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From:	Presidency
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European criminal records information system (ECRIS-TCN system) and amending Regulation (EU) No. 1077/2011 - General approach

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On 19 January 2016, the Commission submitted a proposal for a Directive amending Council Framework Decision 2009/315/JHA, establishing the European Criminal Records Information System (ECRIS). The proposal for a Directive aimed at extending ECRIS to allow storage and exchange of criminal record information regarding convicted third country nationals and stateless persons (TCN) by introducing a *decentralised* system.

During the examination of that proposal for a Directive, Member States expressed a strong preference for establishing a *centralised* system for TCN at EU level. The negotiations on the draft Directive were suspended following the request by Member States to the Commission, at the (JHA) Council on 9 June 2016, to present a proposal for establishing a *central* database for convicted TCN.

The proposal for a Regulation to establish a central database was submitted by the Commission on 28 June 2017 (doc. 10940/17 + ADD 1). Subsequently, the Presidency submitted a revised text for the accompanying Directive (doc. 11568/17 + ADD 1). While the Regulation should regulate all issues related to central database, the Directive will complement existing Framework Decision 2009/315/JHA on matters of general nature related to the functioning of ECRIS.

The Presidency started work on both texts in parallel as from July 2017, meeting various times at the level of the COPEN Working Party, the Friends of the Presidency, CATS, the (JHA) Council, and the JHA Counsellors.

The text of the Regulation as it results from the meeting of Coreper on 29 November 2017 is set out in the Annex.

The Commission has a reservation on Art. 4, para 3-8 (national implementation), Art. 5 para (1)(b) and 4/5 (fingerprints), Art. 7 para 1 (use of the ECRIS-TCN system) and Art. 35 para 2 (no opinion clause).

CZ, SI and UK have a Parliamentary scrutiny reservation. FI has a general scrutiny reservation, as well as a reservation on Art. 5(1)(b).

The Council is invited to reach a general approach, which will constitute the basis for negotiations with the European Parliament in the framework of the ordinary legislative procedure (Art. 294 TFEU).

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011**

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured, in conjunction with appropriate measures to prevent and combat crime.
- (2) This objective requires that information on convictions handed down in the Member States be taken into account outside the convicting Member State, both in the course of new criminal proceedings, as laid down in Council Framework Decision 2008/675/JHA<sup>1</sup>, as well as in order to prevent new offences.

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<sup>1</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L220, 15.8.2008, p. 32).

- (3) This objective presupposes the exchange of information extracted from criminal records between the competent authorities of the Member States. Such an exchange of information is organised and facilitated by the rules set out in Council Framework Decision 2009/315/JHA<sup>2</sup> and by the European Criminal Records Information System (ECRIS) which has been established by Council Decision 2009/316/JHA<sup>3</sup>.
- (4) The ECRIS legal framework, however, does not sufficiently cover the particularities of requests concerning third country nationals. Although it is now possible to exchange information on third country nationals through ECRIS, there is no procedure or mechanism in place to do so efficiently.
- (5) Information on third country nationals is not gathered within the Union in the Member State of nationality as it is for nationals of Member States, but only stored in the Member States where the convictions have been handed down. A complete overview of the criminal history of a third country national can therefore be ascertained only if such information is requested from all Member States.
- (6) Such 'blanket requests' impose an administrative burden on all Member States, including those not holding information on that third country national. In practice, this burden deters Member States from requesting information on third country nationals, and leads to Member States limiting the criminal record information to information stored in their national register.
- (7) To improve the situation, a system should be established by which the central authority of a Member State can find out quickly and efficiently in which other Member State(s) criminal record information on a third country national is stored so that the existing ECRIS framework can then be used to request the criminal record information from that Member State or those Member States in accordance with Framework Decision 2009/315/JHA.

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<sup>2</sup> Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

<sup>3</sup> Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

- (8) This Regulation should therefore lay down rules on creating a centralised system containing personal data at the level of the Union, the division of responsibilities between the Member State and the organisation responsible for its development and maintenance, as well as any specific data protection provisions needed to supplement the existing data protection arrangements and provide for an adequate overall level of data protection and data security. The fundamental rights of the persons concerned should be protected as well.
- (9) The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council<sup>4</sup> should be entrusted with the task of developing and operating the new centralised ECRIS-TCN system to identify the Member State(s) holding information on previous convictions of third country nationals ('ECRIS-TCN system'), given its experience with managing other large scale systems in the area of justice and home affairs. Its mandate should be amended to reflect these new tasks.
- (10) Given the need to create close technical links between the ECRIS-TCN system and the current ECRIS system, eu-LISA should also be entrusted with the task of further developing and maintaining the ECRIS reference implementation, and its mandate should be amended to reflect this.
- (10a) Four Member States have developed their own ECRIS national implementation software in accordance with Art. 3 of Council Decision 2009/316/JHA, and have been using it instead of the ECRIS reference implementation to exchange criminal records information. In this light, and given the particular features that these Member States have introduced in their systems for national use and the investments that they have made, they should be allowed to continue using their national implementation software also for the purposes of the ECRIS-TCN system, provided that the conditions set out in this Regulation are respected.

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<sup>4</sup> Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286 1.11.2011, p. 1).

- (11) The ECRIS-TCN system should contain only the identity information of convicted third country nationals. Such identity information should include alphanumeric data, fingerprint data and facial images.
- (11a) The alphanumeric data to be included by the Member States in the Central System should inter alia comprise the surname (family name) and the first name(s) (given names) of the person concerned, as well as, where available to the central authority, the pseudonym and/or alias name(s) of that person. If other deviating personal data, such as a different spelling of a name in another alphabet, are known to the Member State concerned, such data could be included in the Central System as additional information.
- (11b) The alphanumeric data should also include, as additional information, the identity number, or the type and number of the person's identification document(s), as well as the name of the issuing authority thereof, where such information is available to the central authority. The Member State should seek to verify the authenticity of identification documents before entering the relevant information in the central system. In any case, given that such information could be unreliable, it should be used cautiously.
- (11c) The central authorities of the Member States should use the ECRIS-TCN system to identify the Member State(s) holding criminal record information on a third country national when criminal records information on that person is requested in the Member State concerned for the purposes of criminal proceedings against that person or for any other purpose in accordance with national law. While the ECRIS-TCN system should in principle be used in all such cases, the authority responsible for conducting the criminal proceedings may decide that the ECRIS-TCN system should not be used when this would not be appropriate in the circumstances of the case, e.g. in certain types of urgent criminal proceedings, in cases of transit, when criminal record information was obtained via the ECRIS system recently, or in respect of minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences.

- (11d) Also other authorities requesting criminal record information may decide that the ECRIS-TCN system should not be used when this would not be appropriate in the circumstances of the case, e.g. when certain standard administrative checks need to be carried out regarding the professional qualifications of a person, especially if it is known that criminal records information will not be requested from other Member States, irrespective of the result of the search in ECRIS-TCN. However, the ECRIS-TCN system should always be used when the request for criminal records has been initiated by a person who asks for information on his own criminal record, in application of Article 6(3a) of Framework Decision 2009/315/JHA, or when it is made in order to obtain criminal record information in application of Article 10(2) of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.<sup>5</sup>
- (12) In the event that there is a match between data recorded in the Central System and those used for search by a Member State (hit), the identity information against which a 'hit' was recorded is provided together with the hit. The result of a search should only be used, as regards the central authorities, for the purpose of making a request through the ECRIS System or, as regards the Union bodies mentioned in this Regulation, for the purpose of making a request for conviction information as referred to in this Regulation.
- (13) In the first instance, facial images included in the ECRIS-TCN system should only be used for the purpose of verifying the identity of a third country national. In the future, it is possible that, following the development of facial recognition software, facial images might be used for automated biometric matching, provided that the technical requirements to do so have been met. The Commission should present a report on the availability and readiness of the technology to use facial images in order to identify third country nationals. This report should include an assessment of the necessity and proportionality of the use of facial images to determine the Member State(s) holding information on previous convictions of third country nationals.

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<sup>5</sup> OJ L 335, 17.12.2011, p. 1.

- (13a) Member States should enter in the central system fingerprints of convicted third country nationals that have been collected in accordance with national law during criminal proceedings. In order to have as complete identity information as possible available in the central system, Member States could also insert into the central system fingerprints that have been collected for other purposes than criminal proceedings, where those fingerprints are available for use in criminal proceedings in compliance with national law.
- (13b) This Regulation should establish minimum criteria as regards the fingerprints that Member States should include in the central system. Member States have a choice: they could either insert fingerprints of third country nationals who have been convicted to custodial sentence of at least 6 months, or fingerprints of third country nationals who have been convicted in relation to a criminal offence which is punishable by a custodial sentence for a maximum period of at least 12 months.
- (14) The use of biometrics is necessary as it is the most reliable method of identifying third country nationals within the territory of the Member States, who are often not in possession of documents or any other means of identification, as well as for more reliable matching of third country nationals data.
- (15) Member States should create records in the ECRIS-TCN system regarding convicted third country nationals without undue delay after their conviction was entered into the national criminal record. As from the date of start of entry of data in accordance with this Regulation, Member States should insert alphanumeric data and fingerprints in the central system relating to convictions rendered after that date. As from the same date, and any time thereafter, Member States could insert facial images in the central system.



- (16) Member States should also create records in the ECRIS-TCN system regarding third country nationals convicted prior to the date of start of entry of data, in accordance with this Regulation, in order to ensure the maximum effectiveness of the system. However, for this purpose Member States should not be obliged to collect information which was not already entered into their criminal records prior to the date of start of entry of data in accordance with this Regulation. The fingerprints of third country nationals relating to such prior convictions should be included only where they were collected during criminal proceedings, and where the Member State concerned considers that they can be clearly matched with other identity information in criminal records. Furthermore, Member States should process fingerprints only for the purposes provided for by national law.
- (17) Improving the circulation of information on convictions should assist Member States in their implementation of Framework Decision 2008/675/JHA, which obliges the Member States to take account of previous convictions in the course of new criminal proceedings.
- (18) [replaced by recital 11c]
- (19) A hit indicated by the ECRIS-TCN system should not automatically mean that the third country national concerned was convicted in the indicated Member State(s), nor that the indicated Member State(s) hold criminal record information on that third country national. The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned.
- (20) Notwithstanding the possibility of using the Union's financial programmes in accordance with the applicable rules, each Member State should bear its own costs arising from the implementation, administration, use and maintenance of its criminal records database and national fingerprint databases, and from the implementation, administration, use and maintenance of the technical alterations necessary to be able to use the ECRIS-TCN system, including their connections to the national central access point.

- (21) The European Union Agency for Law Enforcement Cooperation (Europol) established by Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>6</sup>, Eurojust established by Council Decision 2002/187/JHA<sup>7</sup> and the European Public Prosecutor's Office established by Regulation (EU) 2017/1939<sup>8</sup> should have access to the ECRIS-TCN system for identifying the Member State(s) holding criminal record information on a third country national in order to support their statutory tasks. Eurojust should also have direct access to the ECRIS-TCN system for the purpose of carrying out the task, attributed by this Regulation, to act as contact point for third countries and international organisations, without prejudice to the application of principles of judicial cooperation in criminal matters, including rules on mutual legal assistance. Regarding access of the European Public Prosecutor's Office (EPPO) to the ECRIS-TCN system, the position of non-participating Member States should be taken into account.
- (22) This Regulation establishes strict access rules to the ECRIS-TCN system and the necessary safeguards, including the responsibility of the Member States in collecting and using the data. It also sets out the individuals' rights to compensation, access, correction, deletion and redress, in particular the right to an effective remedy and the supervision of processing operations by public independent authorities. It therefore respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to protection of personal data, the principle of equality before the law and the general prohibition of discrimination.

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<sup>6</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

<sup>7</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 063, 6.3.2002, p.1).

<sup>8</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

- (23) Directive (EU) 2016/680 of the European Parliament and of the Council<sup>9</sup> should apply to the processing of personal data by competent national authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>10</sup> should apply to the processing of personal data by national authorities provided that national provisions transposing Directive (EU) 2016/680 do not apply. Coordinated supervision should be ensured in accordance with Article 62 of [the new data protection regulation for Union institutions and bodies].
- (23a) In respect of prior convictions, the central authorities should insert alphanumeric data at the latest by the end of the period for entry of data in accordance with this Regulation, and fingerprint data at the latest within two years after the start of operations. Member States could insert all data at the same time, provided these time limits are respected.
- (24) Rules on the liability of the Member States in respect to damage arising from any breach of this Regulation should be laid down.
- (25) Since the objective of this Regulation, namely to enable the rapid and efficient exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by reason of the necessary synergy and interoperability, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

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<sup>9</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89)

<sup>10</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (26) In order to ensure uniform conditions for the establishment and operational management of the ECRIS-TCN system, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council.<sup>11</sup>
- (27) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (28) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (29) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.

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<sup>11</sup> Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13)

- (30) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>12</sup> and delivered an opinion on ...<sup>13</sup>,

HAVE ADOPTED THIS REGULATION:

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<sup>12</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 008, 12.1.2001, p.1).

<sup>13</sup> OJ C ...

## **CHAPTER 1**

### **General Provisions**

#### *Article 1*

#### **Subject matter**

This Regulation establishes:

- (a) a system to identify the Member State(s) holding information on previous convictions of third country nationals ('ECRIS-TCN system');
- (b) the conditions under which the ECRIS-TCN system shall be used by the central authorities in order to obtain information on such previous convictions through the European Criminal Records Information System (ECRIS) established by Decision 2009/316/JHA, as well as the conditions under which the Union bodies referred to in Article 3(f) shall use the ECRIS-TCN system.

#### *Article 2*

#### **Scope**

This Regulation applies to the processing of identity information of third country nationals who have been subject to convictions in the Member States for the purpose of identifying the Member State(s) where such convictions were handed down.

## *Article 2a*

### **Citizens of the Union that also have the nationality of a third country**

The provisions of this Regulation that apply to third country nationals also apply to citizens of the Union within the meaning of Article 20(1) TFEU who also hold the nationality of a third country.

## *Article 3*

### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (a) 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent that the decision is entered in the criminal record of the convicting Member State;
- (b) 'criminal proceedings' means the pre-trial stage, the trial stage itself and the execution of the conviction;
- (c) 'criminal record' means the national register or registers recording convictions in accordance with national law;
- (d) 'convicting Member State' means the Member State in which a conviction is handed down;
- (e) 'central authority' means an authority designated in accordance with Article 3(1) of Framework Decision 2009/315/JHA;
- (f) 'competent authorities' means the central authorities and the Union bodies (Eurojust, Europol, the European Public Prosecutor's Office) competent to access or query the ECRIS-TCN system in accordance with this Regulation;

- (g) 'third country national' means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU, or a stateless person or a person whose nationality is unknown;
- (h) 'Central System' means the database(s) developed and maintained by eu-LISA in which identity information on third country nationals who have been subject to convictions in the Member States is stored;
- (i) 'Interface Software' means the software hosted by the competent authorities allowing them to access the Central System through the Communication Infrastructure referred to in Article 4;
- (j) 'identity information' means alphanumeric data, fingerprint data and facial images that are used to establish a connection between these data and a natural person;
- (k) 'alphanumeric data' means data represented by letters, digits, special characters, spaces and punctuation marks;
- (l) 'fingerprint data' means the data relating to plain and rolled impressions of the fingerprints of each of a person's fingers;
- (m) 'facial image' means a digital image of the face;
- (n) 'hit' means a match or matches established by comparison between identity information recorded in the Central System and the identity information used for a search;
- (o) 'national central access point' means the national connection point to the Communication Infrastructure referred to in Article 4;
- (p) 'ECRIS reference implementation' means the software developed by the Commission and made available to the Member States for the exchange of criminal records information through ECRIS.



## *Article 4*

### **Technical architecture of the ECRIS-TCN system**

1. The ECRIS-TCN system shall be composed of:
  - (b) a Central System where identity information on convicted third country nationals is stored;
  - (c) a national central access point in each Member State;
  - (d) Interface Software enabling the connection of the competent authorities to the Central System via the national central access point and the Communication Infrastructure;
  - (e) a Communication Infrastructure between the Central System and the national central access point.
2. The Central System shall be hosted by eu-LISA in its technical sites.
3. The Interface Software shall be integrated with the ECRIS reference implementation. The Member States shall use the ECRIS reference implementation or, in the situation and under the conditions set out in paragraphs 4-8, the national ECRIS implementation software, to query the ECRIS-TCN system, as well as to send subsequent requests for criminal records information.

4. The Member States which use their national ECRIS implementation software shall be responsible for ensuring that their national ECRIS implementation software will allow their national criminal records authorities to use the ECRIS-TCN system, with the exception of the Interface Software, in accordance with this Regulation. For this purpose, they shall, before the start of operations of the ECRIS-TCN system in accordance with Article 33(5), ensure that their national ECRIS implementation software will function in line with the protocols and technical specifications established in the implementing acts referred to in Article 10, and any further technical requirements based on these acts established by eu-LISA on the basis of this Regulation.
5. For as long as they do not use the ECRIS reference implementation, these Member States shall also ensure the implementation of any subsequent technical adaptations to their national ECRIS implementation software required by any changes to the technical requirements established through the implementing acts referred to in Article 10, or decided by eu-LISA under this Regulation, without undue delay.
6. The Member States which use their national ECRIS implementation software shall bear all the costs associated with the implementation, maintenance and further development of their national ECRIS implementation software and its interconnection with the ECRIS-TCN system, with the exception of the Interface Software.
7. In case one of these Member State is unable to comply with its obligations under this Article, it shall be obliged to use the ECRIS reference implementation, including the integrated Interface Software, to make use of the ECRIS-TCN system.
8. In view of the assessment to be carried out by the Commission as foreseen in Article 34(5a), under b), the Member States concerned shall provide the Commission with all necessary information.

## CHAPTER II

### Entry and use of data by central authorities

#### *Article 5*

#### **Data entry in the ECRIS-TCN system**

1. For each convicted third country national, the central authority of the convicting Member State shall create a data record in the Central System. The data record shall include the following data:
  - (a) alphanumeric data:
    - (i) obligatory information, unless, in individual cases, such information is not known to the central authority:
      - surname (family name);
      - first name(s) (given names);
      - date of birth;
      - place of birth (town and country);
      - nationality or nationalities;
      - gender;
      - previous name(s), if applicable;
      - the code of the convicting Member State,
    - (ii) optional information, if entered in the criminal record:
      - parents' names,

- (iii) additional information, where available to the central authority:
  - identity number, or the type and number of the person's identification document(s), as well as the name of the issuing authority thereof;
  - pseudonym and/or alias name(s).
  
- b) fingerprint data:
  - (i) fingerprints of third country nationals that have been collected in accordance with national law during criminal proceedings;
  
  - (ii) as a minimum, fingerprints on the basis of either of the following criteria:
    - where the third country national has been convicted to a custodial sentence of a minimum of 6 months;
  
    - or
  
    - where the third country national has been convicted in relation to a criminal offence which is punishable under the national law of the Member State by a custodial sentence for a maximum period of at least 12 months.

The fingerprint data shall have the specifications for the resolution and use of fingerprints referred to in point (b) of Article 10(1), and the reference number of the fingerprint data of the convicted person shall include the code of the convicting Member State.

2. The data record may also contain facial images of the convicted third country national.
  
3. The convicting Member State shall create the data record without undue delay after the conviction was entered into the criminal records.

4. The convicting Member States shall create data records also for convictions handed down prior to [*date of entry of data in accordance with Article 33(2)*] to the extent that data related to convicted persons are stored in their national databases. With respect to fingerprints, these should be included only where they have been collected during criminal proceedings in accordance with national law, and where they can be clearly matched with other identity information in criminal records.
5. In order to comply with the obligations set out in paragraph 1, under b), points (i) and (ii), and paragraph 4, to include fingerprints in the data record, Member States may for such inclusion use fingerprints collected for purposes other than criminal proceedings, where such use is permitted under national law.

## Article 6

### **Facial images**

1. Facial images shall be used only to confirm the identity of a third country national who has been identified as a result of an alphanumeric search or a search using fingerprints.
2. As soon as this becomes technically possible, facial images may also be used to identify third country nationals in order to determine the Member State(s) holding information on previous convictions concerning such persons. Before this functionality is implemented in the ECRIS-TCN system, the Commission shall present a report to the European Parliament and the Council on the availability and readiness of the required technology including an assessment of the necessity and proportionality of the use of facial images of natural persons to determine the Member State(s) holding information on previous convictions of third country nationals.

## *Article 7*

### **Use of the ECRIS-TCN system for identifying the Member State(s)**

#### **holding criminal record information**

1. When criminal records information on a third country national is requested for the purposes of criminal proceedings against that third country national or for any other purpose in accordance with national law, the central authority of that Member State shall use the ECRIS-TCN system to identify the Member State(s) holding criminal record information on that third country national in order to obtain information on previous convictions through ECRIS. However, in specific cases, other than those where a third country national asks the central authority of a Member State for information on his own criminal record, or where the request is made in order to obtain criminal record information in application of Article 10(2) of Directive 2011/93/EU, the authority requesting criminal records information may decide that the use of the ECRIS-TCN system is not appropriate.
2. Europol, Eurojust and the European Public Prosecutor's Office are entitled to query the ECRIS-TCN system for identifying the Member State(s) holding criminal record information on a third country national in accordance with Articles 14, 15, 16 and 16a. However, these Union bodies shall not enter, rectify or erase any data in the system.
3. When querying the ECRIS-TCN system, the competent authorities may use all or only some of the data referred to in Article 5(1), as specified in an implementing act adopted in accordance with Article 10.
4. The competent authorities may also query the ECRIS-TCN system using the facial images referred to in Article 5(2), provided that such functionality has been implemented in accordance with Article 6(2).

5. In the event of a hit, resulting from either an alphanumeric search, a search using fingerprints or, subject to Article 6(2), a search using facial images, the Central System shall automatically provide the competent authority with information on the Member State(s) holding criminal record information on the third country national, along with the associated reference number(s) referred to in Article 5(1) and any corresponding identity information. The result of a search in the Central System may only be used for the purpose of making a request according to Article 6 of Framework Decision 2009/315/JHA or a request referred to in Article 14(4) of this Regulation.
6. In the event that there is no hit, the Central System shall automatically inform the competent authority thereof.

## **CHAPTER III**

### **Retention and amendment of the data**

#### *Article 8*

##### **Retention period for data storage**

1. Each data record shall be stored in the Central System as long as the data related to the conviction(s) of the person concerned are stored in the criminal records.
2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the data record, including any fingerprints or facial images, without undue delay from the Central System.

#### *Article 9*

##### **Amendment and deletion of data**

1. The Member States shall have the right to amend or delete the data which they have introduced into the ECRIS-TCN system.
2. Any subsequent amendment of the information in the national criminal records which led to the creation of a data record in accordance with Article 5 shall entail identical amendment of the information stored in that data record in the Central System by the convicting Member State without undue delay.



3. If a convicting Member State has reason to believe that the data it has recorded in the Central System are inaccurate or that data were processed in the Central System in contravention of this Regulation, it shall without undue delay:
  - (a) check the data concerned;
  - (b) if necessary, rectify the data or erase them from the Central System.
4. If a Member State other than the convicting Member State which entered the data has reason to believe that data recorded in the Central System are inaccurate or that data were processed in the Central System in contravention of this Regulation, it shall contact the central authority of the convicting Member State without undue delay.

The convicting Member State shall without undue delay.

- (a) check the accuracy of the data and the lawfulness of its processing and, if necessary, correct or delete these data;
- (b) inform the other Member State that the data have been corrected or deleted, or of the reasons why the data have not been rectified or erased.

## CHAPTER IV

### Development, Operation and Responsibilities

#### *Article 10*

##### **Adoption of implementing acts by the Commission**

1. The Commission shall adopt the acts necessary for the technical development and implementation of the ECRIS-TCN system, and in particular rules on:
  - (a) the technical specifications for the processing of the alphanumeric data;
  - (b) the technical specifications for the quality, resolution and processing of fingerprints;
  - (c) the technical specifications of the Interface Software referred to in point (c) of Article 4(1);
  - (d) the technical specifications for the quality, resolution and processing of facial images for the purposes of and under the conditions set out in Article 6;
  - (e) data quality, including a mechanism and procedures to carry out data quality checks;
  - (f) entering the data in accordance with Article 5;
  - (g) accessing and querying the ECRIS-TCN system in accordance with Article 7;
  - (h) amending and deleting the data in accordance with Articles 8 and 9;
  - (i) keeping and accessing the logs in accordance with Article 29;
  - (j) providing statistics in accordance with Article 30;

- (k) performance and availability requirements of the ECRIS-TCN system, including minimal specifications and requirements on the biometric performance of the ECRIS-TCN system in particular in terms of the required False Positive Identification Rate, False Negative Identification Rate.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 35(2).

### *Article 11*

#### **Development and operational management of the ECRIS -TCN system**

1. eu-LISA shall be responsible for the development and operational management of the ECRIS-TCN system. The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination.
2. eu-LISA shall also be responsible for the further development and maintenance of the ECRIS reference implementation.
3. eu-LISA shall define the design of the physical architecture of the ECRIS-TCN system including its technical specifications and their evolution as regards the Central System referred to in point (a) of Article 4(1), the national central access point referred to in point (b) of Article 4(1) and the Interface Software referred to in point (c) of Article 4(1). That design shall be adopted by its Management Board, subject to a favourable opinion of the Commission.
4. eu-LISA shall develop and implement the ECRIS-TCN system before [*two years after the entry into force of this Regulation*] and following the adoption by the Commission of the measures provided for in Article 10.

5. Prior to the design and development phase of the ECRIS-TCN system, the Management Board of eu-LISA shall establish a Programme Management Board composed of a maximum of ten members.

The Programme Management Board shall be composed of eight representatives appointed by the Management Board, the Chair of the ECRIS-TCN system Advisory Group referred to in Article 36 and one member appointed by the Commission. The members appointed by the Management Board shall be elected only from those Member States which are fully bound under Union law by the legislative instruments governing the ECRIS and which will participate in the ECRIS-TCN system. The Management Board shall ensure that the representatives it appoints to the Programme Management Board have the necessary experience and expertise in the development and management of IT systems supporting judicial and criminal records authorities.

The Programme Management Board shall meet at least once every three months, and more often when necessary. It shall ensure the adequate management of the design and development phase of the ECRIS-TCN system and ensure consistency between central and national ECRIS-TCN projects. The Programme Management Board shall submit written reports regularly, if possible every month, to eu-LISA's Management Board on progress of the project. The Programme Management Board shall have no decision-making power nor any mandate to represent the members of the Management Board.

6. The Programme Management Board shall establish its rules of procedure which shall include in particular rules on:
  - (a) chairmanship;
  - (b) meeting venues;
  - (c) preparation of meetings;
  - (d) admission of experts to the meetings;
  - (e) communication plans ensuring full information to non-participating Members of the Management Board.
7. The chairmanship of the Programme Management Board shall be held by a Member State which is fully bound under Union law by the legislative instruments governing the ECRIS system and legislative instruments governing the development, establishment, operation and use of all the large-scale IT systems managed by eu-LISA.
8. All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by the Agency and Article 10 of the eu-LISA Rules of Procedure shall apply mutatis mutandis. The Programme Management Board's secretariat shall be ensured by eu-LISA.
9. During the design and development phase, the ECRIS-TCN system Advisory Group referred to in Article 36 shall be composed of the national ECRIS-TCN system project managers and chaired by eu-LISA. During the design and development phase it shall meet regularly, if possible at least once a month, until the start of operations of the ECRIS-TCN system. It shall report after each meeting to the Programme Management Board. It shall provide the technical expertise to support the tasks of the Programme Management Board and shall follow-up on the state of preparation of the Member States.

10. In order to ensure the confidentiality and integrity of information stored in ECRIS-TCN, eu-LISA shall provide for, in cooperation with the Member States, at all times appropriate technical and organisational measures, taking into account the state of the art, the cost of implementation and the risks posed by the processing.
11. eu-LISA shall be responsible for the following tasks related to the Communication Infrastructure referred to in point (d) of Article 4(1):
  - (a) supervision;
  - (b) security;
  - (c) the coordination of relations between the Member States and the provider.
12. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure, in particular:
  - (a) tasks relating to the implementation of the budget;
  - (b) acquisition and renewal;
  - (c) contractual matters.
13. eu-LISA shall develop and maintain a mechanism and procedures for carrying out quality checks on the data in the ECRIS-TCN system and shall provide regular reports to the Member States. eu-LISA shall provide a regular report to the Commission covering the issues encountered and the Member States concerned.
14. Operational management of the ECRIS-TCN system shall consist of all the tasks necessary to keep the ECRIS-TCN system operational in accordance with this Regulation, and in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality in accordance with the technical specifications.

15. eu-LISA shall perform tasks related to providing training on the technical use of the ECRIS-TCN system and the ECRIS reference implementation.
16. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with data registered in the Central System. That obligation shall also apply after such staff leave office or employment or after the termination of their activities.

## *Article 12*

### **Responsibilities of the Member States**

1. Each Member State shall be responsible for:
  - (a) ensuring a secure connection between their national criminal records (...) and fingerprints databases and the national central access point;
  - (b) the development, operation and maintenance of the connection referred to in point (a);
  - (c) ensuring a connection between their national systems and the ECRIS reference implementation;
  - (d) the management and arrangements for access of duly authorised staff of the central authorities to the ECRIS-TCN system in accordance with this Regulation and to establish and regularly update a list of such staff and their profiles.
2. Each Member State shall give the staff of its central authorities which have a right to access the ECRIS-TCN system appropriate training, in particular on data security and data protection rules and on relevant fundamental rights, before authorising them to process data stored in the Central System.

### *Article 13*

#### **Responsibility for the use of data**

1. Member States shall ensure that the data recorded in the ECRIS-TCN system is processed in accordance with Regulation (EU) 2016/679 or Directive (EU) 2016/680.
2. eu-LISA shall ensure that the ECRIS-TCN system is operated in accordance with this Regulation and the implementing acts referred to in Article 10, as well as in accordance with Regulation (EC) No 45/2001 [or its successor Regulation]. In particular, eu-LISA shall take the necessary measures to ensure the security of the Central System and the Communication Infrastructure between the Central System and the national central access point, without prejudice to the responsibilities of each Member State.
3. eu-LISA shall inform the European Parliament, the Council and the Commission as well as the European Data Protection Supervisor of the measures it takes pursuant to paragraph 2 for the start of operations of the ECRIS-TCN system.
4. The Commission shall make the information referred to in paragraph 3 available to the Member States and the public by a regularly updated public website.



## Article 14

### **Access for Eurojust, Europol, and the European Public Prosecutor's Office**

1. Eurojust shall have direct access to the ECRIS-TCN system for the purpose of the implementation of Article 16, as well as for fulfilling its statutory tasks as referred to in Article 3 of Council Decision 2002/187/JHA, as amended,<sup>14</sup> to identify the Member State(s) holding information on previous convictions of third country nationals.
2. Europol shall have direct access to the ECRIS-TCN system for the purpose of fulfilling its statutory tasks as referred to in Article 4(1)(a), (b), (c), (d), (e) and (h) of Regulation 2016/794 to identify the Member State(s) holding information on previous convictions of third country nationals.
3. The European Public Prosecutor's Office shall have direct access to the ECRIS-TCN system for the purpose of fulfilling its statutory tasks as referred to in Article 4 of Regulation (EU) 2017/1939 to identify the Member State(s) holding information on previous convictions of third country nationals.
4. Following a hit indicating the Member State(s) holding criminal records information on a third country national, Eurojust, Europol, and the European Public Prosecutor's Office may use their respective contacts with the national authorities of those Member States established in accordance with their respective constituting legal instruments to request the conviction information.
5. Each of the bodies referred to in this Article shall be responsible for the management of and arrangements for access of duly authorised staff to the ECRIS-TCN system in accordance with this Regulation and shall also be responsible for establishing and regularly updating a list of such staff and their profiles.

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<sup>14</sup> Reference to be modified once the new Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) is adopted.

*Article 15*

**Responsibilities of Eurojust, Europol, and the European Public Prosecutor's Office**

1. Eurojust, Europol, and the European Public Prosecutor's Office shall establish the technical means to connect to the ECRIS-TCN system and shall be responsible for maintaining connection.
2. Eurojust, Europol, and the European Public Prosecutor's Office shall provide appropriate training to those members of their staff who have a right to access the ECRIS-TCN system before authorising them to process data stored in the Central System. The training shall, in particular, cover data security and data protection rules, and relevant fundamental rights.
3. Eurojust, Europol, and the European Public Prosecutor's Office shall ensure that the personal data processed by them under this Regulation is protected in accordance with the applicable data protection provisions.

## *Article 16*

### **Contact point for third countries and international organisations**

1. Third countries and international organisations may, for the purposes of criminal proceedings, address their requests for information on previous convictions of third country nationals to Eurojust. To that end, they shall use the standard form that is set out in the Annex to this Regulation.
2. When Eurojust receives a request as referred to in paragraph 1, it shall use the ECRIS-TCN system to determine which Member State(s), if any, hold criminal record information on the third country national concerned.
3. If there is no hit, Eurojust shall inform the third country or the international organisation accordingly where Eurojust has concluded or signed a cooperation agreement, a memorandum of understanding or a letter of understanding with such country or international organisation.
4. If there is a hit, Eurojust shall enquire with the Member State(s) that hold criminal record information on the third country national concerned if it consents that Eurojust informs the third country or the international organisation of the name of the Member State(s) concerned. In case of such consent, Eurojust shall inform the third country or the international organisation of the name of the Member State(s) that hold criminal record information on the third country national concerned, and it shall inform the third country or the international organisation how it can introduce a request for extracts from the criminal records with that Member State(s) in accordance with the applicable procedures.

## *Article 16a*

### **Providing information to a third country, international organisation or private party**

Neither Eurojust, Europol, the European Public Prosecutor's Office nor any central authority of a Member State may transfer or make available to a third country, any international organisation, or a private party, information obtained from the ECRIS-TCN system concerning a third country national, or information on the identity of a Member State which may hold such information without the consent of that Member State.

## *Article 17*

### **Data Security**

1. eu-LISA shall take the necessary measures to ensure the security of the ECRIS-TCN system, without prejudice to the responsibilities of each Member State, taking the security measures specified in paragraph 3 into consideration.
2. As regards the operation of the ECRIS-TCN system, eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 3 including the adoption of a security plan and a business continuity and disaster recovery plan and ensures that installed systems may, in case of interruption, be restored.
3. The Member States shall ensure the security of the data before and during the transmission to and receipt from the national central access point. In particular, each Member State shall:
  - (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;
  - (b) deny unauthorised persons access to national installations in which the Member State carries out operations related to the ECRIS-TCN system;
  - (c) prevent the unauthorised reading, copying, modification or removal of data media;

- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data;
- (e) prevent the unauthorised processing of data in the ECRIS-TCN system and any unauthorised modification or deletion of data processed in the ECRIS-TCN system;
- (f) ensure that persons authorised to access the ECRIS-TCN system have access only to the data covered by their access authorisation, by means of individual user identities and confidential access modes only;
- (g) ensure that all authorities with a right of access to the ECRIS-TCN system create profiles describing the functions and responsibilities of persons who are authorised to enter, amend, delete, consult and search the data and make their profiles available to the supervisory authorities referred to in Article 26 without undue delay at their request;
- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment;
- (i) ensure that it is possible to verify and establish what data has been processed in the ECRIS-TCN system, when, by whom and for what purpose;
- (j) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from the ECRIS-TCN system or during the transport of data media, in particular by means of appropriate encryption techniques;
- (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation.

## *Article 18*

### **Liability**

1. Any person or Member State that has suffered material or non-material damage as a result of an unlawful processing operation or any other act incompatible with this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered or from eu-LISA, which is responsible for the damage suffered where it has not complied with the obligations set out in this Regulation or in Regulation 45/2001. That Member State or eu-LISA shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event which gave rise to the damage.
2. If any failure of a Member State, Eurojust, Europol, or the European Public Prosecutor's Office to comply with its obligations under this Regulation causes damage to the ECRIS-TCN system, that Member State or body shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in the ECRIS-TCN system failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.
3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the national law of the defendant Member State. Claims for compensation against EU-LISA for the damage referred to in paragraphs 1 and 2 shall be subject to the conditions provided for in the Treaties.

## Article 19

### **Self-monitoring**

Member States shall ensure that each central authority takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the supervisory authority and national supervisory authority.

## *Article 20*

### **Penalties**

[deleted]

## **CHAPTER V**

### **Rights and supervision on data protection**

#### *Article 21*

##### **Data controller and data processor**

1. Each central authority of the Member State is to be considered as controller in accordance with Regulation 2016/679 or Directive (EU) 2016/680 for the processing of the personal data by that Member State under this Regulation.
2. eu-LISA shall be considered as data processor in accordance with Regulation (EC) No 45/2001 as regards the personal data entered into the Central System by the Member States.

#### *Article 22*

##### **Purpose of the processing of personal data**

1. The data included in the Central System shall only be processed for the purpose of the identification of the Member State(s) holding the criminal records information of third country nationals.
2. With the exception of duly authorised staff of the bodies referred to in Article 14, who shall have access to the ECRIS-TCN system for the purpose of consulting the data referred to in Article 5, access to the ECRIS-TCN system shall be reserved exclusively to duly authorised staff of the central authorities. Access shall be limited to the extent needed for the performance of the tasks in accordance with the purpose referred to in paragraph 1, and proportionate to the objectives pursued.



**Right of access, rectification and erasure**

1. The requests of third country nationals concerning the rights set out in Articles 15, 16, 17 and 18 of Regulation (EU) 2016/679 and in Articles 14 and 16 of Directive (EU) 2016/680 may be addressed to the central authority of any Member State.
2. Where a request is made to a Member State other than the convicting Member State, the Member State to which the request has been made shall forward it to the convicting Member State. Upon receipt of the request, the convicting Member State shall check the accuracy of the data and the lawfulness of the data processing in the ECRIS-TCN system without undue delay.
3. In the event that data recorded in the ECRIS-TCN system are inaccurate or have been processed unlawfully, the convicting Member State shall rectify or erase the data in accordance with Article 9. The convicting Member State or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned without undue delay that action has been taken to rectify or erase data relating to that person.
4. If the convicting Member State does not agree that data recorded in the ECRIS-TCN system are inaccurate or have been processed unlawfully, that Member State shall adopt a decision explaining in writing to the person concerned without undue delay why it will not rectify or erase data relating to that person.
5. The Member State which has adopted the decision pursuant to paragraph 4 shall also provide the person concerned with information explaining the steps which that person can take if the explanation given pursuant to paragraph 4 is not acceptable to them. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any assistance, including from the supervisory authorities, that is available in accordance with the national law of that Member State.

6. Any request made pursuant to paragraphs 1 and 2 shall contain the information necessary to identify the person concerned. That information shall be used exclusively to enable the exercise of the rights referred to in paragraphs 1 and 2 and shall be erased immediately afterwards.
7. Whenever a person requests data relating to him- or herself in accordance with paragraph 2, the central authority shall keep a record in the form of a written document that such a request was made and how it was addressed and by which authority.

## Article 24

### **Cooperation to ensure the rights on data protection**

1. The central authorities of the Member States shall cooperate with each other in order to ensure respect for the rights laid down in Article 23.
2. In each Member State, the supervisory authority shall, upon request, provide information to the person concerned on how to exercise his or her right to correct or delete data relating to him or her.
3. In order to achieve those aims, the supervisory authority of the Member State which transmitted the data and the supervisory authorities of the Member States to which the request has been made shall cooperate with each other.

## *Article 25*

### **Remedies** *[deleted]*

**Supervision by the supervisory authority**

1. Each Member State shall ensure that the supervisory authority or authorities designated pursuant Article 51 of Regulation 2016/679 or Article 41 of Directive (EU) 2016/680 shall monitor the lawfulness of the processing of personal data referred to in Article 6 by the Member State concerned, including their transmission to and from the ECRIS-TCN system.
2. The supervisory authority shall ensure that an audit of the data processing operations in the national criminal records and fingerprints databases is carried out in accordance with relevant international auditing standards at least every four years from the start of operations of the ECRIS-TCN system.
3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.
4. Each Member State shall supply any information requested by the supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 12, 13 and 17. Each Member State shall grant the supervisory authorities access to their records pursuant to Article 29 and allow them access at all times to all their ECRIS-TCN system related premises.

## *Article 27*

### **Supervision by the European Data Protection Supervisor**

1. The European Data Protection Supervisor shall monitor that the personal data processing activities of eu-LISA concerning the ECRIS-TCN system are carried out in accordance with this Regulation.
2. The European Data Protection Supervisor shall ensure that an audit of the Agency's personal data processing activities is carried out in accordance with relevant international auditing standards at least every four years. A report of that audit shall be sent to the European Parliament, the Council, eu-LISA, the Commission, the supervisory authorities and the national supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.
3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give him or her access to all documents and to its records referred to in Article 29 and allow him or her access to all of its premises at any time.

## *Article 28*

### **Cooperation among supervisory authorities and the European Data Protection Supervisor**

Coordinated supervision should be ensured in accordance with Article 62 of [new data protection Regulation for Union institutions and bodies].

## Article 29

### Keeping of logs

1. eu-LISA and the competent authorities shall ensure, in accordance with their respective responsibilities, that all data processing operations in the ECRIS-TCN system data are logged in accordance with paragraph 2 for the purposes of checking the admissibility of the request, monitoring data integrity, security and the lawfulness of the data processing as well as for the purposes of self-monitoring.
2. The log shall show:
  - (a) the purpose of the request for access to ECRIS-TCN system data;
  - (b) the data transmitted as referred to in Article 5;
  - (c) the national file reference;
  - (d) the date and exact time of the operation;
  - (e) the data used for a query;
  - (f) the identifying mark of the official who carried out the search.
3. The log of consultations and disclosures shall make it possible to establish the justification of such operations.
4. Log shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 34. Those logs shall be protected by appropriate measures against unauthorised access and deleted after one year, if they are no longer required for monitoring procedures which have already begun.
5. On request, eu-LISA shall make the logs of its processing operations available to the central authorities without undue delay.

6. The competent national supervisory authorities responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security shall have access to those logs at their request for the purpose of fulfilling their duties. On request, the central authorities shall make the logs of their processing operations available to the competent supervisory authorities without undue delay.

## CHAPTER VI

### Final provisions

#### *Article 30*

##### **Use of data for reporting and statistics**

1. The duly authorised staff of eu-LISA, the competent authorities and the Commission shall have access to the data processed within the ECRIS-TCN system solely for the purposes of reporting and providing statistics without allowing for individual identification.
2. For the purpose of paragraph 1, eu-LISA shall establish, implement and host a central repository in its technical site(s) containing the data referred to in paragraph 1 which would not allow for the identification of individuals and would allow to obtain customisable reports and statistics. Access to the central repository shall be granted by means of secured access with control of access and specific user profiles solely for the purpose of reporting and statistics.
3. Detailed rules on the operation of the central repository and the data protection and security rules applicable to the repository shall be adopted in accordance with the examination procedure referred to in Article 35(2).
4. The procedures put in place by eu-LISA to monitor the functioning of the ECRIS-TCN system referred to in Article 34 as well as the ECRIS reference implementation shall include the possibility to produce regular statistics for monitoring purposes.

Every month eu-LISA shall submit to the Commission statistics without allowing for individual identification relating to the recording, storage and exchange of information extracted from criminal records through the ECRIS-TCN system and the ECRIS reference implementation. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation.

5. The Member States shall provide eu-LISA with the statistics necessary to fulfil its obligations referred to in this Article.

They shall provide the Commission with statistics on the number of convicted third country nationals, as well as the number of convictions of third country nationals on their territory.

## Article 31

### Costs

1. The costs incurred in connection with the establishment and operation of the Central System, the Communication Infrastructure, the Interface Software and the ECRIS reference implementation shall be borne by the general budget of the Union.
2. The costs of connection of Eurojust, Europol and the European Public Prosecutor's Office to the ECRIS-TCN system shall be borne by the budget of those bodies.
3. Other costs shall be borne by the Member States, specifically the costs incurred by the connection of the existing national criminal record registers, fingerprints databases and the central authorities to the ECRIS-TCN system, as well as the costs of hosting the ECRIS reference implementation.



## *Article 32*

### **Notifications**

The Member States shall notify eu-LISA of their central authorities which have access to enter, amend, delete consult or search data. eu-LISA shall regularly publish a list of these central authorities.

## *Article 33*

### **Entry of data and start of operations**

1. Once the Commission is satisfied that the following conditions are met, it shall determine the date from which the Member States shall start entering the data referred to in Article 5 into the ECRIS-TCN system:
  - (a) the measures referred to in Article 10 have been adopted;
  - (b) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Article 5 to the ECRIS-TCN system and have notified them to the Commission;
  - (c) eu-LISA has carried out a comprehensive test of the ECRIS-TCN system, in cooperation with the Member States, using test-data.
2. When the Commission has determined the date of start of entry of data in accordance with paragraph 1, it shall communicate this date to the Member States. Within a period of two months following that date, the Member States shall enter the data referred to in Article 5 into the ECRIS-TCN system, taking account of Article 38(2).
3. After the end of the period referred to in paragraph 2, eu-LISA shall carry out a final test of the ECRIS-TCN system, in cooperation with the Member States.

4. When the test referred to in paragraph 3 has been successfully completed and eu-LISA considers that the system is ready to start operations, it shall notify the Commission thereof. The Commission shall inform the European Parliament and the Council of the results of the test and it shall decide the date of from which the ECRIS-TCN system is to start operations.
5. The decision of the Commission on the date of start of operations, as referred to in paragraph 4, shall be published in the *Official Journal*.
6. The Member States shall start using the ECRIS-TCN system from the date determined by the Commission in accordance with paragraph 5.

#### *Article 34*

#### **Monitoring and evaluation**

1. eu-LISA shall ensure that procedures are in place to monitor the development of the ECRIS-TCN system in light of objectives relating to planning and costs and to monitor the functioning of the ECRIS-TCN system and the ECRIS reference implementation in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.
2. For the purposes of monitoring the functioning of the system and its technical maintenance, eu-LISA shall have access to the necessary information relating to the data processing operations performed in the ECRIS-TCN system and in the ECRIS reference implementation.

3. By [six months after the entry into force of this Regulation] and every six months thereafter during the development phase, eu-LISA shall submit a report to the European Parliament and the Council on the state of play of the development of the ECRIS-TCN system and the ECRIS reference implementation. This report shall contain information about costs incurred and information as to any risks which may impact on the overall costs of the system. Once the development is finalised, a report shall be submitted to the European Parliament and the Council explaining how the objectives, in particular relating to planning and costs, were achieved, as well as justifying any divergences.
4. Two years after the start of operations of the ECRIS-TCN system and every year thereafter, eu-LISA shall submit to the Commission a report on the technical functioning of the ECRIS-TCN system and the ECRIS reference implementation, including the security thereof, based in particular on the statistics on the functioning and use of ECRIS-TCN system and on the exchange, through the ECRIS reference implementation, of information extracted from the criminal records.
5. Four years after the start of operations of the ECRIS-TCN system and every four years thereafter, the Commission shall produce an overall evaluation of the ECRIS-TCN system and the ECRIS reference implementation. That overall evaluation shall include an assessment of the application of the Regulation, an examination of results achieved against objectives and the impact on fundamental rights, and an assessment of the continuing validity of the underlying rationale, an assessment of the adequacy of the biometric data used for the proper functioning of ECRIS TCN, the security of the system and any implications on future operations, and shall include any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament, the Council, the European Data Protection Supervisor and the European Agency for Fundamental Rights.

- 5a. The first overall evaluation as referred to in paragraph 5 shall include an assessment of
- a) the advisability, necessity and proportionality to include in the ECRIS-TCN system identity information of convicted persons who are citizens of the Union within the meaning of Article 20(1) TFEU, and who hold the nationality of two or more Member States of the Union without also holding the nationality of a third country;
  - b) the possibility, for some Member States, to continue the use of national ECRIS implementation software, as referred to in Article 4;
  - c) the insertion of fingerprints in the ECRIS-TCN system, in particular the application of the minimum criteria as referred to in Article 5(1)(b)(ii).

The assessment may be accompanied, if necessary, by legislative proposals. Subsequent overall evaluations may include an assessment of either or both of these aspects.

6. The Member States, Eurojust, Europol, and the European Public Prosecutor's Office shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 3, 4 and 5 according to the quantitative indicators predefined by the Commission or eu-LISA or both. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations of the designated authorities.
7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.

## *Article 35*

### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.<sup>15</sup>
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where no opinion is delivered by the committee the draft implementing act shall not be adopted.<sup>16</sup>

## *Article 36*

### **Advisory Group**

eu-LISA shall establish an Advisory Group in order to obtain expertise related to the ECRIS-TCN system and the ECRIS reference implementation, in particular in the context of preparation of its annual work programme and its annual activity report. During the design and development phase, Article 11 applies.

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<sup>15</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

<sup>16</sup> COM has a reservation on the no-opinion clause.

**Amendment of Regulation (EU) No 1077/2011**

Regulation (EU) No 1077/2011 is amended as follows:

(12) In Article 1, paragraph 2 is replaced by the following:

“2. The Agency shall be responsible for the operational management of the Information System, the Visa Information System, Eurodac, [the Entry/Exit System], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] the ECRIS-TCN system and the ECRIS reference implementation.

(13) The following article is inserted:

*"Article 5a*

*Tasks related to the ECRIS-TCN system*

In relation to the ECRIS-TCN system and the ECRIS reference implementation, the Agency shall perform:

(a) the tasks conferred on it by Regulation (EU) No XXX/20XX of the European Parliament and of the Council\*;

tasks relating to training on the technical use of the ECRIS-TCN system and the ECRIS reference implementation.

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\* Regulation (EU) No XXX/20XX of the European Parliament and of the Council\* of X.X.X establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 (OJ L ...).”

In Article 7, paragraph 5 is replaced by the following:

“5. Tasks relating to the operational management of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Regulation (EC, Euratom) No 966/2012. In such a case, the network provider shall be bound by the security measures referred to in paragraph 4 and shall have no access to SIS II, VIS, Eurodac, [EES], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] the ECRIS-TCN system operational data, or to the SIS II-related SIRENE exchange, by any means.

(14) In Article 8, paragraph 1 is replaced by the following:

“1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, Eurodac, [EES], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection], the ECRIS-TCN system and other large-scale IT systems”.

(15) In Article 12, paragraph 1 is amended as follows:

(a) a new point (sa) is added after point (s):

“(sa) adopt the reports on the development of the ECRIS-TCN system pursuant to Article 34(3) of Regulation (EU) No XXX/20XX of the European Parliament and of the Council of X.X.X establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 (OJ L ...)”.

(b) point (t) is replaced by the following:

“(t) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively [or Article 54(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and Article 71(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU] and of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, [of EES pursuant to Article 64(4) of Regulation (EU) XX/XX of XXX and of ETIAS pursuant to Article 81(4) of Regulation (EU) XX/XX of XXX, and of the ECRIS-TCN system and the ECRIS reference implementation pursuant to Article 34(4) of Regulation (EU) XX/XXX;”

(c) point (v) is replaced by the following:

“(v) adopt formal comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, Article 50(2) of Regulation (EU) XX/XX of XXX [establishing the EES) and Article 57 of Regulation (EU) XX/XX of XXX [establishing the ETIAS) and to Article 27(2) of Regulation (EU) XX/XXXX) [establishing the ECRIS-TCN system] and ensure appropriate follow-up of those audits;”.



(d) the following point is inserted after point (xa):

“(xb) Publish statistics related to the ECRIS-TCN system and to the ECRIS reference implementation pursuant to Article 30 of Regulation XXXX/XX;” .

(e) Point y is replaced by the following:

"(y) ensure annual publication of the list of competent authorities authorised to search directly the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of Offices of the national systems of SIS II (N.SIS II) and SIRENE Bureaux as referred to in Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively [or by Article 36(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and by Article 53(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU together with the list of Offices of the national systems of SIS II (N.SIS II) and SIRENE Bureaux as referred to in Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks and Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters respectively; [as well as the list of competent authorities pursuant to Article 8(2) of Regulation (EU) XX/XXXX establishing the EES]; [the list of competent authorities pursuant to Article 11 of Regulation (EU) XX/XXXX establishing the ETIAS] and [the list of central authorities pursuant to Article 32 of Regulation XX/XXX establishing the ECRIS-TCN system];"

(16) In Article 15, paragraph 4 is replaced by the following:

"4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. [The European Border and Coast Guard may attend the meetings of the Management Board as observers when a question concerning SIS in relation to the application of Regulation (EU) 2016/1624 or of Regulation XXX of XXX is on the agenda]. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, is on the agenda. [Europol may also attend the meetings of the Management Board as an observer when a question concerning EES in relation to the application of Regulation XX/XXXX (establishing the EES) is on the agenda or when a question concerning ETIAS in relation to Regulation XX/XXXX (establishing ETIAS) is on the agenda. The European Border and Coast Guard may also attend the meetings of the Management Board when a question concerning ETIAS in relation with the application of Regulation XX/XX of XXX is on the agenda.] [EASO may also attend the meetings of the Management Board as an observer when a question concerning the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM(2016) 270 final-2016/0133(COD), is on the agenda.] [Eurojust, Europol and the European Public Prosecutor's Office may also attend the meetings of the Management Board as observers when a question concerning Regulation XX/XXXX (establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS), and amending Regulation (EU) No 1077/2011 (ECRIS-TCN system) is on the agenda.]The Management Board may invite any other person whose opinion may be of interest, to attend its meetings as an observer.

(17) In Article 17, paragraph 5, point (g) is replaced by the following:

“(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013, [Article 34(4) of Regulation (EU) XX/XX of XX (establishing the EES)]<sup>17</sup>, Article 64(2) of Regulation XX/XXXX (establishing the ETIAS) and Article 11(16) of [Regulation (EU) XX/XX of XXX establishing the ECRIS-TCN system.]”

In Article 19, paragraph 1 is replaced by the following:

- “1. The following Advisory Groups shall provide the Management Board with expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the annual work programme and the annual activity report:
- (a) SIS II Advisory Group;
  - (b) VIS Advisory Group;
  - (c) Eurodac Advisory Group;
  - (d) [EES-ETIAS] Advisory Group;
  - (e) ECRIS-TCN system Advisory Group;
  - (f) any other Advisory Group relating to a large-scale IT system when so provided in the relevant legislative instrument governing the development, establishment, operation and use of that large-scale IT system.”

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<sup>17</sup> Regulation on EES.

## Article 38

### **Implementation and transitional provisions**

1. Member States shall take the necessary measures to comply with this Regulation by [36 months after the entry into force of this Regulation].
2. For convictions handed down prior to [the date of entry of data in accordance with Article 33(2)], the central authorities shall create the individual data records in the Central System as follows:
  - a) alphanumeric data should be entered into the Central System at the latest by the end of the period referred to in Article 33(2);
  - b) fingerprints should be entered into the Central System at the latest within two years after the start of operations in accordance with Article 33(5).

*Article 39*

**Entry into force and applicability**

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at,

*For the European Parliament*

*For the Council*

The President

The President

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