



2017/0144(COD)

30.10.2017

*****I**

DRAFT 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)(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 opinions of the Committee on Budgets and the Committee on Budgetary Control (A8-0000/2017),
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 terrorist offences, and other threats to security*.

Or. en

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/JHA¹⁹, as well as *in order to prevent new offences*.

¹⁹ 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/JHA¹⁹, as well as *for the purposes of recruitment for posts involving direct and regular contact with children under Article 10 of Directive 2011/92/EU of the European Parliament and of the Council^{19a} 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.*

¹⁹ 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).

^{19a} *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).

Or. en

Amendment 3

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2 a) Member States' competent authorities should also take into account previous convictions in relation to decisions ending legal stay, as well as decisions on return and refusal of entry concerning third country nationals posing a threat to public policy or public security or national security, as indicated in the Commission Communication to the European Parliament and the Council of 2 March 2017 on a more effective return policy in the European Union.

Or. en

Amendment 4

Proposal for a regulation Recital 4

Text proposed by the Commission

Amendment

(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.

(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.

Amendment 5

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5 a) Data retention periods for criminal records should be a Member State competency and should not be harmonised. Considering that all conviction data which is retained at national level will still be relevant for other Member States, there should be no artificial discrepancy between the data retention periods of the data in the Central System and the data retention periods of the data concerning third country nationals and citizens of the Union contained in national systems. In order not to undermine the purpose of this Regulation to improve the efficiency of the exchange of criminal records, and so as not to create a discrepancy between the length of time criminal records on third country nationals and citizens of the Union are available for exchange between the Member States, the Central System must therefore be a genuine reflection of all individuals whose data is contained in the national criminal records databases at any given time.

Or. en

Amendment 6

Proposal for a regulation

Recital 6

Text proposed by the Commission

Amendment

(6) Such 'blanket requests' impose ***an*** administrative burden on all Member

(6) Such 'blanket requests' impose ***a disproportionate*** administrative burden on

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.

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.*

Or. en

Amendment 7

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.

Or. en

Amendment 8

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) The ECRIS-TCN system should contain only the identity information of third country nationals convicted by a criminal court within the Union. Such identity information should include alphanumeric data, fingerprint data in accordance with Framework Decision 2009/315/JHA, and facial images ***in as far as*** they are recorded in the national criminal records databases of the Member States.

Amendment

(11) The ECRIS-TCN system should contain only the identity information of third country nationals convicted by a criminal court within the Union. Such identity information should include alphanumeric data, fingerprint data in accordance with Framework Decision 2009/315/JHA, and facial images ***wherever*** they are recorded in the national criminal records databases of the Member States.

Or. en

Amendment 9

**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.

Or. en

Amendment 10

**Proposal for a regulation
Recital 16 a (new)**

Text proposed by the Commission

Amendment

(16 a) Where, in the context of criminal proceedings, a Member State receives, on the basis of bilateral agreements compliant with Union law, information on a conviction relating to terrorist offences or serious criminal offences handed down

by a judicial authority in a third country to a third country national residing in the Union, that Member State should create records in the ECRIS-TCN system, within the limitations of the bilateral agreements. This exchange of information should fully respect the principles of proportionality, necessity, and the right to a fair trial in the third country.

Or. en

Amendment 11

Proposal for a regulation Recital 16 b (new)

Text proposed by the Commission

Amendment

(16 b) Although Europol is prevented from being able to make the information obtained from the ECRIS-TCN system available to a third country, an international organisation or a private party, this should not prevent Europol from communicating information obtained from a Member State through the ECRIS system to third countries, international organisations and other relevant entities or bodies in so far as necessary for the purposes of fulfilling their statutory tasks. Such communication should be done with the consent of the Member State concerned.

Or. en

Amendment 12

Proposal for a regulation Recital 19

Text proposed by the Commission

Amendment

(19) A hit indicated by the ECRIS-TCN system should not automatically mean that

(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.

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. ***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.***

Or. en

Amendment 13

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 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, ***the right to a fair trial, the presumption of innocence*** and the general prohibition of discrimination.

Or. en

Amendment 14

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Since the objective of this Regulation, namely to enable the rapid and efficient exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by ***reason of the necessary synergy and interoperability***, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

Amendment

(25) Since the objective of this Regulation, namely to enable the rapid and efficient exchange of criminal record information on third country nationals, cannot be sufficiently achieved by the Member States, but can rather, by ***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.

Or. en

Amendment 15

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Since the United Kingdom notified on 29 March 2017 its intention to leave the Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the United Kingdom from the date of the entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the United Kingdom, decides to extend that period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, this above-

Amendment

deleted

mentioned description of the participation of the UK in proposal only applies until the United Kingdom ceases to be a Member State.

Or. en

Amendment 16

Proposal for a regulation Article 3 – paragraph 1 – point j a (new)

Text proposed by the Commission

Amendment

(ja) ‘identity information’ means alphanumeric data, fingerprint data and facial image data that serve to determine the identity of a natural person;

Or. en

Amendment 17

Proposal for a regulation Article 3 – paragraph 1 – point m a (new)

Text proposed by the Commission

Amendment

(m a) 'biometric data' means both fingerprint data and facial images;

Or. en

Amendment 18

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 19

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 *shall* also contain facial images of the convicted third country national *wherever the national law of a Member State where a conviction is handed down allows for the collection and storage of facial images of a convicted person.*

Or. en

Amendment 20

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 *automatically* create the data record *immediately upon* the conviction was entered into the national criminal records register.

Or. en

Amendment 21

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

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

records or national fingerprints database.

national criminal records or national fingerprints database.

Or. en

Amendment 22

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. 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 **by [three years after the entry into force of this Regulation]** on the availability and readiness of the required technology, on which the European Parliament shall be consulted.

Or. en

Amendment 23

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. Europol, Eurojust [**and** the European Public Prosecutor's Office] shall have access to the ECRIS-TCN system for identifying the Member State(s) holding criminal record information on a third county national in accordance with Articles 14, 15 and 16.

Amendment

2. Europol, Eurojust [, the European Public Prosecutor's Office] **and the European Border and Coast Guard Agency** shall have access to the ECRIS-TCN system for identifying the Member State(s) holding criminal record information on a third county national in accordance with Articles 14, 15 and 16. **They shall not be allowed to enter, modify or delete any data in the ECRIS-TCN system.**

Amendment 24

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. The competent authorities **may** also query the ECRIS-TCN system using the facial images referred to in Article 5(2), provided that such functionality has been implemented in accordance with Article 6(2).

Amendment

4. The competent authorities **shall** also query the ECRIS-TCN system using the facial images referred to in Article 5(2), provided that such functionality has been implemented in accordance with Article 6(2).

Or. en

Amendment 25

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.

Or. en

Amendment 26

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

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 data record

without delay from the Central System, and in any event no later than one month after the expiry of that retention period.

without delay from the Central System, and in any event no later than one month after the expiry of that retention period.

Or. en

Amendment 27

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 not later than within three months*.

Or. en

Amendment 28

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

Amendment

5. Prior to the design and development phase, a Programme Management Board 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, *a member representing eu-LISA appointed by its Executive Director* and one member appointed by the Commission. The

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

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

Or. en

Amendment 29

Proposal for a regulation

Article 12 – paragraph 1 – point a

Text proposed by the Commission

(a) ensuring a secure connection between their national criminal records databases and *fingerprints* databases and the national central access point;

Amendment

(a) ensuring a secure connection between their national criminal records databases and *biometric* databases and the national central access point;

Or. en

Amendment 30

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 **as soon as possible** 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.

Or. en

Amendment 31

**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 record** 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.

Or. en

Amendment 32

**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

Amendment

3. Neither Eurojust, Europol, [the European Public Prosecutor's Office], **the European Border and Coast Guard**

may transfer or make available to a third country, any international organisation nor 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.

Agency nor any central authority of a Member State may transfer or make available to a third country, any international organisation nor 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.

Or. en

Amendment 33

Proposal for a regulation Article 15 – title

Text proposed by the Commission

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

Amendment

Access for Eurojust, Europol, [, the European Public Prosecutor's Office] *and the European Border and Coast Guard Agency*

Or. en

Amendment 34

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

Or. en

Amendment 35

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 **or Member States** holding criminal records information on a third country national, Eurojust, Europol[, the European Public Prosecutor's Office] **and the European Border and Coast Guard Agency** 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.

Or. en

Amendment 36

Proposal for a regulation

Article 16 – title

Text proposed by the Commission

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

Amendment

Responsibilities of Eurojust, Europol, **European Border and Coast Guard** [, the European Public Prosecutor's Office] **and the European Border and Coast Guard Agency**

Or. en

Amendment 37

Proposal for a regulation

Article 16 – paragraph 1

Text proposed by the Commission

1. Eurojust, Europol[, **and** the European Public Prosecutor's Office] shall establish the technical means to connect to the ECRIS-TCN system and shall be responsible for maintaining that

Amendment

1. Eurojust, Europol [, the European Public Prosecutor's Office] **and the European Border and Coast Guard Agency** shall establish the technical means to connect to the ECRIS-TCN system and

connection.

shall be responsible for maintaining that connection.

Or. en

Amendment 38

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;

Or. en

Amendment 39

Proposal for a regulation

Article 17 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. 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.

Or. en

Amendment 40

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

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 proportionate to the objectives pursued.

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 objectives pursued.

Or. en

Amendment 41

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 check the accuracy of the data and the lawfulness of the data processing in the ECRIS-TCN system ***without undue delay*** 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.

Or. en

Amendment 42

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 or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned, ***the Commission, Member States and eu-LISA***, without delay, that action has been taken to correct or delete data relating to that person.

Or. en

Amendment 43

**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..

Or. en

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 44

**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.

Or. en

Amendment 45

Proposal for a regulation
Article 31 – paragraph 2

Text proposed by the Commission

2. The costs of connection of Eurojust, Europol and [the European Public Prosecutor's Office] to the ECRIS-TCN system shall be borne by the budget of those bodies.

Amendment

2. The costs of connection of Eurojust, Europol, [the European Public Prosecutor's Office] **and the European Border and Coast Guard Agency** to the ECRIS-TCN system shall be borne by the budget of those bodies.

Or. en

Amendment 46

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 **annually**.

Or. en

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.