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*Plenary sitting*

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**A8-0018/2018**

1.2.2018

**\*\*\*I**  
**REPORT**

on the proposal for a regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 (COM(2017)0344 – C8-0217/2017 – 2017/0144(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Daniel Dalton

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 (COM(2017)0344 – C8-0217/2017 – 2017/0144(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0344),
  - having regard to Article 294(2) and Article 82(1), second subparagraph, point (d) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0217/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A8-0018/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

##### **Recital 1**

*Text proposed by the Commission*

(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

*Amendment*

(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.

prevent and combat crime, *including terrorism*.

## Amendment 2

### Proposal for a regulation

#### Recital 2

*Text proposed by the Commission*

(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>19</sup>, as well as ***in order to prevent new offences***.

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<sup>19</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L220, 15.8.2008, p. 32).

*Amendment*

(2) This objective requires that information on convictions handed down in the Member States be taken into account outside the convicting Member State, in the course of new criminal proceedings, as laid down in Council Framework Decision 2008/675/JHA<sup>19</sup>, as well as ***for the purposes of recruitment for posts involving direct and regular contact with children under Article 10 of Directive 2011/93/EU of the European Parliament and of the Council<sup>19a</sup> and for any other purpose according to national law. Member States should endeavour to provide similar safeguards with regard to persons who intend to work with disabled or elderly persons. The aim is to ensure that a person convicted of a sexual or violent offence against a child or vulnerable person can no longer conceal this conviction or disqualification with a view to working in contact with such persons in another Member State.***

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<sup>19</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L220, 15.8.2008, p. 32).

<sup>19a</sup> ***Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p.***

1).

### Amendment 3

#### Proposal for a regulation

##### Recital 4

*Text proposed by the Commission*

(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.

*Amendment*

(4) The **existing** ECRIS legal framework, however, does not sufficiently **address** the particularities of requests concerning third country nationals. Although it is **already** possible to exchange information on third country nationals through ECRIS, there is no **common Union** procedure or mechanism in place to do so efficiently, **rapidly and accurately**.

### Amendment 4

#### Proposal for a regulation

##### Recital 6

*Text proposed by the Commission*

(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.

*Amendment*

(6) Such 'blanket requests' impose **a disproportionate** 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 **from other Member States, which seriously hinders its exchange between** Member States, limiting the criminal record information to information stored in their national register. **As a consequence, the risk of information exchange between Member States being inefficient and incomplete is increased, which in turn affects the level of security and safety provided to citizens and persons residing within the Union.**

### Amendment 5

## Proposal for a regulation

### Recital 7

*Text proposed by the Commission*

(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.***

*Amendment*

(7) To improve the situation, a system should be established by which the central authority of a Member State can find out ***promptly*** and efficiently which other Member State ***or Member States hold*** criminal record information on a third country national.

## Amendment 6

## Proposal for a regulation

### Recital 8

*Text proposed by the Commission*

(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.***

*Amendment*

(8) This Regulation should therefore lay down rules on creating a centralised system containing ***and protecting*** 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, data security ***and the protection of*** the fundamental rights of the persons concerned.

## Amendment 7

## Proposal for a regulation

### Recital 8 a (new)

*Text proposed by the Commission*

*Amendment*



*(8a) The ECRIS-TCN system allows processing of fingerprint data with the aim of identifying the Member State or Member States in possession of criminal records information on a third country national and of facial images in order to confirm their identity. The introduction and use of fingerprint data and facial images must never exceed what is strictly necessary to achieve the aim, must respect fundamental rights, including the best interests of children, and must be in conformity with Directive (EU) 2016/680 of the European Parliament and of the Council<sup>1a</sup>.*

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*<sup>1a</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).*

## **Amendment 8**

### **Proposal for a regulation Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

*(9a) eu-LISA should be equipped with the appropriate funding and staffing to exercise the responsibilities provided for to in this Regulation.*

## **Amendment 9**

**Proposal for a regulation**  
**Recital 12**

*Text proposed by the Commission*

(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. That information should only be used to assist in confirming the identity of the third country national concerned. This may include the recording of such data in the national criminal record database of the querying Member States as an alias of the third country national.

*Amendment*

(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. That information should only be used to assist in confirming the identity of the third country national concerned ***in order to verify that the recorded data is accurately assigned to the correct person to which the hit relates***. This may include the recording of such data in the national criminal record database of the querying Member States as an alias of the third country national.

Amendment 10

**Proposal for a regulation**  
**Recital 13**

*Text proposed by the Commission*

(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***.

*Amendment*

(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 ***and based on an assessment by the Commission of the availability and readiness of the required technology***, facial images might be used for automated biometric matching ***as long as this is necessary and proportionate***.

**Amendment 11**

**Proposal for a regulation**  
**Recital 14**

*Text proposed by the Commission*

*Amendment*

(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.*

*deleted*

## Amendment 12

### Proposal for a regulation

#### Recital 15

*Text proposed by the Commission*

(15) Member States should create records in the ECRIS-TCN system regarding convicted third country nationals *as soon as possible after* their conviction *was* entered into the national criminal record.

*Amendment*

(15) Member States should *automatically* create records in the ECRIS-TCN system regarding convicted third country nationals *immediately upon* their conviction *being* entered into the national criminal record.

## Amendment 13

### Proposal for a regulation

#### Recital 17

*Text proposed by the Commission*

(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.

*Amendment*

(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 *other Member States in* the course of new criminal proceedings, *to the extent previous national convictions are taken into account in accordance with national law.*

## Amendment 14

### Proposal for a regulation

#### Recital 19

*Text proposed by the Commission*

(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.

*Amendment*

(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). The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned. ***A hit in the ECRIS-TCN system by itself should not therefore be used to undermine the principle of equality before the law, the right to a fair trial, the presumption of innocence or the general prohibition of discrimination.***

**Amendment 15**

**Proposal for a regulation  
Recital 22**

*Text proposed by the Commission*

(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.

*Amendment*

(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 ***how*** individuals ***may exercise their*** 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. ***In this regard, it also takes into account the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and***

***Political Rights, and other human rights obligations under international law.***

*Justification*

*The rights are set by Directive 2016/680 - this Regulation only clarifies how these rights can work with ECRIS-TCN.*

**Amendment 16**

**Proposal for a regulation  
Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) Third country nationals should be able to address requests related to their rights of access to, and correction and deletion of, data to the central authority of any Member State. Where the request is made to a Member State other than the convicting Member State, the written confirmation on the action taken addressed to the person concerned should be sent by the convicting Member State. The confirmation should also specify the reasons why the request was handled by the convicting Member State.***

**Amendment 17**

**Proposal for a regulation  
Recital 23**

*Text proposed by the Commission*

*Amendment*

(23) Directive (EU) 2016/680 of the European Parliament and of the Council<sup>26</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

(23) Directive (EU) 2016/680 of the European Parliament and of the Council<sup>26</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>27</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].

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<sup>26</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>27</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).

of the Council<sup>27</sup> should apply to the processing of personal data by national authorities. Coordinated supervision should be ensured in accordance with Article 62 of [the new data protection regulation for Union institutions and bodies]. ***Regulation (EU) .../... of the European Parliament and of the Council<sup>27a+</sup> should apply to the processing of personal data by eu-LISA.***

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<sup>26</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>27</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).

***<sup>27a</sup> Regulation (EU) .../... of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L ..., ..., p. ...).***

***+ OJ: please insert the number of the Regulation, contained in document 2017/0002 (COD), in the text and complete the footnote.***

## Amendment 18

**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

(24) Rules on the liability of the Member States in respect to damage arising from any breach of this Regulation should be laid down.

*Amendment*

(24) Rules on the liability of the Member States **and Union agencies making use of the ECRIS-TCN system** in respect to damage arising from any breach of this Regulation should be laid down.

**Amendment 19**

**Proposal for a regulation**  
**Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24a) eu-LISA should provide regular statistics on the recording, storage and exchange of information extracted from criminal records through the ECRIS-TCN system, including through the use of statistics provided by Member States on the number of convicted third country nationals. However, these statistics should take into account the statistical bias stemming from the use of unrepresentative samples of the population, in this case third country nationals, and not draw any conclusions in comparative analyses.***

*Justification*

*This recital warns about the risk of statistical bias in using statistics of convicted third country nationals only. Comparing the number of convicted TCNs and the number of convicted EU nationals should not lead to the conclusion that TCNs are more prone to commit crimes, as this is not representative of reality.*

**Amendment 20**

**Proposal for a regulation**  
**Recital 25**

*Text proposed by the Commission*

(25) Since the objective of this

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*Amendment*

(25) Since the objective of this

15/61

PE612.310v02-00

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.

Regulation, namely to enable the rapid, **efficient and accurate as possible** exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by **putting in place common Union rules and interoperable systems**, 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.

## **Amendment 21**

### **Proposal for a regulation Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

***(25a) In order to take into account the technical developments in the field of facial recognition software and in order to provide specific rules concerning certain aspects of the development and technical implementation of the ECRIS-TCN system,, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending this Regulation by providing for the use of facial images for the purpose of identifying third country nationals on the basis of this biometric identifier and supplementing this Regulation by laying down rules concerning entering, accessing, amending and deleting the data and keeping and accessing the logs. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance***



*with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>1a</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*

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<sup>1a</sup> OJ L 123, 12.5.2016, p. 1.

## Amendment 22

### Proposal for a regulation Recital 30

*Text proposed by the Commission*

*Amendment*

**(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>29</sup> and delivered an opinion on ...<sup>30</sup>,**

**deleted**

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<sup>29</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>30</sup> OJ C ...

#### *Justification*

*There is no EDPS opinion on this proposal for a centralised ECRIS-TCN, only on the ECRIS-TCN Directive from 2016.*

## Amendment 23

### Proposal for a regulation

#### Article 3 – paragraph 1 – point g

*Text proposed by the Commission*

(g) 'third country national' means a ***national of a country other than a Member State regardless of whether the person also holds the nationality of a Member State***, or a stateless person or a person whose nationality is unknown to the convicting Member State;

*Amendment*

(g) 'third country national' means a person ***who is not a citizen of the Union within the meaning of Article 20(1) TFEU or who is a stateless person or a person whose nationality is unknown to the convicting Member State;***

## Amendment 24

### Proposal for a regulation

#### Article 3 – paragraph 1 – point l

*Text proposed by the Commission*

(l) 'fingerprint data' means the data relating to plain and rolled impressions of ***the fingerprints of all ten fingers;***

*Amendment*

(l) 'fingerprint data' means the data relating to plain and rolled impressions of fingerprints ***collected by Member States during criminal proceedings in accordance with national law;***

## Amendment 25

### Proposal for a regulation

#### Article 4 – paragraph 2

*Text proposed by the Commission*

2. The Central System shall be hosted by eu-LISA in its ***two*** technical sites.

*Amendment*

2. The Central System shall be hosted by eu-LISA in its technical sites.

## Amendment 26

### Proposal for a regulation

#### Article 5 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. For each convicted third country

*Amendment*

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:

national *whose data have been entered in the criminal record* of the convicting Member State, *the central authority of that Member State* shall create a data record in the Central System. The data record shall include the following data:

## Amendment 27

### Proposal for a regulation

#### Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

(a) surname (family name); first name(s) (given names); date of birth; place of birth (town and country); nationality or nationalities; gender; *parents' names*; where applicable previous names, pseudonym(s) and/or alias name(s); the code of the convicting Member State;

*Amendment*

(a) surname (family name); first name(s) (given names); date of birth; place of birth (town and country); nationality or nationalities; gender; where applicable previous names, pseudonym(s) and/or alias name(s); the code of the convicting Member State;

#### *Justification*

*Parents' names are not necessary nor proportionate for the purpose of verification of the identity of the third country national concerned. Parents' names should only be transmitted with the criminal record information in accordance with FD 2009/315, once the MS holding the conviction has been identified.*

## Amendment 28

### Proposal for a regulation

#### Article 5 – paragraph 1 – point b

*Text proposed by the Commission*

(b) fingerprint data in accordance with Framework Decision 2009/315/JHA<sup>31</sup> and with the specifications for the resolution and use of fingerprints referred to in point (b) of Article 10(1); the reference number of the fingerprint data of the convicted person including the code of the convicting Member State.

*Amendment*

(b) fingerprint data, *only when the national law of a Member State where a conviction is handed down allows for collection and storage of fingerprints of a convicted person, and* in accordance with Framework Decision 2009/315/JHA<sup>31</sup> and with the specifications for the resolution and use of fingerprints referred to in point (b) of Article 10(1); the reference number of the fingerprint data of the convicted person including the code of the convicting

Member State.

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<sup>31</sup> As amended by Directive of the European Parliament and the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (...).

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<sup>31</sup> As amended by Directive of the European Parliament and the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (...).

### *Justification*

*In line with amendment 17 in the adopted LIBE report on the ECRIS-TCN Directive.*

## **Amendment 29**

### **Proposal for a regulation Article 5 – paragraph 2**

#### *Text proposed by the Commission*

2. The data record may also contain facial images of the convicted third country national.

#### *Amendment*

2. The data record may also contain facial images of the convicted third country national, ***if the national law of a Member State where a conviction is handed down allows for the collection and storage or facial images of a convicted person.***

## **Amendment 30**

### **Proposal for a regulation Article 5 – paragraph 3**

#### *Text proposed by the Commission*

3. The convicting Member State shall create the data record ***as soon as possible after*** the conviction ***was*** entered into the national criminal records register.

#### *Amendment*

3. The convicting Member State shall create the data record ***automatically, where possible, and in any event within 24 hours upon*** the conviction ***being*** entered into the national criminal records register.

## **Amendment 31**

**Proposal for a regulation**  
**Article 5 – paragraph 4**

*Text proposed by the Commission*

4. The convicting Member States shall create data records also for convictions handed down prior to ***[date of entry into force of this Regulation]*** to the extent that such data are stored in its national criminal records or national fingerprints database.

*Amendment*

4. The convicting Member States shall create data records also for convictions handed down ***up to [24 months after the entry into force of this Regulation]*** to the extent that such data are stored in its national criminal records or national fingerprints database.

**Amendment 32**

**Proposal for a regulation**  
**Article 6 – paragraph 1**

*Text proposed by the Commission*

1. Facial images as referred to in Article 5(2) ***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.

*Amendment*

1. Facial images as referred to in Article 5(2) ***may*** 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.

**Amendment 33**

**Proposal for a regulation**  
**Article 6 – paragraph 2**

*Text proposed by the Commission*

2. As soon as ***this*** becomes technically possible, facial images may also be used to identify a third country national on the basis of this biometric identifier. ***Before this functionality is implemented in the ECRIS-TCN system, the Commission shall present a report on the availability and readiness of the required technology, on which the European Parliament shall be consulted.***

*Amendment*

2. ***The Commission is empowered to adopt delegated acts in accordance with Article 34a amending this Regulation by providing, as soon as it becomes technically possible and based on an assessment by the Commission of the availability and readiness of the required technology, that*** facial images may also be used to identify a third country national on the basis of this biometric identifier.

**Amendment 34**

**Proposal for a regulation**  
**Article 7 – paragraph 1**

*Text proposed by the Commission*

1. When criminal records information on a third country national is requested in a Member State for the purposes of criminal proceedings against that third country national *or for any purposes other than that of criminal proceedings in accordance with its 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.

*Amendment*

1. When criminal records information on a third country national is requested in a Member State for the purposes of criminal proceedings against that third country national, 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

**Amendment 35**

**Proposal for a regulation**  
**Article 8 – paragraph 1**

*Text proposed by the Commission*

1. Each *individual* 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 national criminal records register.

*Amendment*

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 national criminal records register.

**Amendment 36**

**Proposal for a regulation**  
**Article 8 – paragraph 2**

*Text proposed by the Commission*

2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the individual data record *without delay* from the Central System, and in any event *no later than one month* after the expiry of that retention period.

*Amendment*

2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall *permanently* erase the individual data record *automatically, where possible*, from the Central System, and in any event *within 24 hours* after the expiry of that retention period.

## Amendment 37

### Proposal for a regulation Article 9 – paragraph 3

*Text proposed by the Commission*

3. If a 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 check the data concerned and, if necessary, amend them or delete them from the Central System *without delay*.

*Amendment*

3. If a 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 check the data concerned and, if necessary, amend them or delete them from the Central System *immediately*.

## Amendment 38

### Proposal for a regulation Article 9 – paragraph 4

*Text proposed by the Commission*

4. If a Member State other than the Member State which entered the data has reason to believe that data recorded in the Central System are inaccurate or that data was processed in the Central System in contravention of this Regulation, it shall contact the central authority of the convicting Member State without delay. The convicting Member State shall check the accuracy of the data and the lawfulness of its processing within one *month*.

*Amendment*

4. If a Member State other than the Member State which entered the data has reason to believe that data recorded in the Central System are inaccurate or that data was processed in the Central System in contravention of this Regulation, it shall contact the central authority of the convicting Member State without delay. The convicting Member State shall check the accuracy of the data and the lawfulness of its processing *without delay, and in any event within one week after receiving the information*.

## Amendment 39

### Proposal for a regulation Article 10 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. The Commission shall adopt the

*Amendment*

1. The Commission shall adopt,

acts necessary for the development and technical implementation of the ECRIS-TCN system, and in particular rules on:

*before [two years after the entry into force of this Regulation],* the acts necessary for the development and technical implementation of the ECRIS-TCN system, and in particular rules on:

#### *Justification*

*Necessary in order to set a concrete date for the start of the ECRIS-TCN system in Article 11.*

### **Amendment 40**

#### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point e**

*Text proposed by the Commission*

(e) data quality, including a mechanism and procedures to carry out data quality checks;

*Amendment*

(e) *the technical specifications for* data quality, including a mechanism and procedures to carry out data quality checks;

### **Amendment 41**

#### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) *entering the data in accordance with Article 5;*

*Amendment*

*deleted*

### **Amendment 42**

#### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) *accessing the data in accordance with Article 7;*

*Amendment*

*deleted*

### **Amendment 43**

#### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point h**



*Text proposed by the Commission*

*Amendment*

**(h) amending and deleting the data in accordance with Articles 8 and 9;** *deleted*

#### **Amendment 44**

##### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point i**

*Text proposed by the Commission*

*Amendment*

**(i) keeping and accessing the logs in accordance with Article 29;** *deleted*

#### **Amendment 45**

##### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point j**

*Text proposed by the Commission*

*Amendment*

**(j) providing statistics in accordance with Article 30;** *deleted*

*Justification*

*Moved to next Article 10a (new) for a delegated rather than implementing act.*

#### **Amendment 46**

##### **Proposal for a regulation**

##### **Article 10 – paragraph 1 – point k**

*Text proposed by the Commission*

*Amendment*

**(k) performance and availability requirements of the ECRIS-TCN system.** *deleted*

*Justification*

*Moved to next Article 10a (new) for a delegated rather than implementing act.*

#### **Amendment 47**

**Proposal for a regulation**  
**Article 10 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 10a**

**Adoption of delegated acts by the  
Commission**

***The Commission is empowered to adopt delegated acts in accordance with Article 34a supplementing this Regulation by laying down rules concerning:***

- (a) entering data in accordance with Article 5;***
- (b) accessing data in accordance with Article 7;***
- (c) amending and deleting data in accordance with Articles 8 and 9;***
- (d) keeping and accessing logs in accordance with Article 29;***

**Amendment 48**

**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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.

1. eu-LISA shall be responsible for the development **of the ECRIS-TCN system in accordance with the principle of data protection by design and by default. In addition, eu-LISA shall be responsible for the** 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.

**Amendment 49**

**Proposal for a regulation**  
**Article 11 – paragraph 4**

*Text proposed by 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.

*Amendment*

4. eu-LISA shall develop and implement the ECRIS-TCN system ***as soon as possible*** after the entry into force of this Regulation ***and*** the adoption by the Commission of the measures provided for in Article 10 ***and 10a***.

**Amendment 50**

**Proposal for a regulation  
Article 11 – paragraph 5**

*Text proposed by the Commission*

5. Prior to the design and development phase, a Programme Management Board composed of a maximum of ten members shall be established by the Management Board of eu-LISA. It 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 shall 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. The Programme Management Board shall submit written reports every month to eu-LISA's Management Board on progress of the project. It shall have no

*Amendment*

5. Prior to the design and development phase, a Programme Management Board composed of a maximum of ten members shall be established by the Management Board of eu-LISA. It shall be composed of ***seven*** representatives appointed by the Management Board ***from among its members or their alternates***, the Chair of the ECRIS-TCN system Advisory Group referred to in Article 36, ***a member representing eu-LISA appointed by its Executive Director*** 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 shall 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. The Programme Management

decision-making power nor any mandate to represent the members of the Management Board.

Board shall submit written reports every month to eu-LISA's Management Board on progress of the project. It shall have no decision-making power nor any mandate to represent the members of the Management Board.

## Amendment 51

### Proposal for a regulation Article 11 – paragraph 7

#### *Text proposed by the Commission*

7. The chairmanship shall be held by *the* Member State ***holding the Presidency of the Council of the European Union, provided that it*** is fully bound under Union law by the legislative instruments governing the ECRIS and which will participate in the ECRIS-TCN system. ***If this requirement is not met, the chairmanship shall be held by the Member State which shall next hold the Presidency and which meets that requirement.***

#### *Amendment*

7. The chairmanship shall be held by *a* Member State ***that*** is fully bound under Union law by the legislative instruments governing the ECRIS and which will participate in the ECRIS-TCN system.

## Amendment 52

### Proposal for a regulation Article 11 – paragraph 9

#### *Text proposed by the Commission*

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. During the design and development phase it shall meet at least once a month until the start of operations of the ECRIS-TCN system. It shall report after each meeting to the Management Board of eu-LISA. It shall provide the technical expertise to support the tasks of the Management Board and shall follow-up on the state of preparation

#### *Amendment*

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 at least once a month until the start of operations of the ECRIS-TCN system. It shall report after each meeting to the Management Board of eu-LISA. It shall provide the technical expertise to support the tasks of the Management Board and shall follow-up

of the Member States.

on the state of preparation of the Member States.

### **Amendment 53**

#### **Proposal for a regulation**

##### **Article 12 – paragraph 2**

*Text proposed by the Commission*

2. Each Member State shall give the staff of its 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.

*Amendment*

2. Each Member State shall give the staff of its authorities which have a right to access the ECRIS-TCN system appropriate training, in particular on data security and data protection rules and on fundamental rights, before authorising them to process data stored in the Central System.

### **Amendment 54**

#### **Proposal for a regulation**

##### **Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. In accordance with *Directive (EU) 2016/680*, each Member State shall ensure that the data recorded in the ECRIS-TCN system is processed lawfully, and in particular that:

*Amendment*

1. In accordance with *Regulation (EU) 2016/679*, each Member State shall ensure that the data recorded in the ECRIS-TCN system is processed lawfully, and in particular that:

### **Amendment 55**

#### **Proposal for a regulation**

##### **Article 13 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the data are collected lawfully and fully respect the human dignity of the third country national;

*Amendment*

(b) the data are collected lawfully and fully respect the human dignity *and fundamental rights* of the third country national;

### **Amendment 56**

**Proposal for a regulation**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

2. eu-LISA shall ensure that the ECRIS-TCN system is operated in accordance with this Regulation, the implementing acts referred to in Article 10 **and the delegated acts referred to in Article 10a**, 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.

**Amendment 57**

**Proposal for a regulation**  
**Article 13 – paragraph 3**

*Text proposed by the Commission*

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.

*Amendment*

3. eu-LISA shall inform the European Parliament, the Council and the Commission as well as the European Data Protection Supervisor **as soon as possible** of the measures it takes pursuant to paragraph 2 for the start of operations of the ECRIS-TCN system.

**Amendment 58**

**Proposal for a regulation**  
**Article 14 – paragraph 1**

*Text proposed by the Commission*

1. Third countries and international organisations may address their requests for information on previous convictions of third country nationals to Eurojust.

*Amendment*

1. Third countries and international organisations may address their requests for information on previous convictions of third country nationals to Eurojust **for the**

*same purposes as for which Member States' authorities have access to the ECRIS-TCN system pursuant Article 7(1).*

*Justification*

*It is important to clarify for which purposes third countries and international organisations may request ECRIS-TCN information.*

**Amendment 59**

**Proposal for a regulation  
Article 14 – paragraph 2**

*Text proposed by the Commission*

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) hold information on the third country national concerned, and shall, in cases where Member State(s) are identified, transmit the request immediately to the central authorities of those Member State(s). The Member States concerned shall be responsible for further dealing with such requests in accordance with their national law.

*Amendment*

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) hold ***criminal records*** information on the third country national concerned, and shall, in cases where Member State(s) are identified, transmit the request immediately to the central authorities of those Member State(s). The Member States concerned shall be responsible for further dealing with such requests in accordance with their national law. ***Eurojust shall send an acknowledgement of receipt to the third country or international organisation requesting the information as referred to in paragraph 1.***

**Amendment 60**

**Proposal for a regulation  
Article 14 – paragraph 3**

*Text proposed by the Commission*

3. 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 nor

*Amendment*

3. Neither Eurojust, Europol, [the European Public Prosecutor's Office] nor any central authority of a Member State ***shall be permitted to*** transfer or make available to a third country, any

a private party, information obtained from the ECRIS-TCN system on previous convictions of a third country national, or information on the Member State(s) which may hold such information.

international organisation nor a private party, **any** information obtained from the ECRIS-TCN system on previous convictions of a third country national, or information on the Member State(s) which may hold such information.

## Amendment 61

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

1. Eurojust shall have direct access to the ECRIS-TCN system for the purpose of the implementation of Article 14, as well as for fulfilling its statutory tasks.

*Amendment*

1. **Authorised staff of Eurojust** shall have direct access to the ECRIS-TCN system for the purpose of the implementation of Article 14, as well as for fulfilling its statutory tasks.

## Amendment 62

### Proposal for a regulation Article 15 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a. [Authorised staff of the European Public Prosecutor's Office shall have direct access to the ECRIS-TCN system for the purpose of fulfilling its statutory tasks].**

## Amendment 63

### Proposal for a regulation Article 15 – paragraph 2

*Text proposed by the Commission*

2. Europol **[and the European Public Prosecutor's Office]** shall have direct access to the ECRIS-TCN system for the purpose of fulfilling their statutory tasks.

*Amendment*

2. **Authorised staff of Europol** shall have direct access to the ECRIS-TCN system for the purpose of **the prevention, detection, investigation and prosecution of criminal offences when** fulfilling their



statutory tasks.

## Amendment 64

### Proposal for a regulation Article 15 – paragraph 3

*Text proposed by the Commission*

3. 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 contacts with the national authorities of those Member States established in accordance with their respective constituting legal instruments to request the conviction information.

*Amendment*

3. 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 contacts with the national authorities of those Member States established in accordance with their respective constituting legal instruments to request the conviction information. ***The European Public Prosecutor's Office shall not be refused access to such conviction information on the mere ground that the refusing Member State is not part of the enhanced cooperation procedure establishing the European Public Prosecutor's Office.***

*Justification*

*It is important to clarify the relationship between the EPPO and those Member States which are not among the 20 currently setting up the EPPO, when it comes to requesting criminal records information.*

## Amendment 65

### Proposal for a regulation Article 17 – paragraph 3 – point a

*Text proposed by the Commission*

(a) physically protect data, including by making contingency plans for the protection of ***critical*** infrastructure;

*Amendment*

(a) physically protect data, including by making contingency plans for the protection of infrastructure;

## Amendment 66

**Proposal for a regulation**  
**Article 17 – paragraph 3 – point f**

*Text proposed by the Commission*

(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;

*Amendment*

(f) **verify and** 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;

**Amendment 67**

**Proposal for a regulation**  
**Article 17 – paragraph 3 – point g**

*Text proposed by the Commission*

(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 national supervisory authorities referred to in Article 25 **without delay at their request**;

*Amendment*

(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 national supervisory authorities referred to in Article 25;

**Amendment 68**

**Proposal for a regulation**  
**Article 17 – paragraph 3 – point k**

*Text proposed by the Commission*

(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.

*Amendment*

(k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring **and supervision** to ensure compliance with this Regulation.

**Amendment 69**

**Proposal for a regulation**

## Article 17 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. eu-LISA and the Member States shall cooperate in order to ensure a harmonised data security approach based on a security risk management process encompassing the entire ECRIS-TCN system.**

## Amendment 70

### Proposal for a regulation Article 20 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Member States shall take the necessary measures to ensure that any use of data entered in the ECRIS-TCN system in contravention of this Regulation is punishable by penalties in accordance with national law, that are effective, proportionate and dissuasive.

Member States shall take the necessary measures to ensure that any use of data entered in the ECRIS-TCN system in contravention of this Regulation is punishable by penalties in accordance with national law, **Article 84 of Regulation (EU) 2016/679 and Article 57 of Directive (EU) 2016/680**, that are effective, proportionate and dissuasive.

## Amendment 71

### Proposal for a regulation Article 20 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**Europol, Eurojust [and the European Public Prosecutor's Office] shall take the necessary measures to ensure that members of their staff authorised to access the ECRIS-TCN system are subjected to internal disciplinary measures if they make use of data from the ECRIS-TCN system in a way which does not conform with this Regulation.**

## Amendment 72

**Proposal for a regulation**  
**Article 21 – paragraph 1**

*Text proposed by the Commission*

1. Each central authority of the Member State is to be considered as controller in accordance with *Directive (EU) 2016/680* for the processing of the personal data by that Member State under this Regulation.

*Amendment*

1. Each central authority of the Member State is to be considered as controller in accordance with *Regulation (EU) 2016/679* for the processing of the personal data by that Member State under this Regulation.

**Amendment 73**

**Proposal for a regulation**  
**Article 21 – paragraph 2**

*Text proposed by the Commission*

2. eu-LISA shall be considered as data processor in accordance with Regulation (EC) No 45/2001/EU as regards the personal data entered into the Central System by the Member States.

*Amendment*

2. eu-LISA shall be considered as data processor in accordance with Regulation (EC) No 45/2001/EU [*or its successor*] as regards the personal data entered into the Central System by the Member States.

*Justification*

*Technical amendment*

**Amendment 74**

**Proposal for a regulation**  
**Article 22 – paragraph 2**

*Text proposed by the Commission*

2. Access to the ECRIS-TCN system for entering, amending, deleting and consulting the data referred to in Article 5 shall be reserved exclusively to duly authorised staff of the central authorities, and to duly authorised staff of the bodies referred to in Article 15 for consulting the data. That 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

*Amendment*

2. Access to the ECRIS-TCN system for entering, amending, deleting and consulting the data referred to in Article 5 shall be reserved exclusively to duly authorised staff of the central authorities, and to duly authorised staff of the bodies referred to in Article 15 for consulting the data. That 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 *to what is necessary and* proportionate to the

proportionate to the objectives pursued.

objectives pursued.

## Amendment 75

### Proposal for a regulation Article 23 – paragraph 2

*Text proposed by the Commission*

2. If a request is made to a Member State other than the convicting Member State, the authorities of the Member State to which the request has been made shall ***check the accuracy of the data and the lawfulness of the data processing in the ECRIS-TCN system within a time limit of one month if that check can be done without consulting the convicting Member State. Otherwise, the Member State other than the convicting Member State shall*** contact the authorities of the convicting Member State within ***14 days and*** the convicting Member State shall check the accuracy of the data and the lawfulness of the data processing within one ***month*** from the contact.

*Amendment*

2. If a request is made to a Member State other than the convicting Member State, the authorities of the Member State to which the request has been made shall contact the authorities of the convicting Member State ***without delay, and in any event within seven days after receiving the request.*** The convicting Member State shall check the accuracy of the data and the lawfulness of the data processing ***and respond*** within one ***week*** from the contact.

## Amendment 76

### Proposal for a regulation Article 23 – paragraph 3

*Text proposed by the Commission*

3. In the event that data recorded in the ECRIS-TCN system are factually inaccurate or have been recorded unlawfully, the convicting Member State shall correct or delete 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 delay that action has been taken to correct or delete data relating to that person.

*Amendment*

3. In the event that data recorded in the ECRIS-TCN system are factually inaccurate or have been recorded unlawfully, the convicting Member State shall correct or delete the data in accordance with Article 9. The convicting Member State shall confirm in writing to the person concerned without delay that action has been taken to correct or delete data relating to that person. ***The convicting Member State shall also without delay inform any other Member State who has been a recipient of conviction information***

*pertaining to this record what action has been taken.*

## Amendment 77

### Proposal for a regulation

#### Article 23 – paragraph 4

*Text proposed by the Commission*

4. If the Member State ***to which the request has been made*** does not agree that data recorded in the ECRIS-TCN system are factually inaccurate or have been recorded unlawfully, that Member State shall adopt an administrative decision explaining in writing to the person concerned without delay why it is not prepared to correct or delete data relating to him.

*Amendment*

4. If the ***convicting*** Member State does not agree that data recorded in the ECRIS-TCN system are factually inaccurate or have been recorded unlawfully, that Member State shall adopt an administrative decision explaining in writing to the person concerned without delay why it is not prepared to correct or delete data relating to him ***or her***. ***Such cases shall be communicated to the European Data Protection Supervisor and the national supervisory authority for data protection.***

## Amendment 78

### Proposal for a regulation

#### Article 23 – paragraph 7

*Text proposed by the Commission*

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 and shall make that document available to the supervisory authorities without delay.

*Amendment*

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 and shall make that document available to the supervisory authorities without delay. ***That record shall be deleted after three years.***

*Justification*

*A maximum retention period is needed for the records of requests; three years is a reasonable amount of time.*

## Amendment 79

### Proposal for a regulation Article 23 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

**7a. Where applicable, if a search in the Central System returns no hits, the third country national asking for information on his own criminal record shall receive a statement certifying that the search in the Central System returned no hits.**

*Justification*

*This amendment ensures that TNCs requesting a criminal records extract shall receive, if they have committed no offences, a certificate that there was no hit on ECRIS, which proves that they have no criminal records in any MSs. This can be extremely useful for the TNCs for employment purposes.*

## Amendment 80

### Proposal for a regulation Article 24 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. In each Member State, the supervisory authority shall, upon request, assist and advise the person concerned in exercising his or her right to correct or delete data relating to him or her.

2. In each Member State, the supervisory authority shall **be able to audit the central authorities, shall be informed of all incidents referred to in Article 9(3) and (4) and Article 23(4), and** upon request, assist and advise the person concerned in exercising his or her right to correct or delete data relating to him or her.

## Amendment 81

### Proposal for a regulation Article 25 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. In each Member State any person shall have the right to bring an action **or** a complaint in the Member State which

1. **In accordance with Chapter VIII of Directive (EU) 2016/680,** in each Member State any person shall have the

refused the right of access to or the right of correction or deletion of data relating to him or her, provided for in Article 23.

right to bring an action ***before a court and the right to bring*** a complaint in the Member State which refused the right of access to or the right of correction or deletion of data relating to him or her, provided for in Article 23.

#### *Justification*

*Clarifications needed in order to link to the relevant legal basis (Directive 2016/680) and to avoid that Member States can only provide the right to bring a complaint.*

### **Amendment 82**

#### **Proposal for a regulation Article 26 – paragraph 1**

##### *Text proposed by the Commission*

1. Each Member State shall ensure that the supervisory authority or authorities designated pursuant to 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.

##### *Amendment*

1. Each Member State shall ensure that the supervisory authority or authorities designated pursuant to Article ***51 of Regulation (EU) 2016/679*** 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.

### **Amendment 83**

#### **Proposal for a regulation Article 26 – paragraph 2**

##### *Text proposed by the Commission*

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.

##### *Amendment*

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 ***three*** years from the start of operations of the ECRIS-TCN system.

### **Amendment 84**



**Proposal for a regulation**  
**Article 26 – paragraph 3**

*Text proposed by the Commission*

3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.

*Amendment*

3. Member States shall ensure that their supervisory authority has sufficient resources **and training** to fulfil the tasks entrusted to it under this Regulation.

**Amendment 85**

**Proposal for a regulation**  
**Article 26 – paragraph 4**

*Text proposed by the Commission*

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.

*Amendment*

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 **Articles 23(7) and 29** and allow them access at all times to all their ECRIS-TCN system related premises.

**Amendment 86**

**Proposal for a regulation**  
**Article 27 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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 **three** 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.

make comments before the report is adopted.

## Amendment 87

### Proposal for a regulation Article 28 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

*Justification*

*Technical amendment - aligned with Article 62 of the new Regulation 45/2001.*

## Amendment 88

### Proposal for a regulation Article 29 – paragraph 4

*Text proposed by the Commission*

4. Logs and documentation 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.

*Amendment*

4. Logs and documentation 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 *three years*, if they are no longer required for monitoring procedures which have already begun.

*Justification*

*Longer retention periods for logs are necessary to ensure that TCNs may properly initiate complaints.*

## Amendment 89

### Proposal for a regulation

## Article 30 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

1. The duly authorised staff of eu-LISA **and** the competent authorities 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.

*Justification*

*The Commission does not need to have access to the ECRIS-TCN system for statistics; eu-LISA is anyway sending statistical information to the Commission every month.*

## Amendment 90

### Proposal for a regulation Article 30 – paragraph 2

*Text proposed by the Commission*

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.***

*Amendment*

***Deleted***

*Justification*

*Outdated - this central repository is not on the table anymore and has not been raised in the recent workshops organised by the Commission on Information Systems and Interoperability. See also the related Inception Impact Assessment Ares(2017)3765711 on Interoperability of information systems for migration and security.*

*In Opinion 9/2017 on the new eu-LISA Regulation, the EDPS also points out that the establishment of a central repository is neither necessary nor desirable.*

## Amendment 91

**Proposal for a regulation**  
**Article 30 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**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).** **deleted**

*Justification*

*Outdated - this central repository is not on the table anymore and has not been raised in the recent workshops organised by the Commission on Information Systems and Interoperability. See also the related Inception Impact Assessment Ares(2017)3765711 on Interoperability of information systems for migration and security.*

*In Opinion 9/2017 on the new eu-LISA Regulation, the EDPS also points out that the establishment of a central repository is neither necessary nor desirable.*

**Amendment 92**

**Proposal for a regulation**  
**Article 31 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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.

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. ***The annual appropriations shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework and within the framework of the annual budgetary procedure.***

**Compromise amendment replacing Amendments: 46 (Rapporteur), 307 (Mlinar, Deprez, Michel), 308 (Albrecht, Sargentini)**

## Amendment 93

### Proposal for a regulation

#### Article 32 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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 publish a list of these central authorities **on its website. In the event that there is a change to a Member State's central authority, eu-LISA shall update the list without delay.**

## Amendment 94

### Proposal for a regulation

#### Article 33 – paragraph 1 – point a

*Text proposed by the Commission*

(a) the measures referred to in **Article 10** have been adopted;

*Amendment*

(a) the measures referred to in **Articles 10 and 10a** have been adopted;

## Amendment 95

### Proposal for a regulation

#### Article 34 – paragraph 3

*Text proposed by the Commission*

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. **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.**

*Amendment*

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. **That report shall include an overview of the current costs and progress of the project, a financial impact assessment, and information on any technical problems and risks that may impact the overall costs of the system to be borne by the general budget of the Union in accordance with Article 31.**

## **Amendment 96**

### **Proposal for a regulation**

#### **Article 34 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. In the event of delays in the development process, the European Parliament and the Council shall be informed as soon as possible of the reasons for the delays and of their impact in terms of time and finances.**

## **Amendment 97**

### **Proposal for a regulation**

#### **Article 34 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**3b. As soon as the development is completed, a report shall be submitted to the European Parliament and the Council describing the implementation of the project, any difficulties experienced in reaching project milestones and a detailed assessment of the costs incurred and the technical specifications of the system.**

## **Amendment 98**

### **Proposal for a regulation**

#### **Article 34 – paragraph 3 c (new)**

*Text proposed by the Commission*

*Amendment*

**3c. In the event of an upgrade of the system, a report shall be submitted to the European Parliament and the Council, and the costs of the upgrade shall be published accordingly.**

## Amendment 99

### Proposal for a regulation

#### Article 34 – paragraph 4

*Text proposed by the Commission*

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.

*Amendment*

4. **One year** 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 **their** security **and costs**, 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.

## Amendment 100

### Proposal for a regulation

#### Article 34 – paragraph 6

*Text proposed by the Commission*

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 this Article 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.

*Amendment*

6. The Member States, Eurojust, Europol[, and the European Public Prosecutor's Office], **the European Data Protection Supervisor and the national supervisory authorities for data protection** shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in this Article 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.

## Amendment 101

### Proposal for a regulation

#### Article 34 – paragraph 7

*Text proposed by the Commission*

7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in **paragraph 5**.

*Amendment*

7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in **this Article**.

## **Amendment 102**

### **Proposal for a regulation Article 34 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 34 a**

##### ***Exercise of the delegation***

**1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.**

**2. The power to adopt delegated acts referred to in Article 6(2) and Article 10a shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of this Regulation].**

**3. The delegation of power referred to in Article 6(2) and Article 10a may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.**

**4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.**

**5. As soon as it adopts a delegated act, the Commission shall notify it**



*simultaneously to the European Parliament and to the Council.*

*6. A delegated act adopted pursuant to Article 6(2) or Article 10a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council*

### **Amendment 103**

#### **Proposal for a regulation Article 36 – paragraph 1**

*Text proposed by the Commission*

An Advisory Group shall be established by eu-LISA and provide it with the 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.

*Amendment*

An Advisory Group, *to include a representative of the European Data Protection Supervisor and a representative of the European Union Agency for Fundamental Rights*, shall be established by eu-LISA and provide it with the 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.

## EXPLANATORY STATEMENT

### *Background*

The European Criminal Records Information System (ECRIS) has been operational since 2012 and allows the competent authorities of Member States to obtain complete information on previous convictions of an EU national from the Member State of that person's nationality.

Although this has proved to be an extremely useful tool for judicial cooperation between the Member States, a loophole in the system has also been identified. Using the system to check the previous Criminal Records of Third Country Nationals (TCNs) is cumbersome and inefficient. After several calls from the European Council and the Justice and Home Affairs Council to improve the existing system the Commission published Directive (COM(2016) 07 final) on 19th January 2016, which established a decentralised system with a hit/no hit index that would allow competent authorities to quickly identify which Member States held criminal records information relating to a TCN.

However developments since then have demonstrated that a decentralised hit/no hit index would not be an appropriate instrument for the technical exchange of the high numbers of pseudonymised fingerprints that would be needed to make the system effective. This problem is addressed in this ECRIS-TCN Regulation that establishes a centralised database containing only identity information needed for identification, such as fingerprints, alphanumeric data and facial images. This database would be managed by eu-LISA and supervised by the European Data Protection Supervisor.

The ECRIS Directive, establishing the principle changes to the ECRIS system is maintained. This ECRIS-TCN Regulation establishes the creation and management of a centralised system, the responsibilities of the data controllers and the access rights to this centralised database.

### *The Rapporteur's position:*

In this draft report the Rapporteur wished to keep this Regulation in line with the political decisions previously taken on the Directive, for which the parliament already has a mandate.

However, it is important to make clear the distinction between the ECRIS system and the centralised system, referred to as the ECRIS-TCN system. The ECRIS-TCN system only allows a competent authority to establish where criminal records information is held, and not what that information is. In order to obtain the details of what the criminal conviction actually is, the competent authority will still need to use the traditional ECRIS system to make a request to the relevant Member State.

Therefore, the Rapporteur has included an amendment to make it clear that a hit in the ECRIS-TCN system by itself should not be used to affect a judicial outcome by undermining the principle of equality before the law, the right to a fair trial, the presumption of innocence or the general prohibition of discrimination.

In order to keep the Directive and Regulation compatible, the Rapporteur has maintained the Parliament's position that we should move forward with interoperability, that Europol and the European Coast and Border Guard Agency should have direct access the ECRIS-TCN system for the performance of their statutory tasks, and that where Member States have information provided by third countries on the basis of bilateral agreements compliant with Union law on convictions, they can under certain safeguards include them in the central system.

With regard to access for Europol, the draft report makes clear that the restriction on Europol in this regulation does not prevent Europol from sharing information that they have received from Member States through the normal ECRIS system (covered by the Directive) with third countries, where this is in line with their statutory tasks, and only with the consent of the relevant Member States.

The Rapporteur believes that facial images should be included, wherever they are collected by Member States for these purposes, from the moment the ECRIS-TCN system becomes operational. This is because once searches of facial images are possible in the system, this will only be helpful and indeed possible if there is already previous facial image data included for past convictions. This draft report asks the Commission to produce a report on readiness of the required technology to use these facial images for search functionality by three years entry into force of the regulation.

The draft report includes the same extension of the scope found in the Directive to allow for checks for past criminal conviction on persons that will work with children or vulnerable persons (i.e. the elderly). It also allows individuals who make an access request to the ECRIS-TCN system, to receive a statement certifying that the search on the central system returned no hits (this would be very useful for TCNs for employment purposes).

Amendments to the data protection regime are also included, which aim to ensure that there are proper levels of training, and that where requests for correction and deletion are made these requests are dealt with swiftly.

ECRIS-TCN is not a traditional information database, it is a tool to facilitate cooperation and information sharing between Member States. In order for the ECRIS-TCN system to be a useful and accurate reflection of the criminal records information held by Member States, the data retention of the identification information in the ECRIS-TNC system has to be in line with the retention of the national criminal records. If this is not the case, we may end up with a discrepancy between how long criminal records on TCNs and EU nationals can be easily identified and requested from another Member States. This would undermine the very purpose of the ECRIS-TCN and would in practice create an unfair discrepancy between EU nationals and TCNs.

Lastly, the Rapporteur considers that any reference to the potential exit of the UK from the EU on specific legislative acts raise legal concerns and should be deleted, since the consequences should result directly from the application of primary law and the withdrawal agreement.

.12.2017

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council Establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011  
(COM(2017)0344 – C8-0217/2017 – 2017/0144(COD))

Rapporteur: Bernd Kölmel

### **SHORT JUSTIFICATION**

The European Criminal Records Information System (ECRIS) was successfully established in April 2012 and facilitates the exchange of information on criminal convictions against individuals by criminal courts in the EU. The Member State of nationality must store this information. Criminal record information is exchanged between Member States upon request, both for EU nationals and for third-country nationals and stateless persons (TCN). However, information regarding TCN is currently hardly exchanged through ECRIS due to the absence of an efficient, dedicated procedure. Until now, Member States had to send ‘blanket requests’ to all other Member States, thus creating a considerable administrative burden for those authorities not holding the requested information (estimated at EUR 78 million per year). This constitutes an important deterrent from using ECRIS for TCN, resulting in the system being used in only 5% of such cases.

In 2016, the Commission made a proposal for a directive amending the ECRIS Framework Decision to improve this situation. A decentralised system to identify the Member State(s) holding criminal record information through a hit/no hit search mechanism was considered the most proportionate and cost-effective solution. However, in the meantime, in response to the current security situation and recent terrorist attacks in several Member States, the Council has prioritised sharing information on criminal convictions as a strategy to combat crime and counter terrorism, and has requested the Commission to submit an ambitious proposal for the extension of ECRIS to TCN, in order to use ECRIS to its full potential.

The new proposal focuses on a centralised system, set up and managed by eu-LISA, whereby

the alphanumeric data, fingerprints and, where available, facial images of TCN are stored at EU-level. The rapporteur welcomes this proposal, which he considers well-structured, and acknowledges that this set-up has the advantage of facilitating direct access by Eurojust, Europol and the future EPPO in support of their statutory tasks.

The rapporteur agrees with the Commission's proposal to entrust the development, operational management and maintenance of ECRIS-TCN to eu-LISA, which is well placed given its extensive experience managing other large centralised databases in the Justice and Home Affairs area.

The Commission estimates that the total cost for developing and operating ECRIS-TCN in the period 2018-2020 will be around EUR 13 million (one-off cost), including the cost to eu-LISA for hiring five contract agents during the development phase. The ongoing cost to the EU budget of maintaining the system is estimated at EUR 2.1 million per year. The one-off cost to the Member States is estimated at EUR 13.3 million, with the recurring annual cost to Member States expected to grow over time (from around EUR 6 million at the entry into force to a maximum of EUR 15.4 million) as the number of searches increases.

The cost to the EU budget, to be covered under the Justice programme for the period 2018-2020 and in large part transferred to the eu-LISA budget line, is compatible with the current Multiannual Financial Framework (MFF). From 2021 onwards, the budgetary impact is expected to be limited to the recurring costs for system maintenance, to be included in the budget of eu-LISA under the next MFF. Each Member State should bear its own costs for the implementation, administration, use and maintenance of both ECRIS-TCN and its national criminal records and fingerprint databases.

The rapporteur considers the estimated cost to the EU budget of this proposal to be reasonable and proportionate. Although the price tag of the new proposal is significantly higher than the 2016 proposal, both to the EU budget and to Member States, significant savings in terms of administrative burden on Member State authorities (estimated at up to EUR 78 million) should also be taken into account. Nonetheless, the rapporteur urges the Commission, eu-LISA and the Member States to ensure the highest degree of cost efficiency possible throughout the roll-out and implementation of ECRIS-TCN.

Furthermore, the rapporteur emphasises that ECRIS-TCN should be designed in such a way as to facilitate future participation in a shared automated biometric matching service, using facial recognition software for more effective identification at a later stage. He also underlines the need to future-proof the system for further interoperability with other EU level databases.

Finally, the rapporteur strengthens a number of provisions on reporting and evaluation, in order to enable the budgetary authority to follow closely the development and early functioning of the new ECRIS-TCN in view of future budgetary decisions.

## AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a regulation

#### Article 11 – paragraph 16 a (new)

*Text proposed by the Commission*

*Amendment*

**16a.** *eu-LISA shall be provided with appropriate funding and staff to exercise the responsibilities referred to in Article 11.*

### Amendment 2

#### Proposal for a regulation

#### Article 31 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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.

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. ***The annual appropriations shall be authorised by the European Parliament and the Council within the limits of the multiannual financial framework and within the framework of the annual budgetary procedure.***

### Amendment 3

#### Proposal for a regulation

#### Article 34 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. By [six months after the entry into force of this Regulation] and every six

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. ***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.***

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. ***That report shall include an overview of the current development of costs and progress of the project, a financial impact assessment, and information on any technical problems and risks that may impact the overall costs of the system to be borne by the general budget of the Union in accordance with Article 31.***

#### **Amendment 4**

##### **Proposal for a regulation**

##### **Article 34 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. In the event of delays in the development process, the European Parliament and the Council shall be informed as soon as possible of the reasons for the delays and of their impact in terms of time and finances.***

#### **Amendment 5**

##### **Proposal for a regulation**

##### **Article 34 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. As soon as the development is completed, a report shall be submitted to the European Parliament and the Council describing the development of the project and any discrepancies at each of the phases and milestones of the project, and a conclusive assessment of the costs incurred and the technical specifications of the system.***

#### **Amendment 6**

**Proposal for a regulation**  
**Article 34 – paragraph 3 c (new)**

*Text proposed by the Commission*

*Amendment*

**3c. In the event of an upgrade of the system, a report shall be submitted to the European Parliament and the Council, and the costs of the upgrade shall be published accordingly.**

**Amendment 7**

**Proposal for a regulation**  
**Article 34 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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.

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 **their** security **and costs**, 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.

**Amendment 8**

**Proposal for a regulation**  
**Article 34 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. **Three** 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

5. **Two** years after the start of operations of the ECRIS-TCN system and every **two** 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



achieved against objectives and the impact on fundamental rights, and an assessment of the continuing validity of the underlying rationale, the application of the Regulation, the security of the system and any implications on future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament and the Council.

objectives and the impact on fundamental rights and *their costs*, an assessment of the continuing validity of the underlying rationale, the application of the Regulation, the security of the system and any implications on future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament and the Council.

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	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)
<b>References</b>	COM(2017)0344 – C8-0217/2017 – 2017/0144(COD)
<b>Committee responsible</b> Date announced in plenary	LIBE 11.9.2017
<b>Opinion by</b> Date announced in plenary	BUDG 11.9.2017
<b>Rapporteur</b> Date appointed	Bernd Kölmel 11.7.2017
<b>Date adopted</b>	4.12.2017
<b>Result of final vote</b>	+: 19 -: 3 0: 4
<b>Members present for the final vote</b>	Nedzhmi Ali, Jonathan Arnott, Jean Arthuis, Lefteris Christoforou, Gérard Deprez, Manuel dos Santos, André Elissen, José Manuel Fernandes, Eider Gardiazabal Rubial, Jens Geier, Esteban González Pons, Bernd Kölmel, Zbigniew Kuźmiuk, Vladimír Maňka, Siegfried Mureşan, Paul Rübigen, Jordi Solé, Eleftherios Synadinos, Indrek Tarand, Isabelle Thomas, Monika Vana, Daniele Viotti, Tiemo Wölken, Marco Zanni
<b>Substitutes under Rule 200(2) present for the final vote</b>	John Howarth, Joachim Zeller

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
ALDE	Nedzhmi Ali, Jean Arthuis, Gérard Deprez
ECR	Zbigniew Kuźmiuk, Bernd Kölmel
PPE	Lefteris Christoforou, José Manuel Fernandes, Esteban González Pons, Siegfried Mureşan Paul Rübzig, Joachim Zeller
S&D	Eider Gardiazabal Rubial, Jens Geier, John Howarth, Vladimír Maňka, Isabelle Thomas, Daniele Viotti, Tiemo Wölken, Manuel dos Santos

3	-
EFDD	Jonathan Arnott
ENF	André Elissen
NI	Eleftherios Synadinos

4	0
ENF	Marco Zanni
VERTS/ALE	Jordi Solé, Indrek Tarand, Monika Vana

**Key to symbols:**

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	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)		
<b>References</b>	COM(2017)0344 – C8-0217/2017 – 2017/0144(COD)		
<b>Date submitted to Parliament</b>	28.6.2017		
<b>Committee responsible</b> Date announced in plenary	LIBE 11.9.2017		
<b>Committees asked for opinions</b> Date announced in plenary	BUDG 11.9.2017	CONT 11.9.2017	
<b>Not delivering opinions</b> Date of decision	CONT 12.10.2017		
<b>Rapporteurs</b> Date appointed	Daniel Dalton 31.8.2017		
<b>Discussed in committee</b>	20.11.2017	11.1.2018	25.1.2018
<b>Date adopted</b>	25.1.2018		
<b>Result of final vote</b>	+ : 47 - : 6 0 : 0		
<b>Members present for the final vote</b>	Asim Ademov, Jan Philipp Albrecht, Michał Boni, Caterina Chinnici, Daniel Dalton, Rachida Dati, Frank Engel, Cornelia Ernst, Tanja Fajon, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Jussi Halla-aho, Sophia in 't Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Monica Macovei, Roberta Metsola, Péter Niedermüller, Ivari Padar, Birgit Sippel, Csaba Sógor, Sergei Stanishev, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Cecilia Wikström, Tomáš Zdechovský, Auke Zijlstra		
<b>Substitutes present for the final vote</b>	Ignazio Corrao, Pál Csáky, Dennis de Jong, Maria Grapini, Anna Hedh, Lívia Járóka, Sylvia-Yvonne Kaufmann, Ska Keller, Jean Lambert, Gilles Lebreton, Jeroen Lenaers, Sander Loones, Angelika Mlinar, Maite Pagazaurtundúa Ruiz, John Procter, Emil Radev, Barbara Spinelli, Jaromír Štětina, Axel Voss		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Anna Záborská		
<b>Date tabled</b>	1.2.2018		

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

47	+
ALDE	Nathalie Griesbeck, Sophia in 't Veld, Angelika Mlinar, Maite Pagazaurtundúa Ruiz, Cecilia Wikström
ECR	Daniel Dalton, Jussi Halla-aho, Sander Loones, Monica Macovei, John Procter
EFDD	Ignazio Corrao
GUE/NGL	Dennis de Jong
PPE	Asim Ademov, Michał Boni, Pál Csáky, Rachida Dati, Frank Engel, Lívia Járóka, Barbara Kudrycka, Jeroen Lenaers, Roberta Metsola, Emil Radev, Csaba Sógor, Jaromír Štětina, Traian Ungureanu, Axel Voss, Anna Záborská, Tomáš Zdechovský
S&D	Caterina Chinnici, Tanja Fajon, Ana Gomes, Maria Grapini, Sylvie Guillaume, Anna Hedh, Sylvia-Yvonne Kaufmann, Dietmar Köster, Cécile Kashetu Kyenge, Juan Fernando López Aguilar, Péter Niedermüller, Ivari Padar, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer
VERTS/ALE	Jan Philipp Albrecht, Ska Keller, Jean Lambert, Bodil Valero

6	-
ENF	Gilles Lebreton, Auke Zijlstra
GUE/NGL	Cornelia Ernst, Barbara Spinelli, Marie-Christine Vergiat
NI	Udo Voigt

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention