetised benefits including: time saving, criminal justice outcomes and the facilitation of cross border activities. It is not possible to predict how many additional cases would be brought to light due solely to this policy, as there are often several bodies involved in the area of serious organised crime and terrorism, which has made it difficult to attribute benefits. However, It is judged the benefits outweigh the costs of the policy. The sensitivity analysis and breakeven analysis support this judgement.

## 9. ASSUMPTIONS AND RISKS

There are several assumptions, and risks highlighted in Table 4.

**Table 4, General Assumptions**

Area	Assumption
Geographical Coverage	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
Price base year	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
Appraisal period:	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
Discount rate	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
Rounding:	Costs have been rounded to the nearest 100 (if under £10,000). Volumes have been rounded to the nearest thousand, when referring to volumes over 100,000.

**Table 5, specific assumptions and risks associated with them**

Area	Assumption
Sections 5 and 6	The UK will have to pay £8.4m per annum contribution to Europol up to 2020 due to EU budgets that have already been agreed. This will still be the case if we do not rejoin the Europol Council decision and associated instruments.
Costs	There is an assumption that the costs given for 2012/13 will be fixed throughout the appraisal period, any change in costs could change the net present value.



## Breakeven Analysis:

There are no monetised benefits of seeking to rejoin Europol, to illustrate the potential benefit solely Europol would need to achieve, breakeven analysis has been conducted.

Breakeven analysis shows the level of benefits required to equal the monetised costs. Europol databases and operations could have a deterrence effect. A Home Office study, which aimed to understand the scale of the economic and social impact of organised crime, estimated that the social and economic costs of organised crime in this country are at least £24 billion a year<sup>8</sup>.

Europol is increasing the information available to the UK. Opting into the Europol may result in:

- e) More defendants convicted, which may mean future crime is prevented.
- f) More appropriate sentencing. This could mean that for prison sentences, as offenders are incarcerated for longer there could be less crime committed. Note, however, it may just delay the crime taking place rather than prevent future crime.
- g) More supervision post prison sentences than would have been the case.
- h) Deterring offenders to offend again

As such, the increased above could then lead to a reduction in the level of crime.

The example below show the level of crime reduction required, in two different areas of organised crime, for the benefits to outweigh the costs.

### Offences committed using serious firearms

**Table 6, Number of offences committed using serious firearms, 2010/11**

Offence	Volume	Unit Cost (2010/11)	Unit Costs (2013/14 prices)
Robbery	2,195	£14,491	£15,392

*Source: Police recorded crime, 2010/11*

#### Notes:

- a) These are the relevant Home Office cost of crime unit costs, the CJS component of these costs has been adjusted to reflect the assumption that 100% gun crimes are recorded
- b) Updated using the GDP deflator series.

**Source:** Home Office (2013) *Understanding Organised Crime: Estimating the scale and the social and economic costs*

The scale of organised crime varied from each area; organised crime covers offences from human trafficking to organised fraud. However, if Europol was solely responsible for reducing at least **147 robberies** (5% of all robbery offences in 2010/11) robberies with a firearm) a year then the benefits of Europol could outweigh the annual monetised cost of £2.3 million. It is unclear how likely this would be, as the evidence on deterrence is mixed, and the scale of its impact varies. Note that for this to occur, increased detection would need to occur and associated this there would be a corresponding cost of detecting individuals which would have an impact on arrests and the criminal justice system.

**Table 7, Social and economic costs of human trafficking for sexual exploitation, 2013/14 prices 2010/11 costs, UK**

	<b>Volume</b>	<b>Unit cost</b>	<b>Total cost (£m)</b>
Victim cost	2,700	£348,152	£935
Victim support cost	--		£2
CJS cost	24	£25,174	£1
<b>Total</b>			£945

Sources: Walby (2004); Project Acumen (2010), Scottish Crime and Drug Enforcement Agency (2011); Organised Crime Taskforce (2011).

Notes: Figures may not sum due to independent rounding. All outputs have been rounded to two significant figures.

**Source:** Home Office (2013) *Understanding Organised Crime: Estimating the scale and the social and economic costs*

If Europol was solely responsible for preventing at least 7 human trafficking cases a year (0.3% of 2,700), the saving from victim costs and CJS costs<sup>9</sup> could outweigh the annual costs of the policy. It is unclear how likely this would be.

**Table 7, Social and economic costs of human trafficking for sexual exploitation, 2013/14 prices 2010/11 costs, UK**

	<b>Volume</b>	<b>Unit cost</b>	<b>Total cost (£m)</b>
Victim cost	2,700	£348,152	£935
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CJS cost	24	£25,174	£1
<b>Total</b>			£945

Sources: Walby (2004); Project Acumen (2010), Scottish Crime and Drug Enforcement Agency (2011); Organised Crime Taskforce (2011).

Notes: Figures may not sum due to independent rounding. All outputs have been rounded to two significant figures.

**Source:** Home Office (2013) *Understanding Organised Crime: Estimating the scale and the social and economic costs*

Note that this breakeven analysis does not include the potential costs to the CJS for any impact highlighted in a to c above. This is because:

- d) Costs in convicting an offender. We do not know how many cases would change from not convicted to convicted solely due to Europol and how much impact that would have on the level of crime.
- e) Costs in increasing the sentence length. We do not know how much of an increase there would be in sentence length to stop a crime from occurring, and thus the additional cost to the CJS.
- f) The proportion of cases which the factors (a – d) would have a large enough impact to stop, rather than delay, crime.

### **Sensitivity Analysis**

As there is no legal minimum requirement already to fall back on, the base case used for comparison to assess the impact of seeking to rejoin is to have no system in place.

<sup>9</sup> Assuming that CJS costs are for 24/27,000 of cases, to get a weighted average cost of roughly £220 per case.

To show the impact of a scenario where there is an alternative system in place, the UK may seek to increase the number of National Crime Agency (NCA) liaison offices it runs. This could help to maintain bilateral cooperation with Member States in the absence of Europol. The NCA already operates 10 such liaison offices but could look to set up a further 17 in those countries that do not currently have one. The envisaged costs of such an approach are set out below. This is based on establishing a new NCA liaison office comprising one Seconded Liaison Officer and one locally employed member of staff.

**Baseline scenario costs:** Table 7 sets out the estimated initial set up and running cost (in year one) for a new liaison post in a given Member State.

**Table 8, Estimated initial set up costs per liaison office, 2012/13.**

<b>Establishment Cost type – per liaison office</b>	2012/13 costs, 2013/14 prices, £	<b>17 MS's, £</b>
Officer transfer grant	£4,064	£69,083
Removals cost	£7,140	£121,380
IT infrastructure set up per post connectivity per post)	£153,000	£2,601,000
Annual IT running costs per post	£15,915	£270,556
Security clearance – per year	£218	£3,711
Procurement of additional official vehicles inc. fuel and	£12,750	£216,750
Secure cabinet procurement	£1,020	£17,340
1 x G 3 salary	£65,827	£1,119,054
Annual running cost per new office	£39,015	£663,255
ILO allowances per post per year	£41,039	£697,658
Full ILO training	£79,487	£1,351,272
Locally employed salary costs	£40,800	£693,600
<b>Total UK cost per additional liaison officer post</b>	<b>460,274</b>	<b>7,824,658</b>

Source: National Crime Agency.

**Table 9, Ongoing cost after initial set up cost in year 1 (2015) – opt out**

<b>Establishment Cost per year</b>	12/13 costs, 13/14 prices	<b>17 MS's</b>
Annual IT running costs per post	£15,915	£270,556
Security clearance – per year	£218	£3,711
Procurement of additional official vehicles inc. fuel and	£12,750	£216,750
1 x G 3 salary	£65,827	£1,119,054
Annual running cost per new office	£39,015	£663,255
ILO allowances per post per year	£41,039	£697,658
Locally employed salary costs	£40,800	£693,600
<b>Total UK cost per additional liaison officer post</b>	<b>£215,564</b>	<b>£3,664,584</b>

Source: National Crime Agency

**Opt-in to Europol - Benefits:** From moving to a system of bilateral agreements to a multilateral agreement; the total net present benefit from foregone costs from 2015 -2024 would be **£16.3 million**. The overall cost to the UK of being part of Europol is estimated at £19.4 million (PV) over 10 years, compared to the bilateral agreement costs of £35.7 million (PV) over the same time period. A summary of overall costs as a consequence of being part of the Europol Council Decision is included in the evidence base of this Impact Assessment.

The additional non-monetised benefits of Europol would be more limited when compared to this alternative base case, as there would be processes in place. The main benefit would be related to the speed and ease of a multilateral agreement when compared to several bi lateral agreements. It should be noted that the cost of setting up a new system would be in addition to the contributions we pay in to the EU budget that we will not get back in the opt out scenario.

## **10. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **11. SUMMARY AND RECOMMENDATIONS**

It is recommended that the UK seek to rejoin the Europol Council Decision and the associated instruments necessary to support the practical operability of the measure. Continuing to be part of these instruments would enable the UK to maintain access to important Europol systems such as EIS and SIENA and Europol's analytical resources, thereby helping us to effectively tackle serious organised crime and terrorism, which is a priority for the UK Government.

## **Annex A: case studies**

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Case studies which show cross border operations

To facilitate analysis the case studies have been divided into the following categories which are supported by Europol's mandate:

- Trafficking in human beings.
- Unlawful drugs trafficking and illicit trafficking in arms, ammunition and explosives.
- Child abuse and computer crime.
- Illegal immigrant smuggling.

### **Case studies A: UK – Europol operations**

#### **Case study 1 - Trafficking in human beings**

Operation Golf was a JIT between the Metropolitan Police Service (MPS) and the Romanian national police targeting a specific Romanian organised crime network. Offences associated with the network included; trafficking in human beings, money laundering, benefit fraud, child neglect, perverting the course of justice, theft and handling of stolen goods.

Europol provided the following support to EU law enforcement agencies:

- Expert advice in establishing the JIT and planning strategic and operational activities.
- Analytical support throughout the operation – i.e. ability to identify the targets of the organised crime group.
- Provision of a mobile office in the UK and Romania throughout the JIT – permitting real-time checks on Europol systems leading to identification of links to other EU countries (i.e. Belgium and Spain).

Operational outcome:

28 children rescued from trafficking and exploitation and/or neglect by the crime network.

- Arrest of 126 individuals in the UK

#### **Case study 2 - Unlawful Drugs trafficking and illicit trafficking in arms ammunition and explosives**

Drugs and Firearms Operation involved 750 officers in an international operation, including 230 UK officers from SOCA (as was) run from command centres in Malaga, London and Dublin. The operation targeted a criminal network suspected of trafficking drugs and firearms from Spain to the UK as well as the laundering of criminal profits. The Belgian Police, Europol, and a number of other European law enforcement agencies were also involved.

Europol provided the following support to EU law enforcement agencies:

- Data crossovers identified links between a money laundering investigation and an ongoing Irish investigation into the same organised crime group.
- Europol systems facilitated intelligence exchanges between police in the UK, Ireland and Spain;
- Analytical support including on large volumes of financial data and expert coordination of operational meetings to develop the investigations including supporting a simultaneous day of action, with raids in all countries;
- Real-time support during operational activity. Europol Mobile Offices deployed to Spain, UK and Ireland to facilitate fast checking and exchange of information and law enforcement intelligence during the raids.
- Europol provided a central data repository through its AWFs, without which arguably operational links would not have been made between the three countries' investigations;
- Member States' officers were able to meet and plan activity within secure premises at Europol Headquarters and to exchange relevant information directly securely using Europol's systems.

Operational outcome:

- UK drug seizures:
  - 2007-08 - 12 firearms
  - 2008-09 - 1 firearm
  - 2008-09 - 1kg cocaine
  - 2008-09 - 5kg amphetamine
  - 2008-09 - 4kg cannabis
  - 2008-09 - 1.5kg cutting agents (glucose)
  - 2009-10 - 17kg ketamine
  - 2010-11 - 1 firearm (this seizure was made in Spain)
- 32 arrests of which 11 were made in the UK

### Case study 3 - Child abuse and computer crime

Operation Rescue led by the UK's national centre for child exploitation and online protection (CEOP), identified hundreds of suspected paedophiles across the world. Suspects openly discussed the sexual abuse of children on the online forum which operated from the Netherlands. The site was also used as a meeting point for individuals who wished to share child abuse images and video.

Law enforcement authorities were brought together from 13 countries to track offenders on a global scale. The countries involved were: Australia, Belgium, Canada, Greece, Iceland, Italy, the Netherlands, New Zealand, Poland, Romania, Spain, UK and the United States. Some other countries still have investigations ongoing in which suspects have been identified.

Europol provided the following support to EU Law enforcement agencies during the second phase - 1.5 years of the operation:

- Europol cracked the security features on a seized copy of the server enabling them to rebuild the forum offline and forensically interrogate.
- Europol distributed 4202 operational intelligence reports to 25 EU Member States and 8 other countries. These reports also identified links between this network and those featured in multiple other investigations. .
- Analysing the computer server and consequently identifying the members of the child sex abuse network. This facilitated operational action by police authorities in multiple jurisdictions and led to the arrests of suspects and the safeguarding of children.

Operational Outcome:

- 230 children safeguarded to date worldwide – this is the highest number of children safeguarded ever achieved from this type of investigation.
- 670 offenders targeted across the world,
- 184 offenders arrested to date worldwide
- 240 offenders targeted in the UK
- 121 offenders arrested to date in the UK
- 60 children safeguarded to date in the UK<sup>1</sup>

### Case study 4 - Illegal Immigrant Smuggling

Chinese People Smuggling Network was an investigation involving France, Portugal, UK, Eurojust and Europol. The operation targeted a network facilitating illegal migration into the UK. The network was identified in Paris with connections to the UK and Portugal. Criminals in China were providing the network with customers who would pay up to €23,000 to reach Western Europe.

<sup>1</sup> By safeguarding 60 children, future offences which may have been committed if these offenders were undetected are prevented. The average cost of crime for sexual offences in 2013 was £39,143. This includes the costs in anticipation of crime, costs as a consequence of crime and costs in response to a crime. It includes costs to the victim and the criminal justice system. This figure could be saved per case prevented. This figure has been updated for the physical and emotional component for changes in nominal GDP per capita. The rest of the components have been updated for inflation. This cost is based on a figure from:

<http://webarchive.nationalarchives.gov.uk/20100413151441/http://www.homeoffice.gov.uk/rds/pdfs/05/rdsolr3005.pdf>

Europol provided the following support to EU law enforcement agencies:

- Europol set up a coordination centre with specialist communication tools providing real-time support and coordination; this was to support a named day of action.
- Europol analysts provided analysis of the emerging data. Representatives of all investigative authorities involved were present.
- Operational outcomes include:
  - 12 arrests on the named day of action; 6 in France and 6 in Portugal.
  - Simultaneous house searches in France and Portugal, resulted in the seizure of documents, money, bank statements, mobile phones and other supporting evidence.
  - 1 arrest in the UK and 4 additional arrests in France.

## **Annex B: option 1 – opt-in (breakdown of staff costs)**

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The National Crime Agency has provided an estimated break down of UK staff costs associated with Europol membership.

This includes the staff for

Europol National Unit (UK based)

1 x Grade 3 staff member, with the annual cost of £66,626 = £66,626  
3 x Grade 4 staff member, with the annual cost of £52,088 = £156,264  
5 x Grade 5 staff member, with the annual cost of £40,183 = £200,915  
1 x Grade 6 staff member, with the annual cost of £28,108 = £28,108

**Total = £451,913**

UK Liaison Bureau NCA (Netherlands based)

1 x Grade 2 staff member, with the annual cost of £96,153 = £96,153  
4 x Grade 3 staff member, with the annual cost of £84,279 = £337,116  
1 x Grade 4 staff member, with the annual cost of £81,338 = £81,338

**Total = £514,607**

UK Liaison Bureau Other staff (2 x Metropolitan Police Service, 1 x HMRC, 1 x Police Scotland, 1 x Home Office Immigration Enforcement) (Netherlands based)

5 x Grade 3 equivalent - £84,279 = £421,395

**Total = £421,395**

Associated staff allowances and expenses = £241,404

**Grand total = £1,629,319**



<b>Title:</b> Abridged Schengen Convention (see detail below)  <b>IA No:</b> HO 0124  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> Law enforcement agencies	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 24/06/2014
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> EU
	<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present	Net cost to business per year (EANCB on	In scope of One-In, Two-Out?	Measure qualifies as
£0.2m	£0m	£0m	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**

The 'Schengen Area' comprises 26 Member States and over 400 million people, all of whom enjoy free movement between jurisdictions. The UK does not participate in the open borders elements of Schengen but it has implications for us. Within this area there are estimated to be 3,600 criminal groups operating. The Schengen Convention aims to tackle the threat of cross-border crime by facilitating police cooperation and cross-border surveillance. Government intervention is necessary in order to ensure that the UK can continue to cooperate with Schengen States to target cross-border criminality.

**What are the policy objectives and the intended effects?**

The Government's overarching policy aims are:

- To tackle organised crime and the risks associated with increased freedom of movement between Member States; and
- To enhance cooperation between Member States on tackling crime.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base case** – Do not seek to rejoin the Schengen Convention measures on police cooperation. UK officials would retain the power to conduct operations as a matter of UK law, but it would be through slower and more cumbersome bilateral channels.

**Option 1 (preferred)** – Seek to rejoin the Schengen Convention measures on police cooperation. This would allow participation in a number of other police and criminal justice measures and allow the UK to continue to make Article 40 requests for cross-border surveillance.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

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

Signed by the responsible Minister:

Karen Bradley MP

Date: 24 June 2014

Description: Opting in to the Schengen Convention measures relating to police cooperation.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2013/14	PV Base Year 2015	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0.2

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
Best Estimate	N/A		Negligible	0.04

**Description and scale of key monetised costs by ‘main affected groups’**

The cost of Article 40 of the Schengen Convention is around £5,100 per year; for a total cost of £43,900 (PV). Each Article 40 request costs around £125 to process; an average of 41 Article 40 requests are sent by the UK to other Member States each year. This is an opportunity cost (the cost of a member of staff being unable to do their main job for however many hours), and is incurred by the relevant Police Forces / NCA teams.

**Other key non-monetised costs by ‘main affected groups’**

There are no non-monetised costs associated with the UK’s participation in the Schengen Convention measures on police cooperation.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		0.03	0.3

**Description and scale of key monetised benefits by ‘main affected groups’**

Opting into the Schengen Convention measures on police cooperation brings monetised benefits through cost savings, mostly realised through Article 40 cooperation.

**Other key non-monetised benefits by ‘main affected groups’**

Participation facilitates the operation of a number of other police and criminal justice measures, for example Schengen Information System II (SISII). It also allows the UK to make Article 40 requests for cross-border surveillance, which are quicker and more cost effective than the bilateral alternatives.

**Key assumptions/sensitivities/risks**

**Discount rate**

3.5%

Outbound Article 40 requests do not increase or decrease in volume significantly over the appraisal period. Cooperation would continue in the opt-out – at the same volume, but through alternate means.

There is no legal basis for cooperation outside Article 40 of the Schengen Convention; it is therefore assumed that in the event of an opt-out decision, there would be no cooperation with other Member States on cross-border surveillance. Given uncertainty around cost savings, sensitivity analysis has been conducted.

In the base case, it is assumed that alternative methods to Article 40 to obtain information are utilised in equal proportion. The NCA estimates that such methods are used interchangeably; there are no central statistics on the usage of each method.

**BUSINESS ASSESSMENT (Option 13)**

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: £0	Benefits: £0	Net: £0		

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 Decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining specific aspects of the Schengen Convention relating to police cooperation, as set out below. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1<sup>st</sup> December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and Commission enforcement powers, which ultimately include the power to seek to impose fines for wrongful implementation, and the European Court of Justice's jurisdiction take effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

The original Schengen Agreement, signed in 1985 between Belgium, France, Luxembourg, the Netherlands, and the then West Germany, created the borderless Schengen Area and proposed the gradual abolition of border checks at common borders and the harmonisation of visa policies. The Schengen Convention was incorporated into the Amsterdam Treaty, and therefore the main body of European Law in 1997. This extended the provisions to all Member States, abolished internal border controls and imposed a common visa policy.

The Schengen Convention also includes police and criminal justice provisions which aim to address the increased risk of cross-border criminality brought about by the abolition of internal borders controls. The UK and the Republic of Ireland secured an opt-out to the borders aspects of the Schengen Convention (separate to this measure). The UK negotiated partial participation in a number of the police and criminal justice aspects of the Schengen Convention by virtue of Council Decision 2000/365/EC.

The UK is seeking to rejoin the following police and criminal justice elements of the Schengen Convention:

**Convention implementing the Schengen Agreement of 1985: Article 39 to the extent that that this provision has not been replaced by Council Framework Decision 2006/960/JHA, Article 40, Article 42 and 43 (to the extent that they relate to Article 40), Article 44, Article 46, Article 47 (except (2)(c) and (4)), Article 54, Article 55, Article 56, Article 57, Article 58, Articles 59 to 69 (to the extent necessary in relation to the Associated EFTA States) Article 71, Article 72, Article 126, Article 127, Article 128, Article 129, Article 130, and Final Act - Declaration N° 3 (concerning Article 71(2))**

- **Article 39** - This provision has been partially replaced by Council Framework Decision 2006/960/JHA. The article sets out that the police authorities of States will work together, subject to national law, in order to prevent and detect criminal offences.
- **Article 40** - This is the priority police cooperation Article for the UK as it lays out the processes for cross-border surveillance. This Article is frequently used by the UK law enforcement.

Article 40(1) provides that law enforcement officers of one State, who are keeping a person under surveillance because s/he is suspected of an extraditable crime or because there is reason to think s/he can assist in identifying or tracing such a person, shall be allowed to continue their surveillance in the territory of another Member State where the latter has authorised such surveillance.

Article 40(2) recognises that in particularly urgent cases it may not be possible to request and be granted authorisation before crossing the border. It allows for cross-border surveillance without such authorisation in the case of certain offences (listed in Article 40(7)) where certain conditions are met. Where officers cross a border in reliance of Article 40(2), their State must send a notification and request for authorisation to the relevant State immediately. The officers are allowed to continue surveillance over the border for a maximum of five hours without authorisation.

Article 40(3) sets out the general conditions under which any surveillance under Article 40(1) or (2) must comply.

- **Articles 42 and 43** - These provisions relate to liability for damage caused in the course of operations under Article 40, and related matters.
- **Article 44** - This provision relates to the installation of telephone, radio and other links to facilitate police cooperation, in particular for the transmission of information for the purposes of cross-border surveillance.
- **Article 46** – This provision relates to the sharing of intelligence on threats in order to combat future crime and prevent offences. This intelligence is shared through designated central police authorities.
- **Article 47** - This provision allows States to enter into bilateral arrangements to provide for the secondment of liaison officers from one State to the police authorities of another State.
- **Articles 54 to 58** - These provisions relate to the principle of *ne bis in idem* (double jeopardy). Article 54 sets out that a person whose trial has been finally disposed of in one State may not be prosecuted in another State for the same acts, subject to conditions. Articles 55 to 58 make further provision regarding this principle.
- **Articles 59 to 66 to the extent necessary in relation to the Associated European Free Trade Association (EFTA) States** (Norway, Switzerland, Iceland and Liechtenstein) - These provisions streamline extradition between participating Member States. For EU Member States, these have been subsumed into the European Arrest Warrant (EAW) system through the EAW Framework Decision 2002/584 Article 31(1)(e). However, as Iceland, Norway, Switzerland and Liechtenstein do not participate in the EAW, these Articles remain in force for any relationships between EU Member States and these Associated EFTA States.
- **Articles 67 to 69** to the extent necessary in relation to the Associated EFTA States - These provisions allow the enforcement of criminal judgements to be transferred between jurisdictions. For EU Member States, these have been subsumed into the Prisoner Transfer system through the Prisoner Transfer Framework Decision 2008/909 Article 26(1). However, as Iceland, Norway, Switzerland and Liechtenstein do not participate in the Prisoner Transfer system, these Articles remain in force for any relationships between EU Member States and these Associated EFTA States.
- **Articles 71 and 72** - These provisions set out the actions which States agree to take to tackle the sale, export etc of narcotic drugs.
- **Articles 126 to 130** - These provisions relate to the protection of personal data.

**Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders**

This allows Member States to amend references to ‘officers’, ‘authorities’ and ‘competent Ministries’ whenever, as a result of internal changes or reorganisations, the existing references are no longer accurate.

## **Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders**

This expands the list of offences in respect of which surveillance may be carried out under the Article.

### **2. GROUPS AFFECTED**

The main groups affected are the police, the National Crime Agency (NCA) and other law enforcement agencies that cooperate with European Member States regarding the surveillance of a target.

### **3. RATIONALE FOR INTERVENTION**

Serious organised crime and terrorism pose significant threats to the UK as well as all other Member States. The UK is committed to practical cooperation with other Member States to tackle these threats posed in this regard. The Government is committed to ensuring that UK law enforcement agencies have the tools required to tackle them. It is vital that the UK retains the ability to conduct surveillance operations on geographically-mobile suspects. It is necessary for the UK to opt-in to Article 40 of the Schengen Convention, and associated police cooperation measures, to ensure continued vigilance against serious, organised crime and terrorism.

### **4. OBJECTIVES**

The Governments overarching policy aims are to:

- Tackle organised crime and the risks associated with increased freedom of movement with Member States; and
- Enhance cooperation between Member States on tackling crime.

### **5. Base case (Option 0) – Do nothing**

If the UK were not to seek to rejoin the Schengen Convention, as outlined above, domestic legislation would need to be reviewed. In light of the need to review domestic legislation, the comments on the articles covered in this impact assessment are based on an analysis of the law of England and Wales.

UK legislation such as the Regulation of Investigatory Powers Act 2000 (RIPA) and the Crime (International Cooperation) Act 2003 (CICA) would remain in force and UK law enforcement could continue to conduct operations as a matter of UK law. However, practical cross-border cooperation may be negatively affected where the basis in EU law for cooperation (through the Schengen Convention) has been removed. The UK would be unlikely to be able to conduct surveillance operations to an effective operational standard if the UK were to opt out of the Schengen Convention measures relating to police cooperation.

In addition to a review of domestic legislation, bilateral agreements would be required to maintain the levels of cooperation under Schengen Convention. These are unlikely to be as effective or efficient and would take time to negotiate. For example, it is unlikely that the provisions of Article 40, which lays out the processes for cross-border surveillance, could be easily replicated and the current speed maintained.

A full breakdown of alternative means of cooperation for each Article is below. Detail on the operational aspects of alternative means of cooperation is contained in Annex 1:

- **Article 39** – Where this measure has not been replaced by the Swedish Initiative (Council Framework Decision 2006/960/JHA) the UK would have to negotiate bilateral agreements with individual Member States. Negotiations with all Member States would be time consuming and are not guaranteed to result in the same level of cooperation. It is not expected that all Member States would be willing to agree to conclude bilateral agreements.

- **Article 40** - The legal basis of these requests is Article 40 and Section 76 of RIPA. There are no other legislative provisions that can facilitate cross border surveillance and without this possibility the ability of law enforcement agencies to protect the United Kingdom from crime would be adversely affected. All possible alternative methods of cooperation that the UK could seek to use<sup>1</sup> lack the efficiency and speed of Article 40 requests and the financial benefits they bring. This
- **Articles 42 and 43** – The UK would be forced to negotiate alternatives to these articles in addition to any individual bilateral agreements it reached with Member States.
- **Article 44** - The UK would hope to continue compatibility of systems through bilateral arrangements or, if Member States agreed, through existing arrangements. There is no guarantee that such arrangements could continue.
- **Article 46** - The UK would be free to maintain a central police contact point. However the sharing of any intelligence on threats would have to be done on an informal, ad hoc, bilateral basis.
- **Article 47** - The UK would be compelled to facilitate the bilateral exchange of liaison officers with other Member States on an ad hoc and informal basis. It is unclear what the position is for other Member States and whether they would be able to continue such exchanges with the UK.
- **Articles 54 to 58** - The principle of double jeopardy is a well-established principle, not a specific process, within national criminal justice systems and is already reflected across UK law. It now also operates in the EU context across a wide range of measures, in order to prevent someone being tried for the same offence in more than one national jurisdiction. This would continue even if the UK were not subject to these measures.
- **Articles 59 to 66** - The UK would seek to rely on the European Convention on Extradition 1957 in place of existing extradition arrangements. This would not be as effective.
- **Articles 67 to 69** – The provisions relating to the transfer of the enforcement of criminal judgments would no longer be available to supplement the Council of Europe Convention on the Transfer of Sentenced Persons 1983 and its Additional Protocol 1997, both of which have entered into force in the UK. The content of the Additional Protocol does not exactly match that of the Schengen Convention so cooperation may differ.
- **Articles 71 and 72** - On Narcotic Drugs, Article 71 and 72 on Narcotic Drugs have a read across to the UN Convention 1961 (amended 1972) on Narcotic Drugs and UN Convention 1971 on Psychotropic Substances. Subsequently the UN Convention 1988 against illicit traffic in narcotic drugs and psychotropic substances confirmed and built on both Conventions. The UK is a signatory to and has implemented these relevant UN Conventions which form the basis for Schengen standards and approach. Such domestic implementing legislation will remain in force.
- **Articles 126 to 130** – The UK has ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 1981. The Data Protection Act 1998, as amended, will remain in force in the UK.

For the EFTA States (Iceland, Norway, Switzerland and Liechtenstein), like the Member States, the 1959 Council of Europe Convention on mutual assistance in criminal matters would continue to apply and, in relation to some states, so would the additional protocols.

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<sup>1</sup> See Annex 1 for detailed description.

## **6. OPTION 1: OPT IN**

Because of Council Decisions 2000/365/EC and 2004/926/EC, the UK is able to participate in the Schengen *acquis* (body of law). The UK already has the police capability to conduct cross-border operations; there would not need to be any additional training or infrastructure improvements. Currently, the UK sends an average of 41 Article 40 requests each year to Member States, and receives between one and two from Member States each year. There would be a minimal cost to the UK of processing the incoming requests from other Member States – these costs would be negligible. Therefore, the UK is a net-user of Article 40 Schengen Convention measures.

The policing elements allow states to conduct surveillance and track suspected criminals efficiently and effectively. The judicial elements facilitate Schengen information exchange to support effective prosecutions.

Opting into the Schengen Convention measures on police cooperation provides the legal underpinning for the UK to continue conducting cross-border surveillance operations. Such surveillance can lead to further cooperation between Member States, providing the evidence for the formation of a Joint Investigation Team.

### **Costs**

Schengen policing and judicial cooperation costs are absorbed into existing police authority and Home Office budgets.

The cost of Article 40 of the Schengen Convention is estimated to be around £5,100 per year.<sup>2</sup> Each year, the UK sends an average of 41 Article 40 requests to other Member States. The total cost over a 10 year period would be £43,900 (PV).

### **Benefits**

#### **Monetised benefits**

Opting into the Schengen Convention measures on police cooperation brings monetised benefits, mostly realised through Article 40 cooperation.

The alternative methods of cooperation to Article 40 are International Letters of Request (ILOR); NCA Liaison Officers and Intelligence Dissemination. Assuming that in the event of an opt-out, the volume of cooperation requests remains the same, each alternative method will be utilised equally. Therefore, one third of cooperation will be through ILOR, one third through Liaison Officers and the final third through Intelligence Dissemination. The total cost of this alternative cooperation, in the base case, is £30,000 per year – or £261,000 (PV) over ten years. The cost of acting in the base case is also the benefit, through cost-savings, that Article 40 enables. Therefore, the monetised benefit of the Schengen Convention on police cooperation is £261,000 (PV) over ten years.

#### **Non-Monetised benefits**

##### **Time Savings**

The NCA have highlighted that Article 40 requests are dealt with by colleagues in Member States almost immediately. Using ILOR, Liaison Officers and Intelligence Dissemination often takes a minimum of one working day to expedite – often culminating in a less favourable outcome. Article 40 requests allow both the UK and other Member States to take fast, effective action on intelligence that is often time-sensitive.

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<sup>2</sup> See Annex 2 for detailed Cost Breakdown.

## **Benefits enabled by the Schengen Convention**

Article 40 in particular has delivered a number of benefits to UK law enforcement. For example:

**Operation TARIM** - This was an investigation by the North West Regional Organised Crime Unit into the drug (Class A and B) trafficking / distribution activities of an organised crime group operating in the North West of England. The main target of this investigation was travelling frequently to the Netherlands, with intelligence suggesting this travel was directly linked with the planning of future drug importations to the UK. Surveillance assistance was provided through Article 40 on five occasions to Belgium and The Netherlands. Combined with intelligence collated in the UK, the information obtained through these Article 40 requests enabled the investigation team to gather sufficient evidence to allow the Crown Prosecution Service (CPS) to obtain EAWs against their main UK target (who was residing in The Netherlands), and also two Dutch associates. Operation Tarim ended with the successful convictions of 10 people involved with the smuggling of almost £4 million of drugs into the UK, with an average custodial sentence of over nine years. The benefit to Operation TARIM of the Article 40 requests was the additional information that such surveillance provided, leading to arrest that may not otherwise have been made.

**Operation TRUST** – This was an intelligence-led investigation by Strathclyde Police into the wholesale *acquisition*, importation and distribution of controlled drugs, largely Class A, from mainland Europe and the Caribbean. Article 40 of the Schengen Convention was used on 6 occasions to monitor criminal activity in the Netherlands and Spain. This contributed to securing 15 convictions and confiscation of assets worth £600,000 in February 2014. The Senior Investigating Officer for the investigation commented that “*Article 40 assistance was invaluable to gaining an understanding of how Scottish Organised Crime Groups operate overseas, and the standing they hold in the wider criminal community*”.

## **7. NET IMPACT**

The UK is already compliant with this measure. Participation is in line with the UK Government’s commitment to tackle serious organised crime and terrorism and it enables the UK to maintain its cross border surveillance capabilities. The cost of Article 40 of the Schengen Convention is around £5,100 per year; for a total cost of £43,900 (PV), and the benefits through cost savings are £0.26m (PV) mostly realised through Article 40 cooperation. Taking monetised and non monetised impacts into account, the costs are judged to be outweighed by the benefits, particularly by quickening the normal bilateral cooperation processes to allow more effective operational capabilities.

## **8. ASSUMPTIONS AND RISKS**

**Table 1: General Assumptions**

<b>Area</b>	<b>Assumption</b>
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland.
<b>Price base year</b>	All costs are in 2013/14 prices. They have been adjusted using HM Treasury deflator series.
<b>Appraisal period</b>	The opt-in decision will be effective from 1 December 2014. All EU 2014 IAs use an appraisal period from 1 January 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Rounding</b>	Costs have been rounded to the nearest 100 (if under £10,000). Volumes have been rounded to the nearest thousand, when referring to volumes over 100,000.



<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.
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**Table 2: Policy Specific Assumptions**

<b>Area</b>	<b>Assumption</b>
<b>Request Volume</b>	Outbound Article 40 requests do not increase or decrease in volume significantly over the appraisal period.
<b>Legal Basis for Cooperation in Opt-Out</b>	There is no legal basis for cooperation outside Article 40 of the Schengen Convention; it is therefore assumed that in the event of an opt-out decision, there would be no cooperation with other Member States on cross-border surveillance.
<b>Volume of Cooperation in Opt-Out</b>	The level of cooperation would remain the same, in the opt-out. However, it would not be through Article 40 – it would be via ILOR, Liaison Officers or Intelligence Dissemination.

## **9. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do not consider that it is likely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **10. SUMMARY AND RECOMMENDATIONS**

It is recommended that the UK seeks to rejoin the Schengen Convention, and the associated measures set out within this Impact Assessment. It both brings benefits in the form of Article 40, a quicker and more cost effective process to request cross-border surveillance and underpins a host of other police and criminal justice measures, including SISII. Participation helps the UK effectively tackle serious organised crime and terrorism, which is a priority for the Government.

## **Annex 1 - Detail on the operational aspects of alternative means of cooperation**

**ILOR - International Letter of Request** is a system where the assistance of an overseas country is requested. The investigation team prepares a report for the CPS (Crown Prosecution Service) with details of the investigation, a summary of the intelligence and the nature of the request. Typically this will be a drugs investigation, involving importation into the UK and intelligence that UK subjects are travelling to a particular country to conduct meetings, collect drugs etc and the country is requested to provide surveillance and obtain evidence in support of an (eventual) UK prosecution. It may also request agreement to a controlled delivery, for example. The CPS lawyer, having considered the case and the intelligence authorises and drafts a formal letter of request, outlining the case/intelligence/UK law in relation to the particular offences - in full - and the nature of the request. The completed ILOR is sent via UK Central Authority (Home Office) to the equivalent Ministry of Justice in the foreign jurisdiction. (In urgent cases the ILOR can be sent via Interpol channels).

ILOR can be used where there is considerable period of time available prior to travel and should be used where more than a simple surveillance is requested, for example other enquiries into financial/telephones etc/controlled delivery. There is no need for continuous surveillance; for instance, the foreign jurisdiction can act upon intelligence and await arrival in their country (in practice, the target would be subject of surveillance in the UK to confirm travel and assist the receiving surveillance team. Any material obtained is readily provided in an evidential format. However, ILOR requires a considerable period of time to organise. NCA operations have an experienced in house CPS lawyer assigned (and often in the same building) from the outset, so the briefing and the ILOR preparation time are less. Police Forces are less fortunate and have to obtain the services of a CPS lawyer, often with no prior knowledge and limited experience of international matters, despite limited out of hours CPS availability. The report preparation, briefing and ILOR composition, with waiting time, can prolong the process. In reality, there is rarely an extended period of time available between receipt of intelligence, confirmation of and actual travel and, generally speaking, this is usually less than 24 hours and certainly not more than 48 hours. Surveillance through transit countries would require an ILOR for each country.

**NCA Liaison Officers (SLO)** including Europol can be tasked through NCA operations. The regional desks at Spring Gardens are responsible for facilitating requests for assistance (including surveillance) through the network of SLOs, utilising their in country contacts. Assistance can be arranged quickly on an informal basis (but there may be a requirement for a request through A 40 or an ILOR anyway). It should be used where more than simple surveillance is requested, for example other enquiries into financial/telephones etc/controlled delivery. It can also form the basis for a case for a joint investigation with the foreign country, where there are offences in and targets from that country. This may also take the form of a Joint Investigation Team (JITS) through Europol/Eurojust. Occasionally the SLO will support the investigation from a Force if it has a crossover with NCA operation or investigation in the host country, but that will usually need a formal request (A40 or ILOR) as follow up.

**Intelligence dissemination** is where intelligence of a subject travelling to foreign jurisdiction and their involvement in criminality, can be disseminated to the foreign authorities for them to action as they wish. This information can be routed through SLOs, Europol or Interpol and disseminated quickly, with a minimal amount of time and effort, using whatever appears to be the quickest channel.

It is usually where there is clear intelligence of a criminal act taking place overseas, which the country can decide to act upon or otherwise. There is no control over activity in the foreign jurisdiction and no way to ensure compulsion to respond to an ILOR. ILOR requests (via established bilateral channels) may be deemed a lower priority than other Member State's Article 40 or ILOR requests, dependent on the bilateral relationship and the process for passing the ILOR. An ILOR will not support a UK prosecution.

It should be noted that at present the UK benefits on Article 40 as foreign law enforcement carry out the surveillance on our behalf, saving on our resources. In addition, when we receive a similar request the UK is able to maintain control by carrying out the surveillance, which often leads to further operational and intelligence opportunities that would not have ordinarily been seen.

## Annex 2: Detailed Cost Breakdown

“A40 Schengen Agreement” is the cost of the opt-in, per request.

**Table 3: Cost per Request of all possible means of cooperation.**

<b>1. A40 Schengen Agreement</b>	<b>OIC</b>		2	68.44
	<b>UK ICB</b>		2	55.06
				<hr/>
				123.50
<b>2. ILOR</b>	<b>OIC</b>		4	136.88
	<b>CPS Lawyer</b>	1		232.50
	<b>UKCA - G7</b>	1		232.50
	<b>UK ICB</b>		2	55.06
				<hr/>
				656.93
<b>3. SLO</b>	<b>OIC</b>		4	136.88
	<b>SLO</b>	2		506.44
	<b>OIC</b>	1		253.22
	<b>CPS Lawyer</b>	1		232.50
	<b>UKCA - G7</b>	1		232.50
				<hr/>
				1,361.53
<b>4. Intelligence Dissemination</b>	<b>OIC</b>		4	136.88
	<b>UK ICB</b>		2	55.06
				<hr/>
				191.93

Currently, the UK sends an average of 41 Article 40 requests each year to Members States. To calculate yearly totals, the average number of Article 40 requests is multiplied by the total cost of each request.

## **Ministry of Justice Impact Assessments**

- Data Protection Secretariat
- Financial Penalties
- Data Protection FD
- Prisoner Transfer FD
- European Supervision Order
- Trials in Absentia

<b>Title:</b> Council Decision 2000/641/JHA established a secretariat for the joint supervisory data protection bodies (JSBs) set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes, and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) <b>IA No:</b> MOJ 026/2014 <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Home Office	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 24/06/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> EU		
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0	£0	£0	No	Zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

The UK participates in Europol, the Schengen Information System (SIS) and the Customs Information System (CIS). Each has a Joint Supervisory Body (JSB) where the UK Information Commissioner (IC) has a supervisory role (jointly with representatives from other Member States' (MS) data protection authorities). The IC's role in respect of the JSBs is implemented through section 54A Data Protection Act 1998, giving the IC power to inspect any personal data recorded in the SIS; Europol and the CIS. The UK considers that consistency is required to ensure the JSBs and the Conventions to which they relate operate in a coordinated manner in relation to their data protection activities and comply with relevant data protection law. Government intervention is necessary to ensure the UK can continue to participate in the Secretariat set up for this purpose: Council Decision 2000/641/JHA established a secretariat for the JSBs set up by the Convention on the establishment of a European Police Office (Europol Convention), Convention on the Use of Information Technology for Customs Purposes, and Convention implementing the Schengen Agreement on gradual abolition of checks at the common borders (Schengen Convention).

**What are the policy objectives and the intended effects?**

The Government's overarching policy aim is to: ensure data supervision efforts under the three relevant JSBs set up by the Europol Convention, the Convention on the Use of Information Technology for Customs Purposes, and the Schengen Convention are properly administered and coordinated.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base Case (Option 0)** – Do not seek to rejoin the measure. The UK would still participate in the joint supervisory bodies the Data Protection Secretariats Council Decision (DPS CD) supports but would not participate in the Secretariat Council Decision itself.

**Option 1** – Seek to rejoin DPS CD - the main active option available to the UK. This would mean that the UK would continue to participate in the DPS CD from 1 December 2014.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A		

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

Signed by the responsible Minister: Shailesh Vara MP Date: 24 June 2014

## Summary: Analysis & Evidence

Policy Option 1

Description: Rejoin Data Protection Secretariat Council Decision (DPS CD)

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0
<b>COSTS (£m)</b>		<b>Total Transition</b> (Constant Price)	<b>Years</b>	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)
Low					
High					
Best Estimate		0		0	0
<p><b>Description and scale of key monetised costs by 'main affected groups'</b></p> <p>There are no monetised costs to the UK. Any financial costs are met by the general budget of the Council, except on matters that relate to implementation of the Europol Convention, which are met by Europol. The UK would therefore not have to meet these costs itself. The UK Information Commissioner would have to attend the data protection Joint Supervisory Bodies' (JSBs') meetings in any event as the UK would still be a member of the JSBs, just not the DPS CD. As such, rejoining would not incur additional costs for the Information Commissioner's Office (ICO) either. Those costs are part of the base case.</p>					
<p><b>Other key non-monetised costs by 'main affected groups'</b></p> <p>There are no non-monetised costs. The UK is not obliged to carry out any specific actions under the DPS CD and so rejoining would not present any other costs.</p>					
<b>BENEFITS (£m)</b>		<b>Total Transition</b> (Constant Price)	<b>Years</b>	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)
Low					
High					
Best Estimate		0		0	0
<p><b>Description and scale of key monetised benefits by 'main affected groups'</b></p> <p>There are no monetised benefits. It was not possible to quantify the likelihood of repercussions regarding its underlying participation in the related Conventions if it did not rejoin the DPS CD, nor was it possible to monetise the value of these Conventions for these purposes.</p>					
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>The UK criminal justice system and UK Government may benefit from more efficient and effective information sharing. UK citizens may benefit from greater information sharing, with data sharing leading to more effective crime prevention, investigation and prosecution.</p>					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate</b>	3.5%
N/A					

### BUSINESS ASSESSMENT (Option 14)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

## **1. INTRODUCTION**

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising the block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining Council Decision 2000/641/JHA, which established a secretariat for the joint supervisory data protection bodies (JSBs) set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes, and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that European Commission enforcement powers, which ultimately include the power to seek fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The IA aims to identify, as far as possible, the impacts of the proposals on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.

The IA has focussed mainly on key monetised and non-monetised impacts, with the aim of understanding what the net social impact to society might be from rejoining the PTFD from 1st December 2014. The cost benefit analysis underpinning this impact assessment assumes a start of 1st January 2015 for ease of analysis.

## **2. POLICY PROPOSAL**

The UK has opted out of all measures as part of the EU 2014 decision. This means from 1 December 2014, the UK would not be able to participate in the DPS CD unless it rejoins the measure. The DPS CD is a secretariat that facilitates the following (JSBs) in overseeing data protection in respect of activities under the related convention:

- European Police Office (Europol Convention). This is an EU law enforcement organisation which aims to improve cooperation of the competent authorities in the Member States (MS) by collecting, storing, analysing, and exchanging information, as well as other tasks.
- Convention on the Use of Information Technology for Customs Purposes (Customs Information System, CIS). CIS reinforces cooperation between customs administrations by laying down procedures under which customs administrations may act jointly and exchange personal and other data concerned with illicit trafficking activities. The system is technically managed by the Commission, which is supported by a special CIS Committee consisting of representatives from the national customs authorities.
- Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention).

Broadly, the Secretariat ensures that the three JSBs and the Conventions, to which they relate, operate in a coordinated manner in relation to their data protection activities and comply with European data protection law.

The policy proposal is for the UK to rejoin the DPS CD, the main active option available to the UK. This would mean that the UK would continue to participate in the DPS CD beyond 1 December 2014. No new

legislation or policy action would be required to implement the instrument and the instrument has no bearing on UK legal systems.

### **3. AFFECTED GROUPS**

The policy proposal affects all of the UK, with particular impacts on: UK state agencies, including the justice system, which may benefit from more efficient and effective information sharing; and UK citizens, who may benefit from greater information sharing. Such data sharing has potential to lead to more effective crime prevention, investigation and prosecution.

### **4. RATIONALE FOR INTERVENTION**

Sharing data between Member States is important due to the cross-border nature of many issues. The Secretariat provides necessary secretarial support for the JSBs relating to Europol, the Schengen Information System and the Customs Information System, improving their effectiveness in sharing information and ensuring that they operate in a coordinated manner in relation to their data protection activities and comply with European data protection law. Greater sharing of information can enable the more effective handling of crime. This requires an EU-wide secretariat due to the EU-wide nature of the JSBs being supported.

### **5. BASE CASE (OPTION 0)**

IA Guidance requires that all options are assessed against a common 'base case'. The base case for this IA is one in which there is no active decision taken to be part of the DPS CD from 1 December 2014.

If the UK were to remain out of the DPS CD, this would not prevent the DPS and JSBs from operating. However, the UK would not be participating in the DPS CD which may affect the UK's ability to participate fully in the three JSBs, with potential repercussions for the UK's ability to share data under the three information sharing systems (and experience the resulting benefits).

As the DPS CD supports the JSBs to three Conventions the UK could face repercussions regarding its underlying participation in those Conventions due to its disengagement with the DPS. In particular, not seeking to rejoin the measure may compromise law enforcement access to the parts of the Schengen Information System that the UK currently accesses as a result of our limited participation in the Schengen *acquis*. The Schengen Information System (SIS) is a Europe-wide database in the framework of immigration, policing and criminal law for the purpose of law enforcement and immigration control and applies to MSs which participate in the Schengen *acquis*. The UK and Ireland do not participate fully in the Schengen *acquis* and do not have access to immigration data, but do have access to data related to police and criminal cooperation. There may be similar consequences for UK participation in Europol and customs data sharing.

### **6. IMPACT OF PROPOSAL (OPTION 1)**

This section sets out: the costs and benefits of the policy proposal, as compared against the base case ("do nothing") set out in Section 5. It also explains the associated assumptions and risks. The effects are highly dependent on future UK and EU actions and so are presented as possibilities and not certainties.

#### **COSTS OF PROPOSAL**

There are no monetised costs to the UK. Any financial costs are met by the general budget of the Council, except on matters that relate to implementation of the Europol Convention, which are met by Europol. The UK would therefore not have to meet these costs itself. Additionally, the UK Information Commissioner would still have to attend the joint-supervisory data protection bodies' meetings as the UK would still be a member of the JSBs, just not the DPS CD. As such, rejoining would not incur additional costs for the Information Commissioner's Office either. Those costs are part of the base case.

There are also no non-monetised costs. The UK is not obliged to carry out any specific actions under the DPS CD and so rejoining would not present any other costs.



## **BENEFITS OF PROPOSAL**

There are no monetised benefits. It was not possible to quantify the benefits of avoiding the costs of repercussions regarding the UK's participation in the related Conventions if it did not rejoin the DPS CD, nor was it possible to monetise the value of these Conventions for these purposes. These benefits should therefore be regarded as "non-monetised".

In addition, there would be other non-monetised benefits from UK continuous participation. The UK justice system and UK Government would continue to benefit from efficient and effective information sharing. UK citizens would continue to benefit from information sharing, with data sharing continuing to support effective crime prevention, investigation and prosecution.

## **NET IMPACT**

Quantification of the net impact is not possible. However, the analysis above suggests the net impact of rejoining into the DPS CD is positive. The UK would benefit from avoiding the risks of potentially large reductions in data sharing and any costs associated with attempting to mitigate this risk.

## **7. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics. We do not believe any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic of this policy although we acknowledge the gap in relevant data to support this assertion.

### **Adjustment for disabled people**

There is no evidence to suggest that the proposal will have any adverse impact on disabled individuals as well.

<b>Title:</b> Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (MRFP FD). <b>IA No:</b> MOJ 181 <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Home Office	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 24/06/2014	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> EU	
	<b>Type of measure:</b> EU	
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
N/A	£0	£0	No
			Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**

Individuals / companies must not be able to evade the criminal justice system of Member States (MSs) simply because they do not live in the MS where they offend. This instrument resulted from a UK/France/Sweden proposal inspired by cases where foreign companies refused to pay financial penalties of millions of pounds for crimes committed in the UK. One was a financial penalty against a Swedish company for the collapse of a ferry passenger walkway that killed 6 people, the other a financial penalty against an Austrian company for the collapse of a tunnel around Heathrow.

Government intervention is necessary to ensure that the UK would continue to be able to enforce financial penalties transferred to it by other MSs and to ensure that other MSs can continue to enforce fines the UK transfers to them. The legislation implementing Mutual Recognition of Financial Penalties ('MRFP FD') has been operating in the UK since 2009.

**What are the policy objectives and the intended effects?**

The Government's overarching policy aims are to:

- enable MSs to send financial penalties imposed by their courts to be enforced against persons who reside or/have property/income in the UK.
- enable the UK to send financial penalties imposed by UK courts to be enforced against persons who reside/have property/income in other Member States. This may mean that fines and compensation orders imposed by UK courts are more likely to be paid.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base case (Option 0)** - Do not seek to rejoin the MRFP FD. The UK would not be able use this measure to send or receive the penalties within its scope (set out in Annex A).

**Option 1** – Seek to rejoin MRFP FD. The UK would be able use this measure to send or receive the penalties within its scope (set out in Annex A).

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> N/A	<b>Non-traded:</b> N/A

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

Signed by the responsible Minister: Shailesh Vara MP Date: 24 June 2014

**Summary: Analysis & Evidence**

Policy Option 1

Description: Rejoin Framework Decision on mutual recognition to financial penalties (MRFP FD).

**FULL ECONOMIC ASSESSMENT**

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

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

**Description and scale of key monetised costs by ‘main affected groups’**

It has not been possible to monetise costs, partly due to lack of data; partly due to uncertain behavioural impacts and partly because Her Majesty’s Courts and Tribunal Services (HMCTS) is in the process of identifying an external provider for fine enforcement activity, which may impact on costs.

**Other key non-monetised costs by ‘main affected groups’**

Although the UK currently operates the FD, ensuring full compliance may require some additional procedures mainly around notification of and consulting with Member States about issues arising, and the outcome of enforcement. However impacts are unlikely to be substantial. There may be ongoing costs to HMCTS of enforcing MRFP FD financial penalties domestically. There may also be costs to HMCTS of additional court proceedings either where offenders appeal the decision to enforce an MRFP FD fine or where financial penalties are unpaid and cases could give rise to court proceedings. Changes to volumes of incoming financial penalties from other Member States could increase these costs. It is possible that the Legal Aid Agency could face costs of offering legal aid for proceedings in the UK, although we expect this impact to be minimal.

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

**Description and scale of key monetised benefits by ‘main affected groups’**

It has not been possible to monetise benefits, partly due to lack of data and partly due to uncertain behavioural impacts.

**Other key non-monetised benefits by ‘main affected groups’**

HMCTS could gain revenue from the financial penalties transferred from other MSs via the MRFP FD. There could also be benefits to victims of crime and the general public by ensuring that offenders cannot evade financial penalties (including compensation orders) because they reside in a different jurisdiction. Ensuring that financial penalties are enforceable across jurisdictions could therefore increase public confidence in the justice system.

**Key assumptions/sensitivities/risks**

Discount rate (%) N/A

Data suggests that the volume of penalties transferred via the MRFP FD may continue to increase (see Annex B), however, this is uncertain. As the MRFP FD is relatively new it is difficult to estimate if or when steady state would be reached. There are various risks associated with estimating the impacts of rejoining the FD. These are set out in the evidence base.

**BUSINESS ASSESSMENT (Option 15)**

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

## **1. INTRODUCTION**

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising the block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (MRFP FD). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal.

This IA assumes that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and European Commission enforcement powers, which ultimately include the power to seek fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The IA aims to identify, as far as possible, the impacts of the proposals on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.

The IA has focused mainly on key monetised and non-monetised impacts on individuals, groups, commercial organisations and public sector bodies in the UK, with the aim of understanding what the overall impact to society might be from rejoining the MRFP FD from 1 December 2014. It has not been possible to monetise all the identified impacts in this IA, in part due to a lack of data and in part because the impacts are driven by a number of behavioural responses which are uncertain. The cost benefit analysis underpinning this IA assumes a start date of 1 January 2015 for ease of analysis.

## **2. POLICY PROPOSAL**

The UK has opted out of all the measures within the scope of the 2014 decision. This means that from 1 December 2014, the UK would not be able to utilise the MRFP FD to transfer financial penalties to, or accept penalties from other EU Member States (MSs).

The policy proposal is to seek to rejoin the MRFP FD, the main active option available to the UK. This would mean that the UK would continue to transfer and receive financial penalties from other EU MSs in accordance with the MRFP FD from 1 December 2014.

It has been assumed that if the UK does rejoin, it would ensure it is fully compliant with all aspects of the MRFP FD. This is likely to require amendments to legislation, and may also require some further processes on the ground, mainly around notification to and consulting with MSs. It has not been possible to monetise costs of this, partly due to lack of data and partly because Her Majesty's Courts and Tribunal Services (HMCTS) is in the process of identifying an external provider for fine enforcement activity. This may impact on costs.

## **3. AFFECTED GROUPS**

The proposal covered in this IA affects all of the UK. Scotland and Northern Ireland have received and sent out extremely low volumes of financial penalties under this FD, and are not aware of any particular factors that they would add to the assessment of costs/benefits in this IA. Scotland has to date received 68 incoming penalties since implementation (mostly from the Netherlands) and has transferred out 4

cases. Northern Ireland has to date received 29 incoming penalties (again, mostly from the Netherlands) and has not transferred out any.

The cost benefit analysis in the IA has therefore focused on England and Wales because minimal impacts are expected in Scotland and Northern Ireland. However, it should be noted that there may be some minimal impacts to Scotland and Northern Ireland in respect of similar functions found in Scotland and Northern Ireland.

The following individuals/sectors are likely to be affected by the proposal:

- **HM Courts and Tribunals Service (HMCTS).** HMCTS may face the cost of enforcing fines transferred through MRFP, but also may see a benefit from the additional revenue collected.
- **Legal Aid Agency.** The LAA may face the cost of providing legal advice for offenders who do not pay their fines and are summoned to court (this is likely to be minimal).
- **Victims, the general public and society.** Victims may benefit from any additional compensation money collected via MRFP. Society may benefit from the enforcement of fines across jurisdictions.

#### 4. RATIONALE FOR INTERVENTION

The legislation implementing the MRFP FD has been operational in the UK since 2009. The MRFP FD was implemented in England, Wales and Northern Ireland through the Criminal Justice & Immigration Act 2008 (legislation commenced in 2009). Implementation in Scotland was through the Criminal Proceedings etc (Reform) (Scotland) Act 2007 and the Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009.

The MRFP FD requires MSs to collect financial penalties of over EUR 70 transferred to them by other MSs as they would a domestic financial penalty (unless a ground of refusal applies).

The extent to which the penalty falls into scope of MRFP depends on the procedures through which the financial penalty is imposed in the country of origin, and the nature of the offence or unlawful act which resulted in the penalty. (Please see **Annex A** for further detail.) The range of penalties that might be transferred to the UK under the MRFP FD is not clear because, although the FD sets out criteria as to which penalties qualify, these only have to be satisfied in the issuing state.

The UK cannot be sure of the full potential application of the MRFP FD without complete knowledge of all MSs' criminal codes and regulatory/administrative codes under which financial penalties may be imposed. However, broadly, in UK law the MRFP FD applies to financial penalties, which would include those registered as a result of victims surcharge, compensation orders, court costs and fixed penalty notices.

The issuing MS has discretion as to whether to transfer financial penalties out. However, there are limited grounds to refuse to enforce an incoming financial penalty. These include: where the financial penalty is less than EUR 70; the transfer form is incorrectly completed; the offender has been sentenced in another MS for the same act and the sentence has been executed; the act which gave rise to the penalty is not an offence in the law of the executing state; enforcement of the penalty is statute-barred in the executing state; the offender is under the age of criminal responsibility in the executing state; if the offender was tried in his absence and was not properly notified of the possible consequences; and others relating to territorial jurisdiction and immunity.

The enforcing MS that collects the financial penalty can keep the money collected (although compensation order income must be remitted to the victim). Costs of enforcement must be borne by the enforcing state.

Once transferred and accepted, MRFP FD financial penalties are enforced as domestic penalties. At present the money collected in relation to the MRFP FD goes to HM Treasury to the Consolidated Fund and the MoJ gets a proportion of this back under the Fines Incentive Scheme.

HMCTS have commenced a procurement process to identify an external provider for the future delivery of compliance and enforcement activity for criminal financial impositions. It is intended that this will improve efficiency and the collection of financial impositions as well as reduce the cost of the current service. This means that future costs/benefits of financial penalty enforcement may differ from current costs/benefits of financial penalty enforcement.

The nature of the 2014 decision requires the Government to consider and assess the impact of rejoining the MRFP FD. The main rationale for rejoining the MRFP FD is that it promotes justice and confidence in the criminal justice system, by ensuring that offenders are not able to escape justice because they do not live in the MS where they offend. The instrument resulted from a UK/France/Sweden proposal inspired by cases where foreign companies refused to pay financial penalties of millions of pounds for crimes committed in the UK in 1994. One was a financial penalty against a Swedish company for the collapse of a ferry passenger walkway that killed 6 people, the other a financial penalty against an Austrian company for the collapse of a tunnel around Heathrow.

## **5. BASE CASE (OPTION 0)**

IA Guidance requires that all options are assessed against a common 'base case'. The base case for this IA is one in which there is no active decision taken to be part of the MRFP FD from 1 December 2014 and use of the MRFP FD would cease by this date.

Pursuing the do nothing option could have unquantifiable costs to society and victims of crime as not ensuring that financial penalties are enforceable across jurisdictions could allow some offenders to evade financial penalties if they are resident in a different jurisdiction.

Because the do nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

## **6. IMPACT OF PROPOSAL (OPTION 1)**

This section sets out the costs and benefits of the policy proposal, as compared against the base case ("do nothing"). It also explains the associated assumptions and risks.

### **COSTS OF PROPOSAL**

#### **Monetised**

It has not been possible to monetise the costs, partly due to lack of data and partly due to the forthcoming transfer of compliance and enforcement activity for criminal financial impositions to an external provider.

#### **Non-monetised**

##### Her Majesty's Courts and Tribunal Services (HMCTS)

Full compliance would require HMCTS to ensure England & Wales complies with all the procedures mandated by the Criminal Justice & Immigration Act 2008 (as amended to ensure full compliance with the MRFP FD). As part of this the UK needs to ensure that it always informs issuing MSs of outcomes as the FD requires or consult with issuing MSs in situations where the FD requires it. To comply with this may require investment in IT for collecting and collating national data on enforcement actions and outcomes relating to individual financial penalties.

Currently, HMCTS (the London Collection & Compliance Centre, LCCC) processes and provides opinions on all incoming financial penalties. The final decision is the responsibility of the receiving court. If we were to rejoin the MRFP FD, HMCTS could incur some costs in relation to the administration and follow up of financial penalties.

HMCTS could also incur minor costs in order to enforce incoming financial penalties transferred through the MRFP FD and which remain unpaid. There are a range of enforcement mechanisms that HMCTS use, and they are all likely to impose different costs on HMCTS (see **Annex B** for more information on enforcing financial penalties).

It has not been possible to quantify these costs as there is limited data available from HMCTS for estimating the costs of various enforcement activities. Furthermore, future collection behaviour and costs in respect of penalties may well differ from current collection costs and actions. Currently, fine collection is processed by HMCTS but HMCTS have commenced a procurement process to identify an external provider for the future delivery of fine collection and this may change future collection behaviour and costs.

HMCTS could also incur costs for hearings required for appeals made by offenders questioning the court's decision to enforce a MRFP FD penalty against them. HMCTS could also incur costs from additional court proceedings required if incoming MRFP FD penalties remain unpaid. However, this is likely to be minimal as data shows that very few financial penalties transferred through the MRFP FD have required court proceedings to enforce them.

As volumes of incoming transfers are likely to rise, these costs may increase (see **Annex C** for a full outline of the data). However, these costs may well be offset or exceeded by fine income.

#### Legal Aid Agency

It is possible that non-payment of financial penalties transferred via MRFP could result in court proceedings which could result in custodial sentences. This could impose costs on the LAA by requiring them to offer legal aid in eligible cases.

However, given that very few MRFP cases require court proceedings to enforce them, and very few result in custodial sentences,<sup>1</sup> we expect these costs to the LAA will occur rarely and will be minimal.

## **BENEFITS OF PROPOSAL**

### **Monetised**

It has not been possible to fully monetise the benefits due in part to a lack of data and in part to uncertain behavioural impacts.

### **Non-monetised**

#### HMCTS

Rejoining the measure and continuing to collect financial penalties through the MRFP FD could lead to a rise in revenue collected for HMCTS.

Between May 2010 and October 2013 the average value of an incoming penalty that was accepted by a UK court was approximately £300 and this value has risen year on year.

Data suggests that the volume of incoming penalties may continue to rise as use of the instrument increases (see **Annex C**). Between May 2010 and October 2013, 921 incoming penalties for England and Wales were received (718 of which were accepted) and the volume has increased yearly. As more Member States implement the FD (we expect them to do so in 2014), and the IT systems used to transfer penalties are refined, revenue from MRFP transfers could potentially rise substantially. For example the Netherlands currently transfer the most financial penalties to the UK via the MRFP FD. Anecdote suggests that one of the reasons for this may be because they have an automated system for creating the necessary transfer forms.<sup>2</sup>

It has not been possible to monetise this fully as we are not yet in a steady state and reliably predicting trends from the existing small data set is not possible.

#### Victims of Crime, the general public and society

Rejoining the MRFP FD would ensure that penalties incurred by UK residents in other Member States could be enforced against defendants in this country and likewise, penalties incurred in the UK by foreign residents could be enforced by other Member States. Victims, the general public and society may feel that this helps prevent offenders from escaping justice where they are resident in another jurisdiction. It could also benefit victims of crime as more compensation may be collected through the scheme.

## **NET IMPACT**

As other MS have not yet implemented the MRFP FD, it has not been possible to determine the overall financial outcome of rejoining. In overall terms we think the financial costs and benefits of either option

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<sup>1</sup> Anecdote suggests that approximately 3 of the 921 financial penalties transferred to the UK using the MRFP FD, resulted in a custodial sentence.

<sup>2</sup> However there may also be other cultural/political reasons why the Netherlands has used the MRFP FD most frequently out of Member States.

are fairly evenly balanced and not substantial in magnitude. However, there are public confidence benefits to rejoining, that it has not been possible to quantify.

The Government is encouraging the use of financial penalties for minor crimes (in absentia if the offender does not return for trial) and for the financial penalty to be sent to the UK to be enforced (via the MRFP FD) rather than requiring the UK to send the person back (under the European Arrest Warrant, EAW). This could in theory lead to fewer EAWs than would be the case if the UK did not participate in the MRFP FD, although there is little evidence that this has happened to date.

## 7. RISKS AND ASSUMPTIONS

The assumptions and associated risks are set out in table below.

Assumption	Risks
Future base case	The volumes of both incoming and outgoing penalties are expected to rise, partly due to a likely increase in use of the MRFP FD by MSs as they begin to implement the FD, and also an increased awareness domestically (and among other MSs where it is operational). However, it is difficult to estimate if or when steady state would be reached. There are therefore risks associated with assessing future impacts of opting in to the MRFP FD.
Financial penalty enforcement	Collection costs and actions may change in the base case following outsourcing of financial penalty enforcement. Currently, fine collection is processed by HMCTS but HMCTS have commenced a procurement process to identify an external provider for future fine enforcement activity.
Interaction with other policies	The interaction with other policies could impact on incoming and outgoing financial penalty volumes in the future. It is difficult to estimate the size and direction of any impact as a result of the MRFP FD interacting with these policies.
Use of MRFP FD in other MSs	We cannot be sure of the full potential application of the FD for incoming cases without complete knowledge of all MSs' criminal codes and regulatory codes. Hence it is difficult to assess how frequently other MSs will use the MRFP FD in the future and for what type of penalties. There are therefore risks associated with this uncertainty.
Enforcement stages and costs	HMCTS do not hold information on the costs of enforcing MRFP incoming penalties from start to finish; they hold some information on the enforcement actions which have been carried out. Due to this uncertainty, it is difficult to estimate whether benefits from the revenue generated from financial penalties would outweigh the costs to enforce incoming penalties. In addition, future enforcement costs could differ from current enforcement costs.
MRFP data set	The LCCC (London Collection & Compliance Centre – the Central Authority for England & Wales) keep a record of incoming and outgoing financial penalties for England & Wales only; there is a separate Central Authority for MRFP for Scotland and for Northern Ireland. The LCCC collects data about incoming and outgoing financial penalties regularly. This information dates back to when the MRFP instrument was first implemented in 2009 but volumes to date have been low. There are risks associated with estimating any trends in the volume of incoming and outgoing financial penalties using data from this limited time span, particularly as data about the outcome of financial penalty enforcement is often time lagged.
Data updates	Data sets are held for both incoming and outgoing financial penalties and they are updated regularly. However, updates are completed manually based on data sent and requested from seven different regions. There is a



	risk that regions will update the information differently or make manual errors which means that the data may not be robust.
Costs to the Legal Aid Agency	We have assumed any impact to legal aid will be rare and minimal as there are currently very few cases that require court proceedings or custodial sentences to enforce domestic financial penalties. There is a risk that if the volume of incoming penalties continues to increase, then the number of cases resulting in proceedings or custodial sentences may also rise. This may increase the burden on the LAA if many of these cases are eligible for legal aid.
Challenges	As this FD is relatively new and has not been fully implemented across the EU, there is a risk around the likelihood of appeals and challenges in relation to the transfer of penalties; outcomes could affect volumes of eligible penalties. Any such risk would be mitigated were the UK to remain opted-out of MRFP FD. We are not aware of any appeals to date, however because overall volumes are, to date, low, there is little evidence on which to properly assess this risk.
Deterrence effect	Evidence on the scale of deterrence effects, and the conditions necessary for any effect to be exerted, is mixed. However, there is a possibility that opting in to the MRFP FD may deter some individuals from not paying penalties and possibly from not committing the offence in the first place. Given the weak evidence we have not assumed this would occur, but there is a risk that impacts could differ from what we have assumed.

## 8. WIDER IMPACTS

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do consider that it is unlikely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion (data on characteristics of offenders given a financial penalty in Member States is not available).

### Adjustment for disabled people

There is no evidence to suggest that the proposal will have any adverse impact on disabled individuals as well.

## **Annex A: Definition of penalties which fall into the scope of the MRFP Framework Decision**

1. The Framework Decision covers financial orders arising from appropriate “decisions” and defines those as follows<sup>3</sup> (Article 1):
  - (a) "decision" shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:
    - (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;
    - (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
    - (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
    - (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);
  - (b) "financial penalty" shall mean the obligation to pay:
    - (v) a sum of money on conviction of an offence imposed in a decision;
    - (vi) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;
    - (vii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;
    - (viii) a sum of money to a public fund or a victim support organisation, imposed in the same decision.
2. A financial penalty shall not include:
  - (i) orders for the confiscation of instrumentalities or proceeds of crime,
  - (ii) orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

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<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:076:0016:0030:EN:PDF> Article 1, page 1.

## **Annex B: Enforcement of incoming financial penalties**

1. The most frequently recorded enforcement actions pursued by the magistrates courts or enforcement units includes sending a reminder notice to the individual and issuing warrants of control (distress warrants)<sup>4</sup>.
2. The enforcement authority that collects financial penalties would incur minor costs in order to enforce an incoming financial penalty. This would include the cost of a court summons and potentially a hearing, to give individuals the opportunity to explain why the penalty imposed should not be registered. The cost for a further steps notice would be negligible. Different enforcement mechanisms would cost HMCTS different amounts. The costs to HMCTS for the use of a distress warrant (bailiff) would be negligible, as bailiffs fees are paid by the defaulter.
3. More substantial costs would be expected in collection cases requiring the use of clamping orders and arrest warrants. If a clamping order or an arrest warrant was issued, HMCTS could be liable for the cost, though this is dependant on the contractual agreement in place. The MRFP data held by HMCTS shows the current number of arrest warrants used is only a small handful. There are no recorded clamping orders recorded in the data set<sup>5</sup>.
4. Currently, fine collection is processed by HMCTS. HMCTS have commenced a procurement process to identify an external provider for the future delivery of fine collection. Once appointed the external provider rather than HMCTS will carry out enforcement of any penalties transferred through the MRFP FD.

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<sup>4</sup>HMCTS (2012), Mutual Recognition of Financial Penalties Incoming and outgoing spreadsheets for England and Wales.

<sup>5</sup> MoJ internal analysis

## ANNEX C: Data for England and Wales from incoming and outgoing MRFP financial penalties

### *Incoming penalties*<sup>6</sup>

**Table 1:** Volume of incoming financial penalties by the year the financial penalty was received by LCCC and offence group

	May 2010 to 31 December 2010	2011	2012	January 2013 to October 2013	Total (May 2010 to October 2013)
All offence groups	68	179	279	395	921

Source: *Internal Analysis MoJ*

Since the first recorded incoming penalty under the MRFP FD in May 2010 until October 2013, the LCCC which is the Central Authority for England & Wales, recorded a total volume of 921 incoming financial penalties.

There has been an upward trend in incoming cases since this FD was first implemented.<sup>7</sup>

**Table 2:** Total value of all incoming financial penalties by the year the financial penalty was received by LCCC and the offence group (rounded to nearest £100)<sup>8</sup>

	May 2010 to 31 December 2010	2011	2012	January 2013 to October 2013	Total (May 2010 to October 2013)
All offence groups	£10,000	£35,700	£71,300	£137,300	£254,200

Source: *Internal Analysis MoJ*

Between May 2010 and October 2013, the total value of incoming issued financial penalties for England and Wales summed to a value of just over £250,000.

The average value of these incoming penalties was approximately £290. Throughout this period, the average value of incoming financial penalties has increased year on year. For example in 2010 the average penalty was £150 and this has risen to nearly £400 in 2013.<sup>9</sup>

During this period, England and Wales received the majority of incoming penalties from the Netherlands (79%). This is believed to partially be a result of the Netherlands having an automated IT system in place (based on anecdote). It is therefore likely that if, as Member States start to use the MRFP FD fully, they develop or adopt equally sophisticated IT systems, there could be an increase in the volume of incoming penalties for England and Wales.

### Financial penalties accepted:

<sup>6</sup> Please note that the data set only covers England and Wales

<sup>7</sup> If the volume of financial penalties follows the same trend for the recorded data between January 2013 to October 2013, the volume of financial penalties for the full year of 2013 would be higher than the volume for the full year of 2012.

<sup>8</sup> Numbers may not add perfectly due to rounding.

<sup>9</sup> Numbers rounded to the nearest ten. Please note that as data for 2010 and 2013 are not for full years, it is difficult to make like for like comparisons across the years.

There are two key stages where a penalty can be accepted or rejected in the MRFP process. In the first instance a recommendation is made by the LCCC. The enforcing court is then sent the penalty and will also make the final decision to accept or reject.

**Table 3:** Volume of incoming financial penalties which have been accepted by the enforcing court by the year the financial penalty was received by LCCC and offence group

	May 2010 to 31 December 2010	2011	2012	January 2013 to October 2013	Total (May 2010 to October 2013)
All offence groups	54	126	204	334	718

Source: Internal Analysis MoJ

**Table 4:** Total value of all incoming penalties which have been accepted by the enforcing court by the year the financial penalty was received by the LCCC and offence group <sup>10</sup> (rounded to nearest 100)

	May 2010 to 31 December 2010	2011	2012	January 2013 to October 2013	Total (May 2010 to October 2013)
All offence groups	£7,600	£22,400	£54,100	£129,500	£213,700

Source: Internal Analysis MoJ

Between May 2010 and October 2013, the average value of an accepted penalty by the enforcing court is £300<sup>11</sup> and a total value of just over £210,000 of penalties was accepted.

#### Financial penalties paid

**Table 5:** Proportion of penalties which have been paid to date, based on the value of all penalties accepted by the enforcing court by the year the financial penalty was received by the LCCC and offence group<sup>12</sup>

	May 2010 to 31 December 2010	2011	2012	January 2013 to October 2013
All offence groups	69%	48%	33%	5%

Source: Internal Analysis MoJ

It should be noted that financial penalties which have been referred from other MSs to England and Wales in 2013 may still be open and going through the earlier stages of the enforcement process. It is

<sup>10</sup> Note the two stages where a financial penalty can be filtered out and rejected; after a first recommendation from the LCCC or after a decision at the enforcing court. This data captures decisions made at enforcing court regardless of previous recommendation made by the LCCC.

<sup>11</sup> This average has been calculated from data for May 2010 to September 2013, by dividing the total value of accepted financial penalties by the total number of accepted financial penalties.

<sup>12</sup> Note that there are two stages where a decision is made about a financial penalty. This data captures decisions made at enforcing court regardless of previous recommendation by LCCC, as the recommendations are used for guidance.

therefore likely that as new data is obtained, the percentage of financial penalties paid in 2013 will increase.<sup>13</sup>

Between May 2010 and October 2013, the total value of all paid financial penalties was £40,800; and the corresponding average value of these financial penalties was approximately £170<sup>14</sup>.

Please note that any incoming penalties from a Member State would be automatically added to HMCTS's debt stock the instant it is accepted by the courts. Like any other penalty imposed domestically, it will remain a debt until the balance is reduced to zero.

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<sup>13</sup> According to data in Court Statistics Quarterly main tables B2 (<https://www.gov.uk/government/organisations/ministry-of-justice/series/courts-and-sentencing-statistics>), the fine payment rate for Q3 2011 was 55% after 18 months. This is the percentage by value paid by after 18 months and that additional payment may be received beyond the 18 months period. This published payment rate covers all financial impositions.

<sup>14</sup> This average has been calculated by dividing the total value of financial penalties which have been paid to date by the total number of financial penalties which were received by the LCCC between May 2010 to October 2013.

<b>Title:</b> 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 (Data Protection Framework Decision) <b>IA No:</b> MOJ 025/2014 <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Home Office	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 24/06/2014			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU			
	<b>Type of measure:</b> EU			
Contact for enquiries: 2014decision@homeoffice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> N/A

<b>Cost of Preferred (or more likely) Option</b>				
<b>Total Net Present Value</b>	<b>Business Net Present Value</b>	<b>Net cost to business per year (EANCB on 2009 prices)</b>	<b>In scope of One-In, Two-Out?</b>	<b>Measure qualifies as</b>
£0	£0	£0	No	Zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

Sharing of personal data between Member States' (MS) authorities allows for more effective prevention, investigation and prosecution of crime across the EU. Without a framework in place there is no guarantee that rights of citizens are protected when data is transferred or that data is processed in accordance with individual rights and fundamental principles relating to data quality. As such, MSs may not be confident in sharing data which would be important in the fight against crime.

Government intervention is necessary to ensure that an appropriate system is in place to protect the rights of citizens while facilitating cross-border data sharing in order to fight crime. A Council of Europe Convention exists that covers similar ground but has not been ratified by all MS. An alternative to this may be the Police and Criminal Justice Data Protection Directive that is currently under negotiation. This is intended to repeal and replace the Data Protection Framework Decision (DPFD). Progress in negotiations on this measure have been slow and the earliest agreement is likely to be reached in 2015 with a further 2 year period for implementation.

**What are the policy objectives and the intended effects?**

The Government's overarching policy aims are to:

- ensure that a regulatory framework exists for the exchange and processing of personal data between competent authorities of Member States and for transmission of such data to third parties;
- ensure that any data shared is used appropriately and this follows adequate data protection standards.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base Case (Option 0)** Against which the proposal is examined is one in which the UK remains outside the DPFD from 1 December 2014.

**Option 1** – Seek to rejoin DPFD. This is the main active option available to the UK. This would mean that the UK would continue to utilise the DPFD from 1 December 2014.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA	<b>Non-traded:</b> NA	

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

Signed by the responsible Minister:

..... *Shailesh Vara MP* ..... Date: 24 June 2014 .....



Description: Rejoin Data Protection Framework Decision (DPFD)

**FULL ECONOMIC ASSESSMENT**

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low				
High				
<b>Best Estimate</b>	0		0	<b>0</b>

**Description and scale of key monetised costs by ‘main affected groups’**  
 There are no monetised costs.

**Other key non-monetised costs by ‘main affected groups’**  
 There are no non-monetised costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low				
High				
<b>Best Estimate</b>	0		0	<b>0</b>

**Description and scale of key monetised benefits by ‘main affected groups’**  
 There are no monetised benefits.

**Other key non-monetised benefits by ‘main affected groups’**  
 There are non-monetised benefits from avoiding potential costs associated with the issues under the base case. Rejoining would ensure that data sharing can continue. This will avoid the potential interruption in current data sharing arrangements that could have considerable (although probably time limited), operational consequences for the UK law enforcement community. This will therefore aid the UK justice system and government departments in improving justice outcomes, in turn benefiting UK citizens.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
<ul style="list-style-type: none"> <li>Any benefits and costs from rejoining the measure would end once the DPFD is repealed when the proposed Police and Criminal Justice Data Protection Directive comes into effect.</li> <li>It is also assumed that the UK would not attempt to negotiate separate bilateral agreements on data sharing with relevant MSs, because of the UK’s future participation in the proposed Police and Criminal Justice Data Protection Directive that will repeal and replace the DPFD.</li> </ul>		

**BUSINESS ASSESSMENT (Option 16)**

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of</b>	<b>Measure qualifies</b>
Costs: 0	No	Zero net cost
Benefits: 0		
Net: 0		

## 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising the block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the 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 otherwise known as the Data Protection Framework Decision (DPFD). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that European Commission enforcement powers, which ultimately include the power to seek fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The IA aims to identify, as far as possible, the impacts of the proposals on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals. The IA has focussed mainly on key monetised and non-monetised impacts, with the aim of understanding what the net social impact to society might be from rejoining the DPFD from 1 December 2014. The cost benefit analysis underpinning this impact assessment assumes a start date of 1 January 2015 for ease of analysis.

## 2. POLICY PROPOSAL

The purpose of the DPFD is to provide a regulatory framework for the exchange and processing of personal data between competent authorities of Member States and for the transmission of such data to third parties. Competent authorities are public authorities authorised by national law to detect, prevent, investigate or prosecute criminal offences. The definition therefore includes Police, the Financial Conduct Authority, the National Crime Agency, and many other law enforcement agencies and government departments.

The DPFD aims to ensure that any information that is exchanged has been processed legitimately and in accordance with privacy rights and fundamental principles relating to data quality; and to see that the exchange of information between police and criminal justice authorities is not prejudiced by different levels of data protection.

The UK is currently operationally compliant through the Data Protection Act 1998 ("DPA") and associated guidance and administrative procedures. HMG has circulated guidance to competent authorities setting out their full obligations under the DPFD. In order to give legal effect to what competent authorities do operationally, as set out in the guidance issued by the Ministry of Justice in January 2011, the Government intends to supplement the DPA by way of additional legislation.

## 3. AFFECTED GROUPS

. The following groups are likely to be affected if the DPFD is rejoined:

- **The UK justice system** would be affected by the changes to cross-border information sharing. It could lose out due to stricter data protection rules slowing down and increasing the cost of data handling, but would also likely benefit from greater cross-border data sharing.
- **UK government departments** could benefit from increased data sharing.

- **UK citizens** may benefit from greater information sharing, with this potentially leading to more effective crime prevention, investigation and prosecution; and related protection of data.
- **The private sector** when carrying out public service functions in the law enforcement context would fall within the scope of the DPFDF.

#### 4. RATIONALE FOR INTERVENTION

The UK justice system benefits from information sharing with other Member States (MSs) as it allows for more effective prevention, investigation and prosecution of crime. To protect the rights of citizens while facilitating cross-border data sharing in the fight against crime an appropriate system needs to be in place; without it Member States may not be confident sharing such data with the UK. This would constrain the ability of the UK to receive or transfer important information across the EU and would make prevention and detection of crime less effective and the capture of criminals less likely.

Government intervention is needed to ensure that an appropriate system is in place to protect the rights of citizens while facilitating EU cross-border data sharing in the fight against crime. This framework for data protection standards aids the sharing of information by ensuring a high level of protection of the fundamental rights and freedoms of natural persons, and in particular their right to privacy, with respect to the processing of personal data. The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol cover similar ground but have not been ratified by all MS. There is another measure, the proposed EU Police and Criminal Justice Data Protection Directive which is currently under negotiation. This measure is intended to repeal and replace the DPFDF. Progress in negotiations on this measure have been slow and the earliest agreement is likely to be reached is in 2015 with a further 2 year period for implementation.

#### 5. BASE CASE (OPTION 0)

IA Guidance requires that all options are assessed against a common 'base case'. The base case for this IA is one in which there is no active decision taken to be part of the DPFDF from 1 December 2014.

The UK is operationally compliant with the DPFDF and every-day handling of data will continue as though processors were bound by the DPFDF. The DPA already covers data processing in the context of police and criminal justice authorities. In relation to the articles of the DPA that would be amended under the DPFDF, guidance has been issued for competent authorities to follow.

Currently a new data protection measure is being negotiated at the EU level, the proposed EU Police and Criminal Justice Data Protection Directive. The earliest this measure could come into force is in 2015 with a further 2 year period for implementation. This imposes a time limit on the possible benefits and costs of remaining opted out of DPFDF.

The UK will continue to operate according to the provisions of the DPFDF until the block opt-out takes effect on 1 December 2014. As we intend to rejoin this measure, and in this case would continue to operate it after the 1 December it is the base case rather than the policy proposal which would imply the most change.

#### Schengen Instruments

There may be implications for the UK's participation in the underlying Schengen measures if HMG was to choose to 'do nothing', as the DPFDF is considered to be a Schengen building measure. While many of the Schengen instruments have their own detailed data protection provisions which take precedence over the DPFDF, where the Schengen provisions are silent or incomplete the DPFDF applies. If the UK did not rejoin the DPFDF, there would be a risk the UK would not be able to continue participating in the underlying instruments within the Schengen *acquis*, since horizontal data protection provisions are necessary for the coherence of the system. Being unable to participate in the underlying Schengen instruments would severely constrain the ability of the UK to share information with and receive information from other Member States. This is likely to make prevention and detection of crime less effective and capture of criminals less likely, harming the UK justice system and UK citizens.

#### Police and Judicial Cooperation

Data sharing proposals in the field of police and judicial cooperation, such as the European Investigation Order (which, for example, enables the Crown Prosecution Service to get information from other MSs for use in prosecutions in the UK) and the European Criminal Information System (ECRIS) rely on the DPFDF

to provide minimum data protection safeguards. If the UK does not participate in the DPFDP there is a risk that the UK would not be able to operate these, and other similar measures; the UK would be regarded as not complying with the EU framework for data protection safeguards in respect of information sharing in accordance with these measures.

### **Title V Instruments**

If the UK remains opted out, the UK may not be able to comply with Title V instruments which cross-refer to the DPFDP (for example, the Victims Directive). While it may be technically possible to amend the Title V instruments to include specific data protection provisions replicating the relevant parts of the DPFDP, this would be very difficult to achieve in practice, particularly as a replacement measure is currently being negotiated.

## **6. IMPACT OF PROPOSAL (OPTION 1)**

This section sets out the costs and benefits of the policy proposal, as compared against the base case (“do nothing”). It also explains the associated assumptions and risks.

### **COSTS**

#### **Monetised Costs**

There are no monetised costs to the UK.

#### **Non-monetised Costs**

There are no non-monetised costs to the UK.

### **BENEFITS**

#### **Monetised Benefits**

There are no monetised benefits to the UK.

#### **Non-monetised Benefits**

There are non-monetised benefits from avoiding potential costs associated with the issues under the base case. Rejoining may ensure that data sharing can continue. This will avoid the potential interruption in current data sharing arrangements that could have considerable (although probably time limited), operational consequences for the UK law enforcement community. This will therefore aid the UK justice system and government departments in improving justice outcomes, in turn benefiting UK citizens.

## **7. NET IMPACT**

Quantification of the net impact is not possible. However, qualitative analysis of the available information suggests the net impact of rejoining the DPFDP is positive. The UK would benefit from avoiding potentially large gaps in data sharing, which could impact heavily on the effective running of the UK justice system. This would outweigh the costs of legislating and continuing to follow the current guidance on the areas not covered in the DPA.

## **8. RISKS AND ASSUMPTIONS**

The assumptions and associated risks are set out in table below.

Area	Assumption
Time period	Any benefits and costs from rejoining the measure would end once the DPFDP is repealed when the proposed Police and Criminal Justice Data Protection Directive comes into effect. It also is assumed that the UK would not attempt to negotiate separate bilateral agreements on data sharing with

	relevant MSs due to the limited time period of being bound by DPF on rejoining.
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**9. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics. We do not believe any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

Data protection in general does not have a differential impact on any particular group. It applies equally to all citizens. There is very limited scope within the policy for local MOJ discretion in the way it is implemented.

**Adjustment for disabled people**

There is no evidence to suggest that the proposal will have any adverse impact on disabled citizens whose data is shared.



Description: Rejoin the Prisoner Transfer Framework Decision (PTFD)

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2013/14	PV Base Year 2013/14	Time Period Years 2015-2024	Net Benefit (Present Value (PV)) (£m)		
			Low: 20	High: 170	Best Estimate: 110mn

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				30
High				80
Best Estimate	70		10	60

**Description and scale of key monetised costs by ‘main affected groups’**

There would be costs of transferring EU FNOs to their country of origin and of receiving UK nationals back. These costs include: administrative and transfer costs of removing FNOs; the costs of housing returning BNOs transferred from other MS, and the potential cost of increased EU FNO deportation appeals. The assessment considers an increase in the number of appeals against transfers under this policy. As with any measure that deals with prisoner transfers, there may be appeals against transfer on the basis that poor prison conditions in the country of origin would infringe a prisoner’s human rights. Challenges to the deportation order could also be mounted on other grounds (for example the right to family life). The total discounted costs over the 10-year appraisal period are estimated to range between £30mn and £80mn, with a main estimate of £60mn.

**Other key non-monetised costs by ‘main affected groups’**

There are no non-monetised costs associated with this measure.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				70
High				250
Best Estimate	210		20	160

**Description and scale of key monetised benefits by ‘main affected groups’**

There would be potential financial savings to the UK by transferring FNOs to their MS of origin. This would be in the form of current and future prison places that could be saved. The total discounted savings over the 10 year appraisal period would range between £70mn and £250mn, with a main estimate of £160mn.

**Other key non-monetised benefits by ‘main affected groups’**

The PTFD is designed to promote the social rehabilitation of prisoners convicted away from their home MS in order to allow them to complete their sentences where they are more likely to be able to benefit from the close proximity of family and friends. This may also improve rehabilitation chances of BNOs after their release from custody in the UK with positive long-term impacts on the UK. Relatives of returning BNOs would also benefit from their relatives being housed in the UK.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
The assessment is sensitive to assumptions on: volumes of prisoners who may be eligible for transfer; the number of appeals against transfer and the rate of successful appeals against transfer on the basis of Article 8 (human rights) and prison conditions; unit cost assumptions on prison costs; transfer costs; and other administrative assumptions. It is also subject to general appraisal assumptions e.g. appraisal horizon, price base. There is also policy uncertainty about the level of implementation of the PTFD in other Member States.		

**BUSINESS ASSESSMENT (Option 17)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	Zero Net Cost

## 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 Decision. The 2014 Decision is provided for in Article 10(4) and (5) of Protocol 36 which sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 provides for the UK, upon exercising the block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving the deprivation of liberty for the purpose of their enforcement in the European Union (the Prisoner Transfer Framework Decision - PTFD).

This IA assumes that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that European Commission enforcement powers, which ultimately include the power to seek fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect.

The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book. It seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.

The IA has focussed mainly on key monetised and non-monetised impacts, with the aim of understanding what the net social impact to society might be from rejoining the PTFD from 1 December 2014. The cost benefit analysis underpinning this impact assessment assumes a start of 1 January 2015 for ease of analysis.

## 2. POLICY PROPOSAL

The UK has opted out of a range of measures as part of the 2014 Decision. This means that from 1 December 2014, the UK would not be able to utilise the PTFD to facilitate transfer of eligible EU FNOs imprisoned in the UK to serve their sentence in their MS of nationality without their consent and within set timescales. Moreover, other MSs would not be able to send back to the UK imprisoned British national offenders (BNOs). The PTFD has already been implemented in the UK.

The policy proposal is for the UK to rejoin the PTFD, the main active option available to the UK. This would mean that the UK (England & Wales, Scotland and Northern Ireland) would continue to transfer and receive prisoners from other EU MS from 1 December 2014.

It has been assumed that if the UK rejoins the PTFD, it will do so with retrospective effect. This means that it will transfer and receive all prisoners who meet the eligibility requirements, regardless of when they were sentenced. However, various other MSs have implemented the PTFD so that it will only be used for prisoners sentenced after the general date of transposition of 5 December 2011.

There is uncertainty around whether the high volume countries<sup>1</sup> will implement the PTFD retrospectively. In line with the precautionary principle, this assessment assumes that even though the UK will implement retrospectively, all MS will implement non-retrospectively implying that the UK will only be able to

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<sup>1</sup> High volume countries are those MS from where there is high volume of EU offenders imprisoned in UK. Currently, France, Germany, Lithuania, Netherlands, Portugal, Romania and Spain classify as the high volume countries.



transfer those EU FNOs who have been sentenced after 5 December 2011<sup>2</sup> but could receive back BNOs from EU MSs who have been sentenced before 5 December 2011<sup>3</sup>.

In addition, it is assumed that all MSs will have implemented the PTFD by 1 December 2014 when the measure will be subject to European Court of Justice jurisdiction. However, Poland has a derogation from the compulsory transfer elements of the instrument meaning that it does not have to fully implement the instrument until December 2016. Poland has therefore been removed from the analysis until that point. Ireland has also been excluded given the current practice not to routinely seek deportations because of the Common Travel Area.

### 3. AFFECTED GROUPS

The policy proposal affects all of the United Kingdom, with particular impacts on the following groups:

- **EU nationals in prison in the UK** would be compulsorily transferred to their country of nationality;
- **UK nationals in prison in other EU Member States** would be transferred to serve their sentences in the UK;
- **The criminal justice system**, as the primary avenue for transferring and managing relevant offenders. This includes courts; the National Offender Management Service (prison and probation); and legal aid services;
- **Immigration services**, who will be required to issue deportation orders to eligible EU FNOs whom the UK seeks to transfer.

### 4. RATIONALE FOR INTERVENTION

The main objective of the PTFD is to facilitate the social rehabilitation of prisoners by enabling them to serve their sentences in their own country. The PTFD allows MSs to transfer eligible prisoners without the consent of the person concerned. It also requires the receiving MSs to accept the transfer unless one or more of the grounds for refusal set out in the PTFD are met.

The Government took an active decision to opt out of all measures within the scope of the 2014 decision under Protocol 36. This means that from 1 December 2014, the UK will not be able to utilise the PTFD to facilitate the transfer of eligible EU FNOs imprisoned in the UK to their MS of origin to serve their sentence without their consent, i.e. compulsory transfers within set timescales.

If the UK did not seek to rejoin the PTFD it would have to rely on the voluntary transfer mechanisms set out in the 1983 Council of Europe Convention on the Transfer of Sentenced Persons. However, this mechanism requires the consent of the person concerned before they can be transferred to their MS of origin to serve the remaining part of their sentence, unless the MS has also signed the relevant additional Protocol (when prisoner consent isn't always required). Most MS have not signed the additional Protocol.

In addition, the measure relies on bilateral discussions and there are no levers to use if a MS simply refuses to take a prisoner back. Furthermore, once all MS have implemented the PTFD it is unlikely that the Convention route could continue to be used, as many MS may have repealed or amended their domestic implementing legislation relating to the Convention when implementing the PTFD.

It is therefore reasonable to conclude that not seeking to rejoin the PTFD would mean that the current ability to remove EU FNOs would cease from that date and result in the UK continuing to bear the financial burden of housing EU FNOs that it would otherwise be able to remove had it participated in the PTFD.

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<sup>2</sup>With the assumptions for the eligibility of prisoners to be considered for scope for transfer in the analysis, the retrospective implementation is not relevant as the analysis considers only those sentenced after December 2012 eligible for transfer.

<sup>3</sup>Theoretically, the retrospective implementation by UK will be super-seeded by the non-retrospective implementation of the EU MSs as these countries needn't consider transferring BNOs who have been sentenced before 5<sup>th</sup> December 2011. However, for the analysis, it is assumed that the countries would consider transferring BNOs due to the retrospective implementation by UK.

## 5. BASE CASE (OPTION 0)

IA Guidance requires that all options are assessed against a common 'base case'. The base case for this IA is one in which there is no active decision taken to be part of the PTFD from 1 December 2014. This would mean that the current problems set out under Section 4 would continue to persist with ongoing impacts on the UK.

In particular it would mean that the current ability to remove EU FNOs would cease from that date and the UK would be expected to bear the cost of housing EU FNOs in the UK. The UK would also avoid the cost of having to fund BNOs in MS who may otherwise have been sent back to serve their sentences in the UK. As the base case compares against itself, the net present value is zero<sup>4</sup>.

## 6. IMPACT OF PROPOSAL (OPTION 1)

This section sets out the benefits and costs of the policy proposal, as compared against the base case ("do nothing") set out under Section 5. It also explains the associated assumptions and risks.

### BENEFITS OF PROPOSAL

#### Monetised

The main benefit of the proposal is that it would lead to savings in prison places in prisons in England and Wales, with associated economic benefits. As there are low numbers of EU FNOs in prisons in Scotland and Northern Ireland, for the purposes of this IA the cost benefit analysis has focussed on England and Wales. However, there may be minimal impacts to Scotland and Northern Ireland. The estimation of benefits focuses on modelling the broad volume of foreign national sentenced prisoners in the UK that may reasonably be expected to fall under the remit of the PTFD. The benefits of the PTFD are calculated based on these expected volumes.

The principle monetary benefit to the UK of fully implementing the PTFD is a saving of prison places. If sufficient places were saved, this could generate significant cashable savings for the CJS<sup>5</sup>. The average cost of a prison place is assumed to be £28,000 (2011/12 prices) per annum.

Assessment of the total benefits of the PTFD requires an estimation of the volume of EU FNOs that would be transferred from the UK to MSs over the appraisal period. This is influenced by the following factors:

- **Geography** – All MSs are included with the exception of Ireland. Ireland is not currently included in the analysis given the current practice not to routinely seek deportations because of the Common Travel Area. Poland is only considered in the analysis from 2016, at which point its derogation from the compulsory transfer elements of the PTFD ends.
- **Scope of prisoners** – Only prisoners sentenced to 4 years and over (who in practice would be expected to serve 2 years in custody under the UK's current release arrangements) are eligible for removal. This minimum sentence length is to allow time for the unavoidable delay involved in the prison transfer process (expected to be around a year), which is subtracted from the expected benefits accruing from prison savings. The sentence length of 4 years also minimises potential double counting resulting from the sentence period reaching the Early Removal Scheme<sup>6</sup> (ERS) window that is likely to be the more effective mechanism for removing FNOs who have less than 270 days of their sentence remaining.

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<sup>4</sup> However, it should be noted that certain drivers / factors are likely to change over time and may amplify the profile of impacts within the base case over time relative to the current year.

<sup>5</sup> This is based on the expectation that the prison estate will be significantly overhauled if sufficient numbers of transfers are achieved and sustained as a consequence of the rejoining decision.

<sup>6</sup> The Early Removal Scheme, participation for which is voluntary, allows for determinate sentence prisoners liable to removal from the UK to be removed from prison up to 270 days before the end of the custodial part of their sentence for the purposes of deportation or administrative removal.

- Timing of implementation – All MSs are expected to have implemented the PTFD by the end of 2014. A number of countries have already done so. As of January 2014, these were: Austria, Belgium, Croatia, Czech Republic, Denmark, Finland, Hungary, Italy, Latvia, Luxemburg, Malta, Netherlands, Romania, Slovakia and Slovenia. It is assumed that these countries will start receiving their nationals back in 2014. The accumulated prisoners will be transferred first, while new receptions in 2014 will be removed in 2015 in line with the assumed delay in the process. Other MSs are expected to receive their prisoners back during the course of 2015. Poland has a derogation until December 2016, when it is expected to start receiving prisoners back.
- Volumes of FNOs in prison and removals – The volumes have been estimated from yearly reception data. Given an average time served of around three years for EU FNOs with sentences of 4 years and above, receptions starting from December 2012 are combined to form the eligible stock for the first year of deportation in 2015 (2017 for Poland).<sup>7</sup> After this date, it is expected that eligible receptions will be deported. The receptions are projected forward into the future according to a linear projection based on yearly data between 2002 and 2013.
- Growth assumptions – EU FNO numbers have been steadily growing, in part due to increases in immigration from the EU<sup>8</sup> and in part due to a UK-wide trend for longer sentence lengths<sup>9</sup>. A detailed forecast of immigration from the EU and the subsequent impact on the number of EU FNOs is out of scope for this analysis. Therefore a general approach has been adopted by projecting reception data according to a linear assumption, based on yearly data between 2002 and 2013. This disaggregate approach allows for a more accurate representation of scenarios based on growing, falling and static populations of nationals from different Member States.
- Appeals – The analysis relies on appeals data from end tariff deportations, because to date only a very small number of prisoners (5) have been successfully deported under the compulsory PTFD to form the basis for analysis on appeals against prison transfer<sup>10</sup>. The data includes estimates of the proportion of prisoners that is likely to appeal and the proportion of appeals that would likely be successful. Based on this data, it has been assumed that 31% of prisoners appeal and 43% of those who do so are successful (i.e. 13% of prisoners sought for deportation are not removed due to successful appeals). However, it is possible that appeals rates would be higher if offenders were transferred during their prison sentence, due to increased resistance to what they may perceive as worse prison conditions in home countries. Furthermore, they may be more successful than prisoners deported at the end of their sentences because they would be able to appeal on the grounds of Article 3: "*freedom from inhuman or degrading treatment or punishment*", as well as Article 8: "*right to a family life*" for those with families in UK. The analysis tests for the effect on total volumes deported of variation in the rate of successful appeals, using appropriate sensitivity tests.
- MS policy position – The analysis assumes that receiving MSs accept all prisoners deported. However, the volume of EU FNOs that can be transferred depends on the extent to which receiving MSs fulfil their legal obligations. There is a risk that the newer MSs will not be in a position to accept all of their prisoners back which would affect the overall costs and benefits. This is partly due to larger volumes: newer MSs have generally been net exporters of prisoners, while older MSs have generally been net importers of prisoners. It is also due to a likely absence of procedural systems in place in new MSs. Sensitivity tests have been undertaken to account for this.

Rejoining the PTFD would result in the UK being able to transfer its existing eligible prisoners in 2015 to MSs, and in 2017 to Poland. Thereafter, the UK would be able to transfer the new eligible receptions of EU prisoners. In 2015 and 2017, there would be a one-off increase in the numbers of prisoners

<sup>7</sup> Poland has an extension for implementation of the PTFD until 2016 due to operational capacity limitations.

<sup>8</sup> Particularly since the accession of the A8 member states, including Poland and Lithuania, which are two of three largest EU FNO groups in UK prisons, and because of the accession of A2 member states: Romania and Bulgaria, which is the second largest EU FNO group in UK prisons

<sup>9</sup> There has been a long-term trend in the UK for prison numbers to increase, partly due to sentence lengths increasing over time. However, there is no guarantee that this trend will continue, especially under current reforms to the prison system

<sup>10</sup> As of January 2014, there have been 11 voluntary prisoner transfers (8 to Netherlands 3 to Belgium) and 5 compulsory prisoner transfers (1, Malta, 3 Netherlands and 1 Latvia) to EU Member States.

transferred due to transfer of existing EU FNOs and Polish nationals respectively. Thereafter the UK would return to transferring new receptions.

The total discounted benefits over the 10-year appraisal period (2015 – 2024) would range between £70m and £250m, with a main estimate of £160m.

## Non-Monetised

The PTFD is designed to promote the rehabilitation of prisoners in custody in MSs other than their country of origin, to allow them to complete their sentences where they may be more likely to benefit from closer proximity of family and friends<sup>11</sup>. This may also improve rehabilitation chances of BNOs after their release from custody in the UK which could result in positive long term impacts on the UK through the economic and social contributions of these rehabilitated BNOs. Relatives of returning BNOs (who would otherwise be continued to be imprisoned abroad) would also benefit from being closer to their relatives in the UK<sup>12</sup>.

## COSTS OF PROPOSAL

### Monetised

The proposal would lead to financial costs in three areas: i) cost of *FNOs appealing against transfer*; ii) cost of *prison places occupied by returning BNOs*, and iii) *administrative costs* of transferring prisoners. The estimation of these impacts is discussed below.

#### FNO Deportation Appeals

No additional appeal against deportation costs have been included in the model because it is assumed that that the same proportions of prisoners who appeal and are successful *at the end of their sentence* will do so under the PTFD. Analysis assumes that 31% of prisoners choose to appeal and 43% of those who appeal are successful, i.e. 13 % of all prisoners in scope for transfer are successful in their bid to spend their remaining sentence in UK prisons.

However, it is possible that more prisoners would appeal if they were deported during their prison sentence due to resistance to what they may perceive as worse prison conditions, and that they would be more likely to succeed due to the additional grounds for appeal in Article 3: "*freedom from inhuman or degrading treatment or punishment.*" For this reason two sensitivity tests have been included and explained under the appropriate section. Where the sensitivity test varies the volume of eligible prisoners who appeal, the unit cost of an additional appeal is assumed to be £3,000 per case, based on 2010/11 prices (uprated to 2013/14 prices for analytical purposes)<sup>13</sup>.

#### Administrative Costs

Most of the administrative costs would not be additional to HMG because in the absence of the PTFD, UKBA would still have to bear the costs of deporting the prisoner at the end of their sentence.

However, under the PTFD, the burden would be transferred from UKBA, with economies of scale and expertise in deportations, to NOMS which would have to build such expertise. Furthermore, transferring prisoners under the PTFD may require more resources because consent of another MS has to be obtained before transfer can begin, and because the process involves taking responsibility for the

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<sup>11</sup> For those FNOs who have their family currently in UK, they are eligible to apply for an appeal against the transfer on the basis of Article 8 "right to a family life" would place them outside the scope of the transfer.

<sup>12</sup> There may be benefits to BNOs transferred back to the UK, and FNOs transferred out to other MS. However in line with the best practice the IA "rules of standing" exclude costs and benefits on offenders since these are not law abiding citizens. It also restricts the geography of impacts to the UK, which rules out benefits to FNOs and their families.

<sup>13</sup> Source: MoJ Internal Analysis.

physical transfer of the individual who would still be under sentence. These costs are estimated to be around £2,500 per removal (2013/14 prices).<sup>14</sup>

### BNO Prison Costs

The main cost to the CJS of the PTFD would be the cost of housing returning BNOs transferred from custody in other Member States. The volumes eligible to return depend on the following:

- Geography - All MSs are included with the exception of Ireland. This is because there is a bilateral agreement between the UK and Ireland that the PTFD will not be used to compulsorily transfer prisoners between the two countries. Poland is only considered in the analysis from 2016, at which point its derogation from the compulsory transfer elements of the PTFD ends.
- Scope of prisoners - It has been assumed that all other MSs return all eligible prisoners sentenced to 2 years and above, and that prisoners serve the entire length of their sentence in custody. The model builds in the unavoidable delay involved in transferring a prisoner by excluding from the costs calculation the first 12 months of the returning prisoner's sentence. All MSs are assumed to have the capability to either initiate or effect the deportation of the full number of prisoners eligible immediately following implementation.
- Volumes of BNOs in EU - Volumes have been estimated from annual snapshots of the number of British nationals in other MSs' prisons. The proportion of the stock of BNOs in EU prisons that is eligible for transfer to the UK has been estimated from the snapshots using the number of BNOs sentenced for 2 years or more and the total number of BNOs in France, Spain, Italy, Germany and the Netherlands. These countries jointly account for more than 70% of all the BNOs in EU prisons. The analysis accounts for the robustness of this volume assumption through sensitivity tests.
- Growth - One of the main drivers behind volumes used in the analysis is the growth assumptions. Since a complete analysis of changes in immigration and sentence lengths across the EU is beyond the scope of this IA, it has been assumed that volumes will change at the same rate as the rate of change of EU FNOs. This assumption is subjected to sensitivity tests.
- Appeals - The value of the total cost of rejoining the PTFD depends on the volume of BNOs successfully brought back to the UK. There is no data on the likely rate of appeals among BNOs. Therefore the analysis has mirrored the assumptions made for EU FNOs (i.e. 31% of BNOs appeal against their transfer; 43% of these are successful) and then considered alternative scenarios through sensitivity tests.
- Cost of BNO place - the cost of housing a returning BNO is assumed to be the same as that for European offenders at £28,000 per place (2011/12 prices, uprated to 2013/14 prices).

Rejoining the PTFD from 1 December 2014 would initially result in MSs being able to transfer their existing BNOs in 2015. Thereafter, the UK would receive annual receptions.

The total discounted costs over the 10-year appraisal (2015 – 2024) would range between £30m and £80m, with a main estimate of £60m.

### **Non-Monetised**

There are no non-monetised costs.

### **NET IMPACT**

The net impact of the PTFD over the appraisal period would range between £20m and £170m, with a main estimate of £110m. The overall impact of full implementation of the PTFD is therefore likely to be positive because the benefits of being able to send prisoners back to their home country without their consent would outweigh the combined costs incurred a) from deportation and appeals, and b) from receiving and imprisoning BNOs.

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<sup>14</sup> This is based on the NOMS estimation of the average cost of removal of the actual 9 Prisoner transfers to EU MSs that took place as of January 2014.

## APPRAISAL ASSUMPTIONS

The analysis relies on the following appraisal assumptions :

- *Geography* - impacts that fall on UK residents and nationals. This means focusing on assessing the impact of the proposals on those in England, Wales, Scotland and Northern Ireland (including EU nationals within those borders) and UK nationals in EU MSs who may be affected.
- *Horizon* - Impacts that fall on both present and future generations. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
- All figures are expressed in 2013/14 prices and the GDP deflator<sup>15</sup> has been used for any price adjustments. The real discount rate is 3.5%.

## SENSITIVITY TESTS

The central assumptions have been tested under various sensitivity case scenarios to account for uncertainty in the overall net present value of the PTFD. **Table 1** below sets out the broad results of the sensitivity tests. Under each scenario only one assumption is varied with respect to the central case.

Scenarios	Costs	Benefits	Net
Main Case	60	160	110
Sensitivity 1: No growth in volumes beyond 2017	50	150	100
Sensitivity 2: High Growth rate	80	250	170
Sensitivity 3: Low BNO Volumes	30	160	140
Sensitivity 4: High appeal and success rate for all MSs	50	110	70
Sensitivity 5: High appeal and success rate in UK only	60	110	60
Sensitivity 6: Delayed implementation by newer MSs	50	70	20
Sensitivity 7: Decrease in the procedural duration	60	190	130
	Number of Prisoners Transferred		
	BNOs	FNOs	Net
Main Case	900	4400	3500
Sensitivity 1: No growth in volumes beyond 2016	900	4000	3100
Sensitivity 2: High Growth rate	1200	6400	4200
Sensitivity 3: Low BNO Volumes	800	4400	3600

<sup>15</sup> HMT, GDP deflator, [http://hm-treasury.gov.uk/data\\_gdp\\_index.htm](http://hm-treasury.gov.uk/data_gdp_index.htm)

<sup>16</sup> All the monetary values are rounded to the nearest ten million and the prison numbers are rounded to the nearest hundred; hence may not perfectly add.

Sensitivity 4: High appeal and success rate for all MSs	700	3000	2300
Sensitivity 5: High appeal and success rate in UK only	900	3000	2100
Sensitivity 6: Delayed implementation by newer MSs	900	3700	2800
Sensitivity 7: Decrease in the procedural duration	900	4400	3300

## 1. Growth Tests

Since the growth assumption is a very important driver behind the volumes of expected removals, this has been tested using both a high and a low case scenario:

- **Sensitivity 1: No growth in volumes beyond 2017.** The growth rate of the foreign population of prisoners in the UK is set to zero after the date when the accumulated nationals of the various MS are removed. This provides the most conservative estimate of the impact of the PTFD.
- **Sensitivity 2: High growth.** This scenario assumes that growth for the next 10 years will increase at the rate of 10% a year. This method represents an upper bound estimate because growth rates are exponential (they are compounded each year<sup>17</sup>) and because we would expect MSs that have only recently joined the EU to achieve a steady state in their migration patterns at some point in the future.
- **Sensitivity 3: Low BNO volumes.** This explores the possibility of BNO volumes being lower than expected. This aims to reflect the possibility that other MSs might not be interested in removing all their eligible FNOs or that BNOs might appeal successfully against transfer to UK prisons.<sup>18</sup> The assumption for this sensitivity test is that other MSs will remove half of their eligible FNOs back to the UK.

## 2. Appeals Tests

As described above, the appeals rate used in the main case of the analysis is based on the experience of deporting prisoners at the end of their sentences. This is because so far too few prisoner transfers have taken place under the PTFD to form a basis from which to estimate the number of appeals against transfer. The real resistance to the measure and the success rate of appeals are thus not yet known.

Based on this data, 31% of prisoners have been assumed to appeal, 43% of whom are assumed to be successful (i.e. 13% of prisoners are successful in averting their removal through an appeal). However, it is possible that there would be stronger opposition to transfer during the prison sentence than is implied by the data and that grounds for appeal would be found under Article 3: "*freedom from inhuman or degrading treatment or punishment.*" Because of the uncertainty around the success of deporting appealing prisoners, we have tested two scenarios that vary the rate at which prisoners successfully appeal:

- Sensitivity 4: High appeal and success rate for all MSs** – This scenario assumes that resistance to the PTFD is strong: 80% of prisoners appeal and the courts find in favour of 50% of those prisoners. The same assumption is applied to BNOs in other Member States.<sup>19</sup>
- Sensitivity 5: High appeal and success rate in UK only** – This scenario makes the same assumptions, varying the rate at which prisoners appeal to 80% and the success rate to 50%, but only for the UK. For BNOs in other MSs it is assumed that only 31% of prisoners would resist being transported back to the UK, and 43% of those are successful. This scenario is conservative to create a lower bound estimate of savings.

<sup>17</sup> This implies that we would expect growth rates to be higher when volumes are smaller (i.e. when a MS first joins) because if there was only one prisoner from a particular MS, a second would represent an increase in volume of 100%

<sup>18</sup> NOMS have suggested this might be the case for the majority of Member States.

<sup>19</sup> These appeal rates were used in a recent Home Office paper.

## Implementation and Operational Test

The savings that could be achieved under the PTFD are dependant on MSs being in a position to accept their prisoners back by 2015. However, there is a risk that newly implementing MSs may be overwhelmed by the agreement and unable to meet their legal obligations. A sensitivity test has been undertaken to examine the implications of this possibility (at the limit).

- a. *Sensitivity 6: Delayed implementation by newer MSs<sup>20</sup>* - In this scenario, newer MSs are able to accept their nationals back a year after what has been assumed in the base case. This test aims to highlight the cost and volume effects of delays in the system. The scenario accounts for the reduction in the benefits if there is a delay in implementation by the newer Member States. Though in principle these countries would also experience a delay in implementing BNO transfers to the UK, the analysis assumes a conservative approach by assuming that BNOs are transferred to UK without delay, but that FNOs from these MSs are transferred from the UK with a delay.
- b. *Sensitivity 7: Decrease in the procedural duration of the transfer* - In this scenario, there is a steady reduction in the time it takes to carry out a prisoner's transfer to their home country. This is based on the assumption that with time, due to gradual operational capacity building, MSs will establish an efficient system that will make it easier to carry out the transfer. Each prisoner will thus spend less time on remand. This test aims to highlight the cost and volume effects of delays in the operational system.

## 7. WIDER IMPACTS

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics. We do not believe any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

Of those FNOs who are eligible, the PTFD in general does not have a differential impact on any particular group. It applies equally to all determinate sentence FNOs who are liable to removal from the UK. There is very limited scope within the policy for local MOJ discretion in the way it is implemented. There is a presumption that eligible prisoners will be removed under the scheme in as many cases as possible. Prison Governors must approve removal under PTFD unless the offender is subject to any of the (limited) reasons to refuse, as set out in the Prison Service Instruction 04/2013 (e.g. where there are outstanding criminal charges or a confiscation order).

It is important to bear in mind that any issues around whether an offender can or should be removed from the UK – including those who exercise their appeal rights or where there are human rights issues raised by the removal (e.g. impact on dependent children) – are matters taken into account by HOIE in making their removal decision.

### Adjustment for disabled people

There is no evidence to suggest that the proposal will have any adverse impact on disabled FNOs. The legislation applies to all determinate sentence FNOs who have been identified as liable to removal from the UK by Immigration Enforcement.

## 8. RISKS AND ASSUMPTIONS

The assumptions and associated risks are set out in table below.

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Assumption	Risks
Future base case	The volumes of both EU FNOs in UK and BNOs in MSs are forecast for the

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<sup>20</sup> The MSs identified as new MSs for the purpose of this sensitivity are those countries which have their PTFD implementation date on or later than July'2013. The countries are Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Hungary, Lithuania, Portugal, Romania, Slovenia, Spain and Sweden.



	<p>ten year appraisal period on the basis of historic trends over 2003-2013. However, this forecast could change partly due to an increase in FNOs from MSs (particularly, the new ascension countries) or more countries joining the EU. It is difficult to estimate the impact of any new countries joining the EU which could result in more FNOs or/and BNOs.</p> <p>The analysis relies on historic data of prison reception and aggregated average sentences served to forecast the future FNO and BNO population in UK and EU respectively for the appraisal period. The risk associated with this methodology is that the future FNO population could be influenced by uncontrollable factors like immigration patterns and sentencing policy.</p>
<p>Eligibility of prisoners for transfer</p>	<p>It is assumed that the UK rejoins the PTFD retrospectively. This means it will transfer and receive all prisoners who meet eligibility requirements, regardless of when they were sentenced. The eligibility of prisoners for transfer is based on their sentence length. In the case of EU FNOs in the UK, those sentenced for four years or more are considered to be within scope. In the case of BNOs, due to data limitation and varied sentencing policies, it is assumed that all those who are sentenced for 2 years or more are eligible for transfer.</p> <p>However, changes in sentencing policy in UK could result in a change in the number of FNOs eligible for transfer. Additionally, a one-size-fits-all approach on eligibility of BNOs for transfer across all MSs poses a risk in the eligibility assumption of BNOs. These risks are factored in the analysis through the sensitivity tests: <i>High Growth rate, No growth in volumes beyond 2017; low BNO volumes.</i></p>
<p>Operational Capacity</p>	<p>The analysis assumes that the time it takes to carry out a prisoner's transfer is 1 year, during which the prisoner is held in custody. This is due to the operational processes involved in effecting a transfer and its associated delay.</p> <p>However, there is a risk that some MSs would not have at hand the operational capacity for both accepting and removing prisoners. This would result in reduced associated prison cost savings. This risk is factored in the sensitivity test of <i>Delayed implementation by newer MSs</i> where it is assumed that newer MSs are able to accept their nationals back a year after what has been assumed in the base case.</p>
<p>Appeals</p>	<p>No additional appeal costs have been included in the model because it is assumed that the same proportion of prisoners successfully appeal if they are deported at the end of their sentence as those who may be transferred under the PTFD. Analysis assumes that 31% of prisoners choose to appeal and 43% of those who appeal are successful, i.e. 13 % of prisoners of all are successful in averting removal. Due to lack of data, the analysis applies the same appeal rates for the BNOs</p> <p>However, it is possible that more prisoners would appeal if they were deported during their prison sentence due to resistance to what they perceive as worse prison conditions, and that they would be more likely to succeed due to the additional grounds for appeal in Article 3: "<i>freedom from inhuman or degrading treatment or punishment.</i>" For this reason two sensitivity tests have been included.</p>
<p>Costs</p>	<p>The analysis assumes that the average cost of a prison place for one year is assumed to be £28,000. However, this could change over the appraisal period as the cost of additional prison places is also dependent on the existing prison population. If there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low as only the low variable costs will have to be incurred and not the large fixed costs. Conversely, if the current prison population is running at or over capacity then marginal costs may be significantly higher as</p>

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contingency measures will have to be found for which larger fixed costs would also have to be incurred.

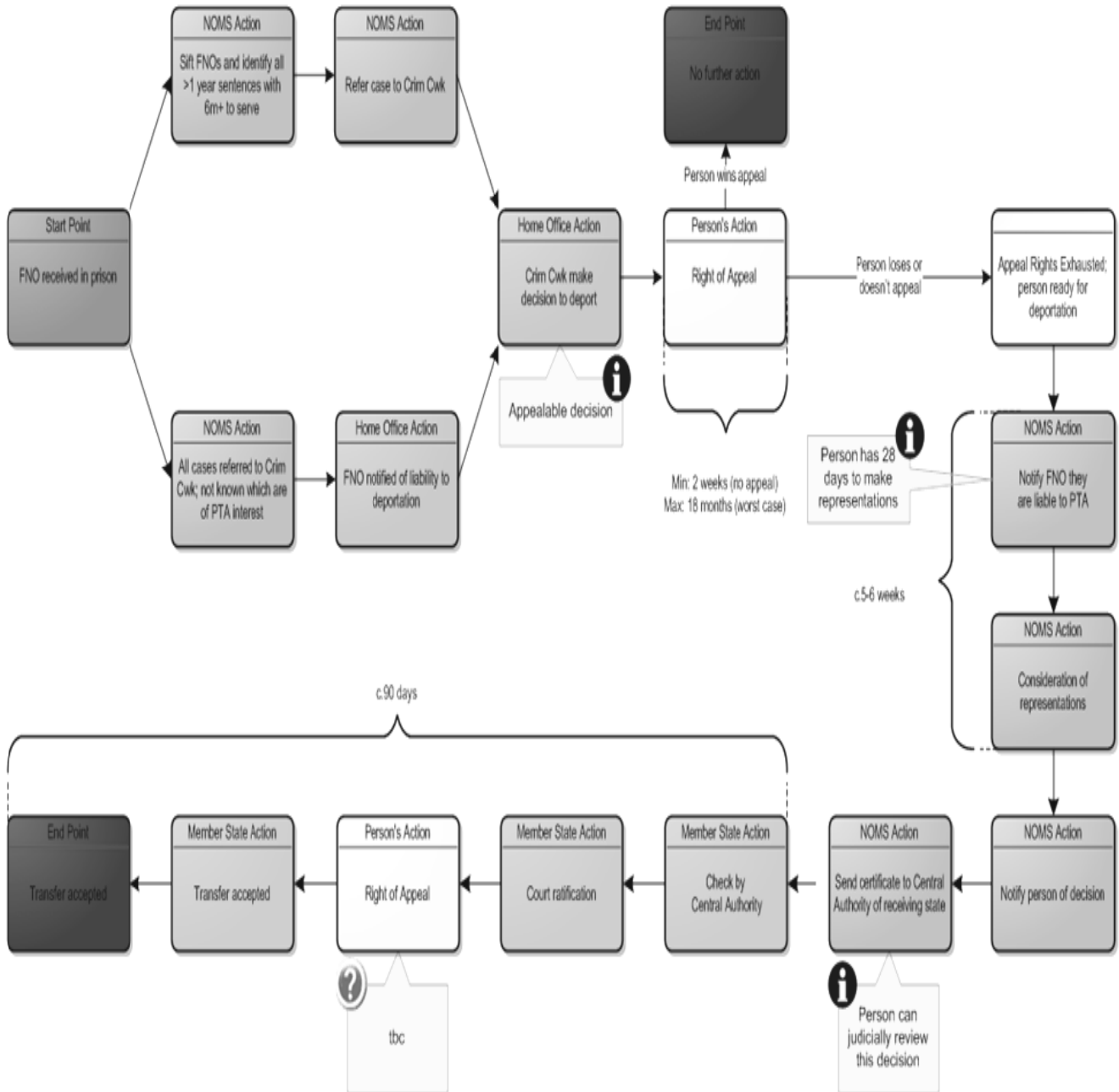
The analysis assumes that the average cost of transferring a prisoner to a MS, which includes the cost of escorting and expenses incurred by the staff escort, is £2,500 per prisoner. This is based on the 9 transfers to date which HM Prison Service has carried out to Member States. However, any changes in the costs associated with the transfer would pose risks to the accuracy of estimates.

The cost of additional appeals on the basis of Article 3: *“freedom from inhuman or degrading treatment or punishment”* is assumed to be the same as the cost of appeal (£3,000) on the basis of the existing appeal cases, i.e. on the basis of Article 8: *“right to family life”*. The cost of appealing on the basis of the additional grounds for appeal could be different to that assumed which also poses a risk to the accuracy of estimates of the impacts.

The risks associated with these costs assumptions are low as any changes to these costs on average are expected to be minimal over the appraisal period.

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## EEA Prisoner Transfer Agreement – Current Process



<b>Title:</b> Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention – The European Supervision Order (ESO) <b>IA No:</b> MOJ 179  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Home Office	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 24/06/2014
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> EU
	<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£35m	£0m	£0m	No Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**  
Under current arrangements there is no mechanism in place that enables those accused in a Member State (MS) where they are not normally resident to have their supervised bail conditions transferred to the MS in which they normally reside. As such, local criminal justice systems often do not grant those accused supervised bail conditions even though they might normally be eligible if they were a national of that MS as the individual cannot be supervised if allowed to return home since there is no legal machinery to enable that. Consequently, some British residents accused of a crime abroad have been held on remand there or forced to remain there to have their bail conditions supervised, sometimes for long periods of time, rather than being released to go home and continue with their life as normal whilst awaiting trial.

Government intervention is necessary because the European Supervision Order (ESO) is the only mechanism available that transfers responsibility for supervising conditions of bail to the person's home MS. This may enable British residents who would otherwise be held in custody or subject to bail conditions supervised in other EU MSs while awaiting trial to return home. Those eligible for an ESO are suspects, who have not yet been convicted of the alleged crime at the time of issue and could later be found not guilty. If the accused person is able to return home under an ESO they will be able to continue with their normal home life, working or studying pending trial rather than being held on remand or bailed abroad. The Framework Decision (FD) provides this by establishing a legal framework for mutual recognition of court orders (bail decisions) between MSs to enable a person subject to such an order to be released on bail back to their MS of residence (or other MS) and be supervised there, while criminal proceedings are pending in the MS which made the Order.

**What are the policy objectives and the intended effects?**  
The Government's overarching policy aims are to: enable suspects considered suitable to be allowed to return to their home MS pending trial in a different MS, with conditions of their bail supervised in the home State; and to enable accused persons to be able to continue with their normal home life, work or study rather than being held on remand or bailed abroad.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Base Case (Option 0)** - The UK would continue to remain outside the ESO and would not seek to implement the policy. Other MSs are assumed to have fully implemented the ESO by 1 December 2014 given the European Court of Justice will have jurisdiction over this measure from that date.  
**Option 1** - The UK would seek to rejoin the ESO and would fully implement the instrument. This includes putting in place measures to be able to recognise and act upon ESOs made by other MSs, and to begin ordering ESOs for suspects from other EU Member States.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?	N/A
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

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

Signed by the responsible Minister:

..... *Shailesh Vara MP* ..... Date: 24 June 2014 .....

## Summary: Analysis & Evidence

Policy Option 1

Description: Rejoin the European Supervision Order (ESO)

### FULL ECONOMIC ASSESSMENT

Price Base Year 2013/14	PV Base Year 2013/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 7	High: 154	Best Estimate: 35

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				1
High				5
Best Estimate	2		1	2

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

Implementing the Framework Decision (FD) that establishes the ESO regime would mean that UK-based suspects arrested in another MS would be able, upon application by the suspect and consent of the court, to return to the UK to be supervised on bail. This would lead to costs for the UK, relative to the situation where the UK would have remained opted out and avoided these costs (as the suspect would then be retained in the prosecuting jurisdiction). The costs would be in the form of criminal justice costs associated with supervising the order; and administrative costs as the UK would need to put in place administrative processes to process the applications for cases originating in another MS for supervision in the UK.

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

No non-monetised costs have been identified.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				8
High				154
Best Estimate	44		4	37

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

Implementing the FD that establishes the ESO regime would mean that suspects from EU MSs, in the UK, would be able to return to their home MSs to await trial on bail once the ESO is implemented in other MSs. Currently some of these suspects remain in custody prior to their trial and thus the UK would benefit from potential CJS savings if it could utilise the ESO in a number of these cases. There could be approximately 80 prison places saved annually. There is also a potential supervision cost saving for those suspects who would have served their bail in the UK, but could serve it in their home MS instead. Additionally, the ESO could lead to individuals being able to engage in productive activities in their home society, instead of being kept in detention in another MS while awaiting trial, which could lead to wider benefits to the economy.

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

As rejoining the ESO would facilitate the return of suspects waiting for trial returning to their home country (both in UK and other MSs), it promotes social benefits such as reunion with family and continuation of normal home life, work or study rather than being held on remand or bailed abroad. Thus, the ESO offers a potential positive effect on the civil liberties and rights of the accused.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
The assessment is sensitive to assumptions on volume of suspects in UK and other MSs who may be eligible and apply for supervision orders; unit cost assumptions on prison costs, bail costs, absconding costs, opportunity cost of imprisonment and administrative costs. It is also subject to general appraisal assumptions e.g. appraisal horizon, price base. There is also policy uncertainty about the level of implementation of the ESO in other MSs. There is no operative experience to guide the assessments.		

### BUSINESS ASSESSMENT (Option 18)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	Zero Net Cost

## 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising the block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention – the European Supervision Order (ESO). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that European Commission enforcement powers, which ultimately include the power to seek fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The IA aims to identify, as far as possible, the impacts of the proposals on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.

In addressing these questions, the IA has focussed mainly on key monetised and non-monetised impacts, with the aim of understanding what the net impact to society might be from rejoining the ESO FD from 1 December 2014 (the cost benefit analysis underpinning this impact assessment assumes a start of 1 January 2015 for ease of analysis).

## 2. POLICY PROPOSAL

The UK has opted out of all the measures within the scope of the EU 2014 decision. This means that unless the UK rejoins, from 1 December 2014 the UK would not be able to participate in the ESO. It would thus not be able to transfer suspects to different MSs for supervision of bail pending trial nor could it supervise the bail conditions of any UK resident seeking to return to the UK pending trial in a different MS.

The policy proposal is for the UK to seek to rejoin the ESO which is also the active option available to the UK. This analysis assumes that the UK (England & Wales, Scotland and Northern Ireland) would fully implement the ESO to allow persons to be released on bail to return to their home MS and be supervised there, while criminal proceedings are pending in the UK, and also receive UK residents from EU MSs for supervision while awaiting trial there.

## 3. AFFECTED GROUPS

The policy proposal covered in this IA affects all of the UK, with particular impacts on the following groups:

- **Suspects of crime charged in the UK but usually resident in a different Member State.** These may benefit from being able to serve their bail in their home MS if the ESO is implemented;
- **Suspects of crime usually resident in the UK but charged with a crime in a different Member State.** These may benefit from being able to serve their bail in the UK, if the ESO is implemented;
- The UK **criminal justice system** as the primary avenue for dealing with suspects. This includes courts; prison services; police; bail services; legal aid; and prosecution and defence services. The

ESO regime would be a new option for dealing with suspects awaiting trial and would therefore engage all groups currently involved in managing such suspects.

#### 4. RATIONALE FOR INTERVENTION

Currently suspects of a crime committed in a EU MS other than their "home" MS who are not considered suitable for unconditional bail have to remain in custody or under supervised bail in the MS where the trial will be held while awaiting trial. Thus, currently in some EU MSs, UK residents may be held in custody or under supervised bail conditions in a country in which they are not usually resident, for sometimes long periods before trial.

The ESO provides an alternative for courts when they are considering the pre-trial arrangements for certain suspects. The ESO measure provides a legal framework to enable the transfer of a suspect of a crime committed in a EU MS other than their "home" MS to return home under supervised bail whilst they await trial, rather than having to remain for that time in custody or under supervised bail in the MS where the trial will be held.

Implementing the ESO could potentially reduce the UK prison population and the consequent costs (by removing those currently held here who, under the terms of the ESO, could be sent home under appropriate supervision to await trial in the UK).

Due to the reciprocal arrangements set out in the ESO, implementation could also lead to a number of British residents being returned to the UK to be supervised on bail here. Although this would mean additional costs to the UK stemming from any new monitoring of returned suspects, it also offers prospects for the accused person to continue with their normal home life, work or study rather than being held on remand or bailed abroad. It therefore offers a positive effect on the civil liberties and rights of the accused.

There are two critical elements to the ESO framework as currently envisaged:

- **Suspects in the UK from other MS** would be expected to request during their bail hearing to return to their "home" MS whilst awaiting trial.
- **UK suspects in other MS** would have the same opportunities to apply for ESO (so would apply to the court where they are being prosecuted for an ESO to return to the UK) and a similar process would apply. Following return to the UK, until the suspect returns to the other MS for trial, the suspect would remain in the UK and the UK authorities would be required to monitor the bail arrangements deemed necessary by the issuing MS. In the event that that the suspect breaches the terms of the ESO (i.e. fails to meet a bail condition), the executing MS (the UK in this scenario) would alert the issuing MS, which would retain jurisdiction and determine the consequences. If the suspect fails to return for trial (or absconds to a different (third) MS) the issuing State would determine whether to issue a European Arrest Warrant (EAW), if that option is available. If so, it would be acted upon as normal. It is possible for MSs to declare, during implementation of the ESO, whether they will require Art 2(1) of the EAW to apply.

#### 5. BASE CASE (OPTION 0)

IA Guidance requires that all options are assessed against a common 'base case'. The base case for this IA is one in which there is no active decision taken to be part of the ESO from 1 December 2014. This would mean that the current problems set out under Section 4 would continue to persist with on-going impacts on the UK.

In particular it would mean that the UK would remain unable to transfer EU suspects to other jurisdictions on bail and the UK would be expected to continue bearing the cost of the remand or supervision of non-UK resident suspects awaiting trial in the UK.

By non-implementation, UK residents would not have the option to be returned home under an ESO to await trial and thus the UK would avoid any additional cost for administrative arrangements in place to



recognise the supervision orders issued by other MSs. As the base case compares against itself, the net present value is zero<sup>1</sup>.

## 6. IMPACT OF PROPOSAL (OPTION 1)

This section sets out the benefits and costs of the policy proposal, as compared against the base case (“do nothing”) set out under Section 4. It also explains the associated assumptions and risks.

### COSTS OF PROPOSAL

#### Monetised

The proposal would lead to financial costs incurred by the UK criminal justice system (CJS), including administrative costs. The estimation of these impacts is discussed below.

Costs to the UK CJS would stem from the need to supervise bail conditions for UK residents who use the ESO to return to the UK from other EU MS. The CJS costing has focused on estimating the costs per applicant to the UK and the overall volumes.

For returning UK residents on bail, the additional cost per applicant to the UK would depend on the following:

- *Costs of monitoring suspects on bail in the UK*<sup>2</sup>. The costs of monitoring someone on electronic tag are based on the report ‘The Electronic Monitoring of Adult Offenders’<sup>3</sup>.
- *Costs of absconding*<sup>4</sup>: In addition to the costs of monitoring UK-based suspects on bail, the CJS would also have to bear the additional costs of dealing with suspects who fail to adhere to the conditions of bail. It has been assumed that the main cost would be from extradition hearings.
- *Cost of European Arrest Warrant Execution*. The ESO framework allows a European Arrest Warrant (EAW) to be used, where applicable, to return a person to a MS to stand trial who otherwise refuses to do so. Thus, if a UK resident on bail under the ESO from another MS absconds, there can be an EAW issued to the UK by the respective MS and vice versa. If the number of EAWs changes following implementation of the ESO there is potential for increased costs. However, any such costs are not quantified in this IA as they are addressed in the Home Office analysis undertaken as part of the EAW Framework decision.

The total cost depends on the volume of UK residents who would be arrested abroad and seek to utilise the ESO process. This has been estimated based on the following:

- *Current volume of British residents held on remand in other countries*: Due to the lack of robust data on the number of British residents held on remand in Europe, the analysis uses data on those held in prison instead and estimates the number on remand by applying the proportion estimated from the 2009 study ‘Pre-trial Detention in the European Union.’<sup>5</sup>
- *Current volume of UK suspects who may be eligible to apply for ESO*: Since there is no reliable data on how many UK residents are currently held in EU MSs who would be eligible for a return under the

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<sup>1</sup> However, it should be noted that certain drivers / factors are likely to change over time and may amplify the profile of impacts within the base case over time relative to the current year.

<sup>2</sup> The analysis assumes that 4.5% of the returning ESO suspects to UK will be electronically tagged. This is based on the data on those who were electronically tagged and bailed in UK during the period January-December 2011. Source: MoJ Internal Analysis.

<sup>3</sup> National Audit Office, *The Electronic Monitoring of Adult Offenders*, February 2006

<sup>4</sup> The analysis assumes that 7.95% of the returning ESO suspects to UK will abscond. This is based on the data on those who fail to attend the court after being remanded on bail in UK. Source: MoJ Internal Analysis and <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/court-proceedings-1211.xls>

<sup>5</sup> *Pre-trial Detention in the European Union*, 2009, edited by Anton van Kalmthout, Marije Knapen and Christine Morgenstern, which defines pre-trial as being before final sentence and relies on data from the ‘Council of Europe Annual Penal Statistics, 2008.’

ESO FD, the analysis relies on the eligibility for return via the ESO of EU residents suspects in the UK, which is 80% of EU residents held on remand.<sup>6</sup>

- *Current volume of MS suspects who exercise the right to apply.* Estimation has been made of the proportion of British residents abroad who intend to stay for less than a year, in order to estimate what proportion of British residents in prison abroad would wish to apply for an ESO. UK 'Travel Trends'<sup>7</sup> is used and compared to an estimate of the number of Britons living in the EU, taken from a report by IPPR in 2006<sup>8</sup>. The figures have been adjusted to match the *Travel Trends* data by using *International Passenger Survey* estimates of increases in British emigration.<sup>9</sup> This shows that the proportion - 46% - was much higher than that for Europeans living in the UK. This could be because UK citizens have either a higher rate of holidaying in the EU or a lower rate of permanently relocating abroad.
- *Number of returning UK suspects supervised on bail.* Not all suspects would be monitored by tagging. Data on the UK offender population monitored using an electronic tag<sup>10</sup> has been used to estimate how many returning British suspects would be tagged.<sup>11</sup>
- *Further adjustments have been undertaken to account for those absconding.* It has been assumed that 8% of suspects would abscond.<sup>12</sup>

Implementation will involve setting up an administration process for undertaking ESOs, which may require its own dedicated body. Based on the set-up and running costs for the ACRO-UKCA Exchange of Criminal Records, an additional 20 cases per year suggests two dedicated members of staff would need to be appointed. Together with related infrastructure, costs for this have been estimated at a rounded cost of £1m over the 10 year appraisal period.

## **Non-Monetised**

No non-monetised costs have been identified.

## **BENEFITS OF PROPOSAL**

### **Monetised**

The ESO could lead to benefits in the form of criminal justice system (CJS) savings and economic benefits of avoiding inefficient imprisonment of individuals who could otherwise contribute to the economy.

#### **CJS Savings**

Full implementation of the ESO is likely to lead to financial savings for the CJS through a reduction in the volume of foreign residents suspects from other MSs on supervised bail or held on remand in custody in the UK. The CJS savings analysis has focused on estimating the savings that may occur with respect to those held on remand, due to a lack of data from which to estimate savings which may occur with respect to those given bail. For MS suspects under detention, the current costs per 'eligible' individual

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<sup>6</sup> SEC(2006)1079, Commission Staff working Document, Accompanying document to the proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union {COM(2006) 468 final} IMPACT ASSESSMENT.

<sup>7</sup> *Travel Trends*, Office of National Statistics, 2009.

<sup>8</sup> IPPR, *Brits aboard: mapping the scale and nature of British emigration*, D. Skiskandarajah and C Drew, 2006.

<sup>9</sup> ONS, *International Passenger Survey (IPS) estimates of long-term international migration, rolling annual data to Q1 2011*.

<sup>10</sup> MoJ statistics.

<sup>11</sup> Currently Scotland doesn't have the electronic tagging as a measure of supervising suspects on bail. Hence the electronic tagging for the UK suspects on bail will only be applicable to those in England and Wales and Northern Ireland.

<sup>12</sup> Based on criminal justice statistics from 2011, the proportion of defendants that abscond is 7.95%. <http://www.justice.gov.uk/downloads/statistics/criminal-justice-stats/court-proceedings-1211.xls>

have been assessed based on the annual prison place cost of £28,000 (2011/12 prices)<sup>13</sup>. This is based on the general prison population. The cost per prison place has been updated to 2013/14 prices using the GDP deflator and is £30,000 annually.

The assessment of the CJS savings from detention depends on the volume of suspects from MSs that would be eligible to successfully apply for the ESO. This has been estimated based on the following:

- *Current volume of suspects from other MSs in detention in the UK*<sup>14</sup>: Published statistics show there were approximately 590 detention places occupied by European suspects held on remand over each of the last five years.
- *Current volume of MS suspects who are eligible to apply for ESO*: Not all European suspects held on remand in the UK would be eligible for bail. To estimate the number of those who would be eligible, data from the Commission's ESO IA on the proportion of suspects held in remand abroad that could be eligible for an ESO<sup>15</sup> has been considered. This suggests that 80% of all those detained on suspicion of all but the most serious crimes (rape, murder and robbery) would be eligible. This equates to approximately 470 detention places occupied on average annually over the last five years.
- *Current volume of MS suspects who exercise the right to apply*: Not all eligible EU nationals would actually apply for the ESO in practice for any number of reasons. An estimate has been made of the number of suspects held on remand who are not permanent residents and therefore assumed more likely to travel back to their resident country on an ESO. This has been based on *Travel Trends*<sup>16</sup> data (those visiting the UK for one year or less). This has been compared to data on the number of Europeans living in the UK from the Labour Force Survey<sup>17</sup>. It is assumed that 17% of Europeans in the UK intend to stay here for less than one year. Assuming this is representative of the eligible detained ESO population, this translates into approximately 80 detention places per year.
- *Projection of MS suspects going forward*: The volumes are assumed to remain steady going forward based on an even trend. This is because there was a steep increase in the volume of EU prisoners held on remand in the first year of the data period considered for the analysis, but this trend flattened out for the remaining years. Furthermore, the number of EU prisoners as a total of all prisoners held on remand has remained steady.

Taking the 80 detention places and holding them fixed over the next 10 years suggests that the implementation of the ESO would save the UK government £2m annually or £20m over the next 10 years.

### Reduced Imprisonment

ESO would lead to avoidance of the costs of inefficient imprisonment. This would be the case for individuals who, if in their own countries could be engaged in productive activities in their home society. The imprisonment under these circumstances currently represents an opportunity cost to the home MS which would be avoided by the ESO.

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<sup>13</sup> The cost of additional prison places is also dependent on the existing prison population. If there is spare capacity in terms of prison places then the marginal cost of accommodating more offenders will be low as only the low variable costs will have to be incurred and not the large fixed costs. Conversely, if the current prison population is running at or over capacity then marginal costs may be significantly higher as contingency measures will have to be found for which larger fixed costs would also have to be incurred.

<sup>14</sup> The volume of 592 detention places includes suspects in England & Wales only. In principle the ESO FD is applicable to the whole of the UK, i.e. including Northern Ireland and Scotland. However, as the current number of suspects awaiting trial from EU MSs in Scotland and Northern Ireland are very few in comparison to that of England & Wales (E&W), the additional benefit for Scotland and Northern Ireland by rejoining the ESO provision will form only a negligible share of the total additional benefit for the UK as a whole. Thus, the estimates reflect the benefit implications for England & Wales only.

<sup>15</sup> SEC(2006)1079, Commission Staff working Document, Accompanying document to the proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union {COM(2006) 468 final} IMPACT ASSESSMENT.

<sup>16</sup> Travel Trends, Office of National Statistics, 2009.

<sup>17</sup> ONS, Population by country of birth and nationality, July 2010 –June 2011.

Estimates take the opportunity cost approach of not being able to work during the period in prison, assumed to be a loss of a salary of £2,300 (2013/14 prices) per month<sup>18</sup>. This is broadly in line with the European Commission Impact Assessment carried out in 2006, which found that average compensation payouts were approximately €2000 per month. Using this method, it is estimated that the opportunity cost is equal to £27,400 a year<sup>19</sup>. The full benefit of avoiding this cost of inefficient imprisonment is estimated at £16m over the next 10 years.

### Other Considerations

The ESO would also apply to those MS suspects from other MS who are not in detention, but are being monitored on bail in the UK whilst awaiting trial. Due to an absence of data it has not been possible to determine the volumes and associated cost savings of implementing the ESO for this cohort.

### **Non-Monetised**

This measure will allow suspects in certain circumstances to return home while awaiting trial abroad instead of being held on remand or under supervised bail there. It offers the prospect of the accused person in those circumstances being able to return home to continue with their normal home life, work or study until such time as they may be proven guilty.

### **NET IMPACT OF PROPOSAL**

The net impact of implementing the ESO over the appraisal period is estimated at £28m under a realistic set of assumptions (the “main case”). The overall impact is subject to a range of assumptions. A range of additional sensitivity tests have been undertaken to account for uncertainty. These are discussed below.

The non-monetised impacts are also broadly positive. The ESO could lead to an increase in cooperation between MSs. The possibility of suspects returning to their home country while awaiting trial (both in UK and other MSs) promotes social benefits such as reunion with family and continuing their normal home life, work or study rather than being held on remand or bailed abroad. Thus, ESO offers potential for a positive effect on the civil liberties and rights of those accused.

### **SENSITIVITY TESTS**

The main case assumptions have been tested under various sensitivity case scenarios to account for uncertainty in the overall net present monetised value of rejoining. **Table 1** sets out the broad sensitivity tests. Under each scenario only one assumption is varied with respect to the main case.

- **Low Applicants**

Assumes a reduced number of eligible applicants from both the EU MSs and the UK applying for ESOs, i.e. around 5% of the 80% eligible. This would equate to 9 net detention places that would be saved by the UK by implementing the ESO.

- **High Applicants**

Assumes that all EU MS's and UK residents eligible for application apply and are granted the ESO, i.e. 100% of the 80% eligible. This would equate to potentially 318 net detention places that would be saved by the UK by implementing the ESO.

- **Low Applicants from UK**

Assumes that low numbers of MS residents eligible for application apply and are granted the ESO, i.e. 5% of the 80% eligible EU MS residents. This would equate to potentially approximately 50 net detention places that would be additionally incurred by the UK by implementing the ESO.

- **High Bail Costs**

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<sup>18</sup> ONS, *2011 Annual Survey of Hours and Earnings*, (SOC 2000), up rated to 13/14 prices using the GDP deflator.

<sup>19</sup> Up rated to 13/14 prices using the GDP deflator.

There is uncertainty regarding the cost of a British suspect returning to the UK to be supervised on bail. The UK would not have control over who is tagged as the measure is determined in the order issuing state. The main case assumes that the proportion on tag would reflect the UK national average of 4.5%. However, it is possible that suspects on an ESO may be perceived to be at higher risk of absconding so may be more likely to attract a tag. The analysis tests for this by assuming a maximum potential cost to the UK of monitoring by assuming that 100% of returning UK suspects would be monitored on a tag.

<b>Table 1: Sensitivity Tests on Impact of ESO Implementation</b> <b>(All scenarios assessed over the appraisal period, 2015-2025, £m, 2013/14 prices)<sup>20</sup></b>					
<b>Scenarios</b>	<b>Benefits</b>		<b>Costs</b>		<b>Net</b>
	<i>CJS</i>	<i>Wider</i>	<i>Admin</i>	<i>Bail</i>	
Main Case	20	16	1	1	35
Test 1: High Applicants	118	35	1	1	154
Test 2: Low Applicants	6	2	1	0	7
Test 3: Low Applicants in UK	6	16	1	1	20
Test 3: High Bail Costs	20	16	1	4	31

## **RISKS AND ASSUMPTIONS**

### **Standing**

An important consideration for any IA is the relevant scope of the assessment. The scope of this IA includes:

- Impacts that fall on UK residents. This means focusing on assessing the impacts of the proposals on those in UK (including EU residents within UK borders) and UK residents in the EU MSs who may be affected by the proposals.
- Impacts that fall on both present and future generations. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2015, we have appraised the impacts between 2015 and 2024 (10 years).

### **Technical**

The following general assumptions are made:

- Timing – it has been assumed that suspects begin to be transferred both from and to the UK in 2015. It has been assumed that all MSs have implemented the ESO by then.
- Policy appraisal length - 2015-2024
- Real discount rate – 3.5%
- Price base (2013/14) and the GDP deflator<sup>21</sup> has been used for price adjustments.

The unit cost assumptions that underpin the assessment are set out below:

- Absconding - average cost to the CJS of an abscond is estimated at £8,800 (2013/14 prices)
- Cost of electronic tagging per person - £6,200 (2013/14 prices)
- Opportunity cost of being imprisoned per person annually - £27,400 (2013/14 prices)
- Cost of prison place - £30,000 (2013/14 prices)

## **7. WIDER IMPACTS**

<sup>20</sup> Figures are rounded to the nearest million and may not perfectly add.

<sup>21</sup> HMT, GDP deflator, [http://hm-treasury.gov.uk/data\\_gdp\\_index.htm](http://hm-treasury.gov.uk/data_gdp_index.htm)

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics. We do not believe any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

Of those suspects who are eligible, ESO in general does not have a differential impact on any particular group. It applies equally to all EU MS suspects in UK who are awaiting trial in the UK. There is very limited scope within the policy for local MoJ discretion in the way it is implemented. There is a presumption that eligible suspects awaiting trial will be voluntarily transferred to their resident MS under the scheme in as many cases as possible.

It is important to bear in mind that any issues around whether a suspect can or should be transferred from the UK are matters taken into account by the legal system in making their transfer decision.

### **Adjustment for disabled people**

There is no evidence to suggest that the proposal will have any adverse impact on disabled suspects. The legislation applies to all suspects awaiting trial from EU MSs who have been identified eligible to transfer from the UK by the respective judges.

<p><b>Title:</b> Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/514/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (Trials in Absentia FD).</p> <p><b>IA No:</b> MOJ 024/2014</p> <p><b>Lead department or agency:</b> Ministry of Justice</p> <p><b>Other departments or agencies:</b> Home Office</p>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 24/06/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> EU		
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£0	£0	£0	No	Zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

There are several EU instruments which deal with the issue of judgments ‘*in absentia*’ (decisions rendered following a trial at which the person concerned did not appear personally). The EU instruments deal with the recognition of decisions handed down in absentia in different ways. The main objective of the Trials in Absentia Framework Decision (FD) is to align the criteria by amending each of the other measures thereby ensuring commonality of approach to ensure adequate safeguards for the defendant.

Government intervention is necessary to ensure that UK practice on proceedings taking place ‘in absentia’ has certain common elements with the approaches used throughout the EU; thereby facilitating the recognition of any order the UK issues “in absentia” in another Member State.

**What are the policy objectives and the intended effects?**

The Government’s overarching policy objectives are to:

- ensure that defendants’ rights are adequately safeguarded when they are subject to criminal proceedings in their absence, including UK citizens subject to proceedings in other EU Member States;
- ensure that criminals are not able to evade justice by successfully arguing that their convictions were unfair when they were tried in their absence; and to
- prevent courts in other Member States from declining to recognise judgments of UK courts on the basis of the proceedings being unfair where the person was tried in their absence.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

**Base Case (Option 0)** – Do not seek to rejoin this measure.

**Option 1** – Seek to rejoin the Framework Decision, the main active option available to the UK.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> N/A					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister:

Shailesh Vara MP

Date: 24 June 2014



## Summary: Analysis & Evidence

Policy Option 1

Description: Rejoin Trials in Absentia FD

### FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				N/A
High				N/A
Best Estimate	0		0	0

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

None identified.

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

None identified.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				N/A
High				N/A
Best Estimate	0		0	0

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

None identified.

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

None identified.

#### Key assumptions/sensitivities/risks

Discount rate

3.5%

The effect of this Framework Decision (FD) is to make changes to other FDs. As such, if the UK continues to participate in those FDs, it will need to continue to be bound by this one. If we do not, there will be no reason to continue to be bound.

### BUSINESS ASSESSMENT (Option 19)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

## 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 Decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising the block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/514/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial ("Trials in Absentia FD"). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and that European Commission enforcement powers, which ultimately include the power to seek fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.

The IA aims to identify, as far as possible, the impacts of the proposals on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact, accounting for economic and social factors and where possible seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.

The IA has focussed mainly on identifying key monetised and non-monetised impacts, with the aim of understanding what the net social impact to society might be from opting into the Trials in Absentia FD from 1 December 2014. The analysis underpinning this impact assessment assumes a start date of 1 January 2015 for ease of analysis.

There are several EU instruments which deal with the issue of judgments *in absentia* (decisions rendered following a trial at which the person concerned did not appear personally). The EU instruments deal with the recognition of decisions handed down in absentia in different ways. The main objective of the Trials in Absentia FD is to align the criteria and amend each measure to ensure adequate safeguards for the defendant. The Framework Decisions amended by the Trials in Absentia FD are: 2002/584/JHA (European Arrest Warrant); 2005/214/JHA (Mutual Recognition of Financial Penalties); 2006/783/JHA (Mutual Recognition of Confiscation Orders); 2008/909/JHA (Prisoner Transfer) and 2008/947/JHA (Probation). The UK co-sponsored this measure to reflect its full support for a legislative measure which would bring consistency to FDs that already exist and which already contain provisions on trials made in the absence of the accused. The legislative measure addressed problems facing practitioners in the field.

The FD was due to have been implemented by 28 March 2011 and has been partially implemented in the UK. The Home Office have responsibility for two of the Framework Decisions (FD) that are amended by this FD – the European Arrest Warrant and Mutual Recognition of Confiscation Orders. The remaining three are the responsibility of the Ministry of Justice - Mutual Recognition of Financial Penalties, Prisoner Transfers and Probation. Policy responsibility in Scotland and Northern Ireland for each of these measures, except for the European Arrest Warrant, is devolved to the Scottish Government and the Northern Ireland Department of Justice. Implementation of the Prisoner Transfer FD was carried out through UK-wide legislation.

England and Wales have implemented three of the five measures (European Arrest Warrant, Mutual Recognition of Financial Penalties and Prisoner Transfer), but have not implemented the Trials in Absentia provision of the Mutual Recognition of Financial Penalties measure or the Confiscation Orders

FD. Scotland and Northern Ireland are in the same position as England & Wales. The UK has not implemented the Probation FD, which we do not intend to rejoin.

## **2. POLICY PROPOSAL**

The UK has opted out of a range of measures as part of the EU 2014 decision. This means that from 1 December 2014, the UK would not be able to utilise the Trials in Absentia FD which amends the five measures set out above. The policy proposal is for the UK to rejoin the Trials in Absentia FD, the main active option available to the UK. This would mean that the UK would continue to be bound by the Trials in Absentia FD from 1 December 2014 (which will take effect in so far as it amends those measures which the UK is also rejoining).

## **3. AFFECTED GROUPS**

The policy proposal affects all of the UK, with particular impacts on the following groups: defendants and defence counsel; prosecutors; the judiciary.

## **4. RATIONALE FOR INTERVENTION**

The main objective of the Trials in Absentia FD is to align the criteria and amend each measure to ensure adequate safeguards for the defendant and thereby enable mutual recognition and enforcement of decisions between Member States without need of special procedures. If the UK did not participate in the FD, there is a risk that courts in other Member States may refuse to recognise judgments by UK courts where the person was tried in their absence.

The FD ensures that fewer criminals will be able to evade justice by arguing that their conviction was unfair, and by preventing Member States from declining to recognise judgements and judicial decisions flowing from instruments of mutual recognition where a person has been tried in absence. It will facilitate security by improving the administration of justice across borders.

## **5. BASE CASE (OPTION 0)**

IA Guidance requires that all options are assessed against a common 'base case'. The base case for this IA is one in which there is no active decision taken to be part of the Trials in Absentia FD from 1 December 2014. This would mean that the current problems set out under **Section 4** would continue to persist with on-going impacts on the UK.

## **6. IMPACT OF OPTION 1**

The effect of this FD is to make changes to other FDs. As such, if we continue to participate in any of those FDs, we will need to continue to be bound by this one. If we do not, there will be no reason to continue to be bound. All of the costs and benefits therefore pertain to the FDs which have been changed and this IA should be read in conjunction with the IAs accompanying those FDs.

## **7. WIDER IMPACTS**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics. Since the proposed policy implies no change we do not believe any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic.

### **Adjustment for disabled people**

There is no evidence to suggest that the proposal will have any adverse impact on disabled individuals as well.

## **HMRC Impact Assessments**

- Naples II
- Customs Information System

<b>Title:</b> The Convention on mutual assistance and cooperation between customs administrations, known as Naples II <b>IA No:</b> <b>Lead department or agency:</b> HM Revenue & Customs  <b>Other departments or agencies:</b> Home Office Ministry of Justice Border Force	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 23/06/2014				
	<b>Stage:</b> Final				
	<b>Source of intervention:</b> EU				
	<b>Type of measure:</b> EU				
<b>Contact for enquiries:</b> 2014decision@homeoffice.gsi.gov.uk					
<b>Summary: Intervention and Options</b>					<b>RPC Opinion:</b> n/a

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0m	N/A	N/A	No	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Customs related criminal activity is increasingly cross-border and transnational, both within the EU and between the EU and third countries. The creation of the European Union removed most internal customs controls between Member States and created a single European border. To deliver an effective and unified response to threats to this border UK customs officers must have the tools, mechanisms and legal gateways to systematically share information and work more closely with customs services and other law enforcement services with customs responsibilities in other Member States.

**What are the policy objectives and the intended effects?**  
The Government policy objectives are:

- To tackle cross-border trafficking and money laundering
- To prevent the import and export of contraband and goods subject to prohibitions and restrictions
- To contribute towards global safety and security.
- To ensure full tax/duty is paid on imports – including tackling excise duty evasion

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Option 0** – Do not seek to rejoin this measure. Naples II provides the legal base for customs cooperation and mutual assistance between EU customs authorities for the disclosure of information for the purposes of the detection, prevention, investigation and prosecution of customs crime. There are no alternative measures that enable the same exchange of information and administrative assistance as Naples II.  
**Option 1** (preferred) – Seek to rejoin the measure. Non-participation in the Naples II Convention would remove the legal basis for joint investigations and operations with other EU customs authorities. To provide the same degree of comprehensiveness and coherence in these matters the UK would be required to negotiate identical bilateral agreements with each member state. It is preferable that the UK rejoins this measure.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date: Month/Year</b>					
<b>Does implementation go beyond minimum EU requirements?</b>			N/A		
<b>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</b>	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible

..... Nikki Morgan MP ..... Date: 23 June 2014 .....

Description:

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

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
Best Estimate	N/A	N/A	N/A

**Description and scale of key monetised costs by ‘main affected groups’**

There are no monetised costs in this measure.

**Other key non-monetised costs by ‘main affected groups’**

Some UK investigations are initiated by information received under Naples II, but such leads add to the body of information determining how best to deploy resources. Any increase in investigations may have downstream costs on law enforcement agencies and the criminal justice system. UK Customs officials consider that relationships with other customs authorities could suffer if the UK were to opt out of Naples II and seek to enter into other arrangements.

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

**Description and scale of key monetised benefits by ‘main affected groups’**

There are no monetised benefits in this measure.

**Other key non-monetised benefits by ‘main affected groups’**

HMRC estimates that Naples II contributes to approximately 500 seizures per annum. Although we estimate the average monetary value of each seizure to be approximately £250,000 it is not possible to calculate a per annum monetary value as a direct result of Naples II because there are other contributing factors and dependencies. Naples II enables cooperation activates between EU agencies on customs criminal matters, resulting in a range of law enforcement outcomes, and the reduced impacts of crime. Outcomes associated with Naples II interventions include seizures of drugs and other smuggled goods such as firearms and highly-taxed good: and disrupting and dismantling organised crime gangs. In many cases, UK customs offences are linked with customs offences in other Member States and in third countries.

Key assumptions/sensitivities/risks

Discount rate

3.5%

Assuming each seizure prevents approximately 20 minor crimes, and using the Home Office Integrated Offender Management Value for Money Toolkit, we estimate the average monetary value of each seizure to be approximately £250,000.

**BUSINESS ASSESSMENT (Option 20)**

Direct impact on business (Equivalent Annual) £m:			In scope of OITO? No	Measure qualifies as N/A
Costs: N/A	Benefits: N/A	Net: N/A		

# Evidence Base (for summary sheets)

## 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of rejoining the Convention on mutual assistance and cooperation between customs administrations, known as Naples II. The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and Commission enforcement powers, which ultimately include the power to levy fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

The implementation of the EU Single Market in January 1993 removed most internal customs controls, allowing criminals as well as legitimate economic operators to take advantage of free movement of goods. The Naples II Convention updated an earlier Convention with the objective of enabling EU customs services and other law-enforcement services with customs responsibilities to respond to these new circumstances, working together more closely in response to risks arising from the free movement of goods in the Single Market. This customs cooperation spans a wide range of inter-connected activities which cannot be completely disentangled from each other.

Naples II is an important "real-time" information gateway and legal base for cooperation between enforcement agencies dealing with drugs smuggling, serious revenue goods fraud as well as the smuggling of weapons explosives and other devices. The convention provides the legal base for customs cooperation and mutual assistance between EU customs authorities for the disclosure of information for the purposes of the detection, prevention, investigation and prosecution of customs crime. This can take the form of: regular exchanges of information for intelligence gathering and risk analysis; requests for assistance during actions to tackle customs crime; and instances of special assistance, for example, the sharing of information during Joint Customs Operations between the UK and other EU Customs law enforcement authorities in carrying out investigations. It is also the legal base for the provision of the Customs Information System, which is the other customs measure the UK is seeking to rejoin.

Initially, Naples II was used mainly for requests by Member States to others for information to support their existing investigations. Information sharing is still the most common activity. Use of other provisions has slowly risen. Controlled-delivery requests (with associated cross-border surveillance requests) have been very useful. Suspect consignments of drugs or high-tax goods such as tobacco are followed through two or more Member States to their final destination instead of being seized, in order to gather intelligence and arrest the more serious criminals behind the operation.

Use of joint investigation teams under Naples II has also been increasing, and there are many examples of UK officials working successfully – especially with French, German, Dutch and Irish counterparts. Smuggling operations can be multifaceted, with inputs to UK customs law enforcement efforts from round the world, including the EU, and it is not possible to attribute every action that contributes towards results.

The overall impact on society is in terms of reduced crime levels as a result of an important contribution to customs law-enforcement cooperation.

## **2. GROUPS AFFECTED**

The policy proposal covered in this IA affects all of the United Kingdom, with particular impacts on the following groups:

- Customs officials, from HMRC who exchange information with other MS to combat customs crimes, such as smuggling of drugs, weapons and tobacco;
- The Border Force, who carry out a variety of activities using CIS to detect customs crime; and
- The UK **criminal justice systems** as the primary avenue for dealing with suspects. This includes courts, prison services; police; bail services; legal aid; and prosecution and defence services. The Naples II regime could result in more detection, subsequent arrests, prosecution and imprisonment.

## **3. RATIONALE FOR INTERVENTION**

As crime increasingly operates across borders, practical international cooperation is required in order to disrupt criminal activities. Government intervention is necessary in order ensure that there is effective cooperation across borders to tackle and prevent crime. This includes improving communication between the judicial authorities of Member States.

There are no alternative measures that enable the same exchange of information and administrative assistance as Naples II. To provide the same degree of comprehensiveness and coherence in these matters the UK would be required to negotiate identical bilateral agreements with each member state. This is unlikely to happen and the result would be a fractured process that may be expensive to maintain. Gaps in coverage will be exploited by criminals and may result in the loss of prosecutions and the inability to exchange information which may cause reputational damage to the UK.

## **4. OBJECTIVES**

The Government policy objectives are:

- To tackle cross-border trafficking and money laundering
- To prevent the import and export of contraband and goods subject to prohibitions and restrictions
- To contribute towards global safety and security activities
- To ensure full tax/duty is paid on imports – including tackling excise duty evasion

## **5. Base case (Option 0) – Do nothing**

The base case for this IA is one in which no information is exchanged with other MS. This would potentially lead to more crime within the UK as information would not be exchanged to allow for effective customs investigations, detection and subsequent prosecution of criminals who may be involved in e.g. drugs smuggling or firearms smuggling. Any alternative to the Naples II Convention would probably be less comprehensive and less well-understood than Naples II, which has associated groups of officials and handbooks to facilitate the cooperation process.

## **6. OPTION 1: OPT IN**

### **BENEFITS OF JOINING THE NAPLES II CONVENTION**

#### **Monetised Benefits**

There are no monetised benefits to this measure

#### **Non- Monetised Benefits**

The main impact of re-joining the Naples II Convention is that there would be continued exchange of information under the Convention, which is a well-established method of sharing information with the Customs and Border officials of other Member States to tackle serious organised crime. The sharing of



this information leads to an increase in the detection of drugs and other prohibited goods and a reduction in associated crime.

Naples II enables a range of cooperation activities between EU agencies on customs criminal matters. Figures for this exercise reflect inputs from the now defunct UK Border Agency (UKBA), HMRC and UK Border Force. The National Crime Agency (NCA) does not require Naples II to carry out its activities concerning serious customs offences, and no NCA-related figures are included. However, it is possible that some of the EU agencies which cooperate with NCA on serious EU customs offences might regard it as necessary to cover their involvement, so some impact is possible.

Attribution of particular law enforcement outcomes to individual policy interventions is difficult, and officials are continuing to attempt a more accurate assessment. As well as providing a legal base for customs cooperation on smuggling, Naples II also allows Member States to cooperate in cases where serious frauds on matters within EU competence, such as evading customs duty or anti-dumping duty or importing counterfeit or unsafe goods, are escalated to criminal investigations.

It is in the interests of all Member States (as well as the European Commission) that the UK should be able to continue using the range of customs law enforcement cooperation provisions included in the Naples II Convention.

All customs work involves the movement of goods between third countries and/or EU Member States. If agencies with responsibility for tackling smuggling and serious customs fraud can cooperate with each other regularly across the EU, there will be a marked decrease in the activities of smugglers and fraudsters leading to a fall in crime.

A recent example that demonstrates the kind of benefits delivered by cooperation under Naples II is Operation Stoplamp. This originated from intelligence supplied from France and Germany under Naples II.

- Example 1: Operation Stoplamp

*In July 2011 a record haul of cocaine was seized by the UK Border Agency, working with the then Serious Organised Crime Agency (SOCA), now the NCA and the Dutch National Crime Squad. The 1.2 tonne seizure, which had a purity of 90 per cent and is worth up to £300 million, was found hidden inside a £1 million pleasure cruiser at Southampton docks in June. The UK Border Agency worked with SOCA and the Dutch police to track members of the criminal gang responsible. As a result of this joint international investigation under Naples II joint investigation team procedures, six Dutch nationals were arrested and convicted in the Netherlands, resulting in 56 years in prison sentences and the confiscation of assets amounting to £2.5 million. It is the largest quantity of Class A drugs ever seized in the UK, at that point in time. Intelligence received from French colleagues and upon making further enquiries it was clear that a significant amount of cocaine was headed for the UK and was destined to be smuggled via the south east ports. A covert operation was therefore commenced led by UKBA Specialist Teams supported by SOCA and Dutch colleagues employing a range tactics. This covert investigation was only viable under the Naples II framework.*

- Example 2: Operation Almagro

*Another example, of the benefits of using Naples II and its impact on tackling serious organised crime, is Operation Almagro, which took place in 2012. This was a joint operation between French and UK border officials, using Naples II, which uncovered regular smuggling of Class A drugs from France to the UK using microlight aircraft. As a result of this operation, extensive information was exchanged resulting in the seizure of 63kg of meta-amphetamine and 6.2kg of cocaine, with a total value of about £1m. Two British nationals were arrested in France and have been remanded in custody awaiting sentencing in France. Extradition proceedings are about to take place in the UK.*

There is no suitable alternative to using the Naples II Convention, which is regularly used by HM Revenue & Customs and Border Force to share information about drugs smuggling, money laundering and other forms of cross-border crime. Information shared between the UK and customs authorities in other EU Member States regularly results in the seizure of Class A drugs and the seizure of prohibited goods.

Non-participation in the Naples II Convention would remove the legal basis for joint investigations and operations with other EU customs authorities.

In the absence of Naples II it has been assumed that we will lose the seizures attributed to it.

Having liaised with operational teams involved in using information from Naples II we concluded that only a proportion of seizures can be attributed directly to incoming information. Whilst this information plays a key role in providing complementary intelligence,

On this basis we assumed that each seizure corresponds to at least 20 moderate severity crimes such as general assaults, with a nominal monetary value of £250,000, from the Integrated Offender Management Value for Money Toolkit. This is an indicative monetary estimate of the social cost of the drugs and/or weapons entering the UK, and is not the same as the street value of those drugs.

**Deterrence:** As rejoining Naples II should increase information sharing, in the longer term, this may mean individuals are deterred criminal activity related to illegal trafficking of goods. Studies on deterrence suggest its effect is mixed, so it is not possible to calculate the impact of Naples II on the level of deterrence. Any deterrence that does occur could have downstream savings on the Criminal Justice System.

## **COSTS OF JOINING THE NAPLES II CONVENTION**

### **Monetised Costs**

The cost of joining would be zero, given that we have assumed that carrying on with the existing agreement does not have dedicated resources, with staff simply falling back on less valuable inputs to customs law enforcement efforts.

### **Non- Monetised Costs**

There would be downstream costs for other governmental departments as a result of rejoining the Naples II. These can be explained as follows:

**Arrests and Criminal Justice System impacts:** As Naples II provides a significant legal reinforcement to support the fight against criminal activity and various forms of trans-national trafficking, that breaches national and Community customs provisions, rejoining into the provision should increase information sharing that will lead to a deeper insight into criminal problems. The information obtained under the Naples II Convention could result in an increase in arrests and as can be used as evidence in court, this inevitably leads to more convictions, leading to a downstream criminal justice impact. However, we are unable to monetise this as:

- An inability to predict how many additional cases would be brought to light attributable directly to this policy<sup>1</sup>.
- The speed with which cases might be solved in relation to the base case.
- The differing offence types which have different costs to the Criminal Justice System depending on how they flow through it.
- Difficulties in determining how many additional prison places will be required as a result of the increase in arrests and subsequent prosecutions directly attributable to this policy.

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<sup>2</sup> It can take many years for a case to come before the courts and be prosecuted successfully from the point at which an arrest is made for drugs smuggling or other customs crimes. No central records are kept which record the final outcome following an investigation commenced using the Naples II Convention. There has not been a need to record each outcome that results directly from information received under the Naples II Convention and we do not have the necessary computer systems that can record this information. Each individual investigation usually involves other government departments jointly investigating a potential crime usually with colleagues from customs and police authorities of other EU Member States. These other agencies will also rely on information obtained through other sources as well. Thus, pinning the end result of an investigation and subsequent arrest and conviction on any one source of information (from Naples II convention) is therefore difficult.

## 7. NET IMPACT

As a sense check, a case study of a recent significant seizure was considered. Operation Stoplamp was directly attributed to Naples II and resulted in a 1.2 tonne class A drug seizure in 2011. In our best judgement it would not be unreasonable to assume that if this quantity had entered the illicit supply chain instead of being seized, it might well have prompted a wide range of further crimes, including a homicide, serious assault, and over 50 less serious offences. Again, using our best judgement, our assumption of associating a seizure to 20 general assaults (using Home Office figures for monetisation of other crimes) appears reasonable if not conservative.

The activities provided for by the Convention include requests for spontaneous disclosures of information; requests for information, enquiries, surveillance, controlled deliveries (where suspect goods are tracked instead of being seized at the first opportunity); joint operations and joint investigations between competent agencies. These activities inform each other, and combine with activities under other legal bases such as arrangements with third countries and mutual legal assistance. This means that it is very difficult to capture all the activity carried out under Naples II accurately and comprehensively, and to assign outcomes to particular interventions.

Naples II cooperation is a factor in many operations. Differing operational circumstances and ways of recording data mean that attempts to establish a meaningful ratio between the numbers of information exchanges logged, and investigations, prosecutions and seizures are tentative, and the analysis is necessarily based around assumptions which are based to some extent on experts' judgements. However, officials are continuing to examine information available about Naples II with a view to assessing its current and future value more accurately. It has not been possible to remove all possibility of double counting or omissions, because some of the intelligence obtained from the Customs Information System (CIS) may have been used to build up a better case for investigation under Naples II but may not be separately identifiable. The Naples II Convention is the single most important instrument in creating a comprehensive, common framework which permits a range of useful customs cooperation interventions to fight cross border crime.

Withdrawing from Naples II would also include withdrawing from the CIS.  
On balance we judge the benefits of rejoining Naples II outweigh any costs.

## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

<b>Area</b>	<b>Assumption</b>
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	2013/14
<b>Appraisal period</b>	The opt-in decision will be effective from 1st December 2014. All EU2014 IAs use an appraisal period from January 1st 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

## **9. WIDER IMPACT**

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do consider that it is unlikely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## **10. SUMMARY AND RECOMMENDATIONS**

For the reasons set out above the UK would seek to continue cooperation between Member States through opting in to the Convention on mutual assistance and cooperation between customs administrations. UK customs authorities would not be able to exchange information as well as seek and give assistance to live smuggling operations if the UK was not opted-in to this measure. Therefore the preference is to opt in to Naples II.

<b>Title:</b> Council Decision 917/09 JHA (Customs Information System)  <b>IA No:</b> <b>Lead department or agency:</b> HM Revenue & Customs  <b>Other departments or agencies:</b> Home Office Border Force Ministry of Justice	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 23/06/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> EU		
<b>Contact for enquiries:</b>  2014decision@homeoffice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0m	N/A	N/A	No	3N/A

**What is the problem under consideration? Why is government intervention necessary?**  
Customs related criminal activity is increasingly cross-border and transnational, both within the EU and between the EU and third countries. The creation of the European Union removed most internal customs controls between Member States and created a single European border. To deliver an effective and unified response to threats to this border UK customs officers require the tools, mechanisms and legal gateways to systematically share information and work more closely with customs services and other law enforcement services with customs responsibilities in other Member States.

**What are the policy objectives and the intended effects?**  
The Government policy objectives are:

- To tackle cross-border trafficking and money laundering
- To prevent the import and export of contraband and goods subject to prohibitions and restrictions
- To contribute towards global safety and security.
- To ensure full tax/duty is paid on imports – including tackling excise duty evasion

What policy options have been considered, including any alternatives to regulation? Please justify preferred

**Option 0** – Do not seek to rejoin this measure. The CIS is an EU database which aims to strengthen and improve customs law-enforcement cooperation through facilitating the sharing of reports or specific customs checks. If the UK did not rejoin the CIS Decision HMRC would not be able to enter or search for data related to current and completed customs investigations on individuals and businesses to aid their own investigations. There are no suitable alternative systems.

**Option 1** (preferred) – Seek to rejoin the measure. In rejoining the measure HMRC would have access to case data from customs authorities in all Member States. This is a rich source of data that allows analysts and risk experts to identify trends in smuggling techniques, changes to routing and new or resurgent modus operandi. Without this information HMRC’s risk identification and targeting activities will be hampered. It should be noted that CIS is conditional upon rejoining Naples II

<b>Will the policy be reviewed?</b> It will not reviewed. <b>If applicable, set review date:</b> N/A					
<b>Does implementation go beyond minimum EU requirements?</b>			N/A		
<b>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</b>	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Nikki Morgan MP Date: 34 June 2014

Description:

**FULL ECONOMIC ASSESSMENT**

Price Base Year 13/14	PV Base Year 2015	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

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

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

There are no monetised costs associated with this measure.

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

The increase in the detection of criminal activity and other forms of trans-national trafficking that breaches national and Community customs provisions may result in subsequent detections and arrests. This could result in an additional burden to the UK Criminal Justice System.

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

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

There are no monetised benefits associated with this measure.

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

HMRC estimates that currently CIS contributes to approximately 50 seizures per annum and this figure is expected to be replicated should we rejoin. Although we estimate the average monetary value of each seizure to be approximately £250,000 it is not possible to calculate a per annum monetary value as a direct result of CIS because there are other contributing factors and dependencies. CIS improves staff productivity compared to using other mechanisms of communication and information sharing.

Key assumptions/sensitivities/risks

Discount rate

3.5%

Assuming each seizure prevents approximately 20 minor crimes, and using the Home Office Integrated Offender Management Value for Money Toolkit, we estimate the average monetary value of each seizure to be approximately £250,000.

## Evidence Base (for summary sheets)

### 1. INTRODUCTION

This Impact Assessment (IA) accompanies the Government's wider policy decisions in regard to Protocol 36 to the EU Treaties, commonly referred to as the 2014 decision. The 2014 decision is provided for in Article 10(4) of Protocol 36 to the EU Treaties and sets out the UK's right to exercise a block opt-out from all acts of the EU in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Lisbon Treaty. Article 10(5) of Protocol 36 also provides for the UK, upon exercising said block opt-out, to seek to rejoin those measures it wishes to continue to participate in.

This IA assesses the impact of Council Decision 917/09 JHA (Customs Information System). The IA seeks to present the evidence base supporting the rationale for intervention and estimates the likely costs and benefits of the proposal. For the purpose of this IA, it has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014. This is the point at which transitional controls as set out in Article 10(1) of Protocol 36 come to an end and Commission enforcement powers, which ultimately include the power to levy fines for wrongful implementation, and the European Court of Justice's jurisdiction takes effect. The IA follows the procedures set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book (2003).

This Council Decision establishes a Customs Information System (CIS) and permits customs law-enforcement services in Member States to use these secure electronic information-sharing services to assist each other in combating customs crimes, such as smuggling of drugs, weapons and tobacco. It lays down procedures for the exchange of personal and other data related to smuggling activities. The CIS is an EU database which aims to strengthen and improve customs law-enforcement cooperation through facilitating the sharing of reports or specific customs checks. If the UK did not rejoin into the CIS Decision, Member States' competent authorities would not be able to enter or search for data related to current and completed customs investigations on individuals and businesses to aid their own investigations.

The information shared via the services established under Decision 917 is part of a broader range of customs cooperation activity on criminal matters. The basic legislation permitting Member States to carry out a range of customs cooperation activity is the Naples II Convention, also subject to the 2014 decision process. Decision 917 establishes information-sharing services that effectively support activity under the Naples II Convention. For example, when an individual or business is under investigation by a team of MS, acting under the Naples II Convention, checks may be carried out on CIS, which may yield useful information about that individual or entity, e.g. that they have been prosecuted before for a customs offence.

The aim of the Customs Information System, is to assist in preventing, investigating and prosecuting serious contraventions of national laws by making information available more rapidly, thereby increasing the effectiveness of the co-operation and control procedures of the Member States.

These information systems support Member States activities under the Naples II Convention, which is the general legal base under which Member States' customs authorities and related agencies co-operate and communicate with each other.

Customs services and agencies with customs criminal responsibilities can enter and view data, including personal data, for the purpose of sighting and reporting, discreet surveillance, specific checks, and strategic or operational analysis. Data on the system falls into the following categories: commodities; means of transport; businesses; persons; fraud trends; availability of expertise; items or cash detained, seized or confiscated. Nominal data is only included if there are real indications that the person has committed, is committing or will commit serious contraventions of national laws; and cash data for the purpose of strategic or operational analysis only

There is no other secure information-sharing system that connects the same users and stores the same information. The World Customs Organisation provides a secure platform for the sharing of customs data, however, the UK does not use this platform because it lacks the legal base for cooperation: The

current WCO multilateral arrangement for customs mutual administrative assistance is the Nairobi Convention. The UK is only signed up to Annex X of the Nairobi Convention, which only covers certain cooperation on narcotic and psychotropic substances. We cannot use the Nairobi Convention as a legal base for any other purpose.

## **2. GROUPS AFFECTED**

The policy proposal covered in this IA affects all of the United Kingdom, with particular impacts on the following groups:

- Customs officials, from HMRC who exchange information with other MS to combat customs crimes, such as smuggling of drugs, weapons and tobacco;
- The Border Force, who carry out a variety of activities using CIS to detect customs crime; and
- The UK **criminal justice systems** as the primary avenue for dealing with suspects. This includes courts, prison services; police; bail services; legal aid; and prosecution and defence services.

## **3. RATIONALE FOR INTERVENTION**

The Customs Information System (CIS), offers immediate access to relevant customs information for all Member States (MS) without barriers. Since information can be accessed quickly, legitimate trade is facilitated while officers can focus their resources on high risk activities. Details input into the system include information on new methods of concealment for prohibited goods, information on serious customs offences and information on trends, such as new types of fraud or smuggling. The CIS also allows MS competent authorities to enter and search for current and completed customs investigations on individuals and businesses to aid their own investigations, subject to certain provisions. Without it UK customs authorities would not be able to exchange information nor have access to the rich source of EU wide case data to enhance its own analysis.

## **4. OBJECTIVES**

The Government policy objectives are:

- To tackle cross-border trafficking and money laundering
- To prevent the import and export of contraband and goods subject to prohibitions and restrictions
- To contribute towards global safety and security.
- To ensure full tax/duty is paid on imports – including tackling excise duty evasion

## **5. Base case (Option 0) – Do nothing**

UK officers from the UK will not be able to search the systems for information to assist in the fight against fraud and smuggling. This would potentially lead to more crime within the UK as information would not be available to allow for effective customs investigations, e.g. investigations into drugs or firearms smuggling. There is no other secure information-sharing system that connects the same users and stores the same information.

## **6. OPTION 1: OPT IN**

### **BENEFITS OF JOINING THE CIS DECISION**

#### **Monetised Benefit**

There are no monetised benefits associated with this measure



## **Non- Monetised Benefits**

The main impact of the proposal is that re-joining CIS would result in UK officers using the CIS information communication channels to their full potential and thereby reduce related crime within the UK.

We consulted with operational teams that use intelligence supported by services established under the legislation. It was clearly difficult to attribute seizures directly to the information-sharing services that Decision 917 establishes. In principle, information made available in this way can be associated with seizures, so it was decided to attribute a small proportion of seizures to this source of incoming information, thus illustrating the value to operational activity from some information obtained via CIS channels.

The information currently shared using the information systems established by the CIS Decision is primarily used to inform intelligence activity such as profiling risks to help determine strategy and tactics for targeting customs activity. This has an indirect effect on success rates. For example, Dutch customs officers might upload photographs of new concealment methods found in ships from a particular destination. UK officers will include this in updates to risk profiles and sometimes obtain seizures as a direct result. It has not been possible to create an audit trail allowing accurate counting of such instances. A variety of databases and secure information exchange options is made available, though to date the UK has avoided entering sensitive live data.

Stakeholders also consider that there is potential for the UK to realise more benefits from the services, e.g. by identifying more opportunities to use these information-sharing services instead of faxes and paper letters.

Given the uncertainty associated with the quality and quantity of drugs and arms seized as well as the uncertainty about the type of crime that the seized quantities may lead to, we have had to make assumptions about the type and number of potential crimes resulting from any given seizure not happening. These include a wide range of scenarios from the seizure of drugs from a single user to a 1.2 tonne Class A drug seizure in 2011, in Operation Stoplamp, both of which can be attributed to cooperation under the Naples II Convention. Had this consignment not been seized, it might have generated a range of crimes, including homicide, across different parts of the UK. We estimate using best judgement that each customs seizure will probably correspond to at least 20 moderate severity crimes, such as general assaults. Using multipliers and unit costs as set out in the Integrated Offender Management Value for Money Toolkit, we have given the 'average' customs seizure an indicative monetary value of £250,000.

**Deterrence Effect:** Rejoining CIS should increase information sharing, in the longer term, this may mean individuals are deterred from criminal activity related to illegal trafficking of goods across EU member states. This could result in a reduced burden on the UK Criminal Justice System

## **COSTS OF JOINING THE CIS DECISION**

### **Estimates of the costs of not opting out of Council Decision 917/09 JHA**

#### **Monetised Costs**

There are no monetised costs associated with this measure

#### **Non Monetised Costs**

The cost of remaining bound is zero of rejoining the measures given that we have assumed that carrying on with the existing agreement does not require specifically targeted resources. It is important to note that the Customs Information System information-sharing services exist to cover areas of customs cooperation within exclusive EU competence (covered by Regulation 515/97, not subject to the 2014 opt-out decision) as well as Justice and Home Affairs matters subject to this Council Decision.

The Commission pays all costs associated with systems under the different legislation, though it is not allowed to view the data on parts of the system covered by Decision 917. This means that any costs to the UK of using the systems are unquantifiable but judged to be negligible. Even if opted out of the areas

covered by Decision 917, UK officials would still need to remain connected, and occasionally attend meetings or training associated with the Customs Information System in order to use it for the purposes of Regulation 515/97. They would simply have permissions withdrawn for accessing or entering information into those parts covered by Decision 917.

There would however be downstream costs for other governmental departments as a result of rejoining the Naples II. These are identified as follows:

**Arrests and Criminal Justice System impacts:** As CIS allow the UK (England & Wales, Scotland and Northern Ireland) to enter and search for current and completed customs investigations on individuals and businesses to aid their own investigations rejoining CIS should increase information sharing that will lead to a deeper insight into criminal activities. This could result in an increase in arrests, leading to a downstream criminal justice impact. However, we are unable to monetise these due to:

- An inability to predict how many additional cases would be brought to light attributable directly to this policy.
- The speed with which cases might be solved in relation to the basecase.
- The differing offence types which have different costs to the Criminal Justice System depending on how they flow through it.
- Difficulties in determining how many additional prison places will be required as a result of the increase in arrests and subsequent prosecutions directly attributed to this policy.

## 7. NET IMPACT

Although it has proved difficult to attribute the specific outputs or outcomes to the use of particular information services supplied under CIS, (e.g. a seizure of drugs). The information gained from accessing CIS, supplements information from other sources, which is invaluable in building up a complete picture of the criminal activity being investigated, (e.g. to support information obtained under the Naples II Convention). Information thus obtained, which can be used as evidence in court leads to more convictions. On balance we judge the benefits of rejoining the CIS outweigh any costs.

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## 8. ASSUMPTIONS AND RISKS

**Table 1: General Assumptions**

Area	Assumption
<b>Geographical Coverage</b>	As the Opt-in decision is for the whole of the UK, this IA covers England, Scotland, Wales and Northern Ireland
<b>Price base year</b>	2013/14
<b>Appraisal period</b>	The opt-in decision will be effective from 1st December 2014. All EU2014 IAs use an appraisal period from January 1st 2015. In line with the HMT Green Book and IA Guidance, the appraisal assesses whether any of the options will yield a positive net social benefit to all who may be affected by it. As the EU 2014 proposals have impacts beyond 2014, we have appraised the impacts between 2015 and 2024 (10 years).
<b>Discount rate</b>	Any monetised costs and benefits are discounted at an annual rate of 3.5% in line with the HM Treasury Green Book guidance in order to generate a net present value (NPV).
<b>Implementation</b>	It has been assumed that the UK will be fully compliant with and have fully implemented the measure by 1 December 2014.

## 9. WIDER IMPACT

As per our responsibilities under the Public Sector Equality Duty, we have considered the likely impacts of these proposals on individuals who share protected characteristics with those who do not. We do consider that it is unlikely that any such group of individuals will be placed at a particular advantage or disadvantage because of a particular characteristic although we acknowledge the gap in relevant data to support this assertion.

## SUMMARY AND RECOMMENDATIONS

For the reasons set out above the UK would seek to continue cooperation between Member States through opting in to the Customs Information System. Without it UK customs authorities would not be able to exchange information nor have access to the rich source of EU wide case data to enhance its own analysis. Therefore the preference is to opt in to the CIS.

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