# Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726

## REGULATION (EU) 2019/816 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The Union has set itself the objective of offering its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. That objective should be achieved by means of, among others, appropriate measures to prevent and combat crime, including organised crime and terrorism.

(2) That 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[(2)], as well as in order to prevent new offences.

(3) That objective presupposes the exchange of information extracted from criminal records between the competent authorities of the Member States. Such an exchange of information is organised and facilitated by the rules set out in Council Framework Decision 2009/315/JHA[(3)] and by the European Criminal Records Information System (ECRIS), established by Council Decision 2009/316/JHA[(4)].

(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.

(5) Within the Union, information on third-country nationals is not gathered as it is for nationals of Member States — in the Member States of nationality — but only stored in the Member States where the convictions have been handed down. A complete overview of the criminal history of a third-country national can therefore be ascertained only if such information is requested from all Member States.

(6) Such 'blanket requests' impose a disproportionate administrative burden on all Member States, including those not holding information on the particular third-country national. In practice, that burden deters Member States from requesting information on third-country nationals from other Member States, which seriously hinders the exchange of information between them, limiting their access to criminal records 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.

(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 States hold criminal records information on a third-country national ('ECRIS-TCN'). The existing ECRIS framework could then be used to request the criminal records information from those Member States in accordance with Framework Decision 2009/315/JHA.

(8) This Regulation should therefore lay down rules establishing a centralised system at the Union level containing personal data, and rules on the division of responsibilities between the Member State and the organisation responsible for the development and maintenance of the centralised system, as well as any specific data protection provisions needed to supplement the existing data protection arrangements and to provide for an adequate overall level of data protection, data security and protection of the fundamental rights of the persons concerned.

(9) The objective of offering to citizens of the Union an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured, also requires complete information to be held on convictions of citizens of the Union who also hold the nationality of a third country. Given the possibility that those persons could present themselves as holding one or several nationalities, and that different convictions could be stored in the convicting Member State or in the Member State of nationality, it is necessary to include citizens of the Union who also hold the nationality of a third country within the scope of this Regulation. The exclusion of such persons would result in the information stored in ECRIS-TCN being incomplete. That would jeopardise the reliability of the system. However, since such persons hold Union citizenship, the conditions under which fingerprint data can be included in ECRIS-TCN in respect of those persons should be comparable to the conditions under which the fingerprint data of Union citizens are exchanged between Member States through ECRIS, which was established by Framework Decision 2009/315/JHA and Decision 2009/316/JHA. Therefore, in respect of citizens of the Union who also hold the nationality of a third country, fingerprint data should only be included in ECRIS-TCN where they have

been collected in accordance with national law during criminal proceedings, it being understood that for such inclusion Member States should be able to use fingerprint data collected for purposes other than criminal proceedings, where such use is permitted under national law.

(10) ECRIS-TCN should allow for processing of fingerprint data for the purpose of identifying the Member States in possession of criminal records information on a third-country national. It should also allow for processing of facial images in order to confirm his or her identity. It is essential that the entry and use of fingerprint data and facial images not exceed what is strictly necessary to achieve the aim, respect fundamental rights, as well as the best interests of children, and be in conformity with applicable Union data protection rules.

(11) The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council[(5)] should be entrusted with the task of developing and operating ECRIS-TCN, given its experience with managing other large scale systems in the area of justice and home affairs. Its mandate should be amended to reflect those new tasks.

(12) eu-LISA should be equipped with the appropriate funding and staffing to meet its responsibilities under this Regulation.

(13) Given the need to create close technical links between ECRIS-TCN and ECRIS, eu-LISA should also be entrusted with the task of further developing and maintaining the ECRIS reference implementation, and its mandate should be amended to reflect this.

(14) Four Member States have developed their own national ECRIS implementation software in accordance with Decision 2009/316/JHA, and have been using it instead of the ECRIS reference implementation to exchange criminal records information. Given the particular features that those Member States have introduced in their systems for national use and the investments that they have made, they should be allowed to use their national ECRIS implementation software for the purposes of ECRIS-TCN as well, provided that the conditions set out in this Regulation are met.

(15) ECRIS-TCN should contain only the identity information of third-country nationals convicted by a criminal court within the Union. Such identity information should include alphanumeric and fingerprint data. It should also be possible for facial images to be included in as far as the law of the Member State where a conviction is handed down allows for the collection and storage of facial images of a convicted person.

(16) The alphanumeric data to be entered by the Member States into the central system should include the surname (family name) and the first names (given names) of the convicted person, as well as, where such information is available to the central authority, any pseudonyms or aliases of that person. If differing personal data, such as a different spelling of a name in another alphabet, are known to the Member State concerned, it should be possible to enter such data into the central system as additional information.

(17) The alphanumeric data should also include, as additional information, the identity number, or the type and number of the person's identification documents, as well as

the name of the authority issuing those documents, where such information is available to the central authority. The Member State should seek to verify the authenticity of identification documents before entering the relevant information in the central system. In any case, given that such information could be unreliable, it should be used cautiously.

(18) The central authorities should use ECRIS-TCN to identify the Member States holding criminal records information on a third-country national when criminal records information on that person is requested in the Member State concerned for the purposes of criminal proceedings against that person, or for the purposes referred to in this Regulation. While ECRIS-TCN should in principle be used in all such cases, the authority responsible for conducting the criminal proceedings should be able to decide that ECRIS-TCN should not be used when it would not be appropriate in the circumstances of the case, e.g. in certain types of urgent criminal proceedings, in cases of transit, when criminal records information has recently been obtained via ECRIS, or in respect of minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences.

(19) Member States should also be able to use ECRIS-TCN for purposes other than those set out in this Regulation, if provided for under and in accordance with national law. However, in order to enhance the transparency of the use of ECRIS-TCN, Member States should notify such other purposes to the Commission, which should ensure publication of all the notifications in the *Official Journal of the European Union*.

(20) It should also be possible for other authorities requesting criminal records information to decide that ECRIS-TCN should not be used when this would not be appropriate in the circumstances of the case, e.g. when certain standard administrative checks need to be carried out regarding the professional qualifications of a person, especially if it is known that criminal records information will not be requested from other Member States, irrespective of the result of the search in ECRIS-TCN. However, ECRIS-TCN should always be used when the request for criminal records information has been initiated by a person who asks for information on his or her own criminal record in accordance with Framework Decision 2009/315/JHA, or when it is made in order to obtain criminal records information in accordance with Directive 2011/93/EU of the European Parliament and of the Council[(6)].

(21) Third-country nationals should have the right to obtain information in writing concerning their own criminal record in accordance with the law of the Member State where they request such information to be provided and in accordance with Framework Decision 2009/315/JHA. Before providing such information to a third-country national, the Member State concerned should query ECRIS-TCN.

(22) Citizens of the Union who also hold the nationality of a third country will only be included in ECRIS-TCN if the competent authorities are aware that such persons hold the nationality of a third country. Where the competent authorities are not aware that citizens of the Union also hold the nationality of a third country, it is nevertheless possible that such persons have prior convictions as third-country nationals. In order to ensure that the competent authorities have a complete overview of criminal records,

it should be possible to query ECRIS-TCN to verify whether, in respect of a citizen of the Union, any Member State holds criminal record information concerning this person as a third-country national.

(23) 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 should be provided together with the hit. The result of a search should be used by the central authorities only for the purpose of making a request through ECRIS or by the European Union Agency for Criminal Justice Cooperation (Eurojust) established by Regulation (EU) 2018/1727 of the European Parliament and of the Council[(7)], the European Union Agency for Law Enforcement Cooperation (Europol) established by Regulation (EU) 2016/794 of the European Parliament and of the Council[(8)], and the European Public Prosecutor's Office (the 'EPPO') established by Council Regulation (EU) 2017/1939[(9)], only for the purpose of making a request for conviction information as referred to in this Regulation.

(24) In the first instance, facial images included in ECRIS-TCN should only be used for the purpose of confirming the identity of a third-country national in order to identify the Member States holding information on previous convictions of that third-country national. In the future, it should be possible for facial images to be used for automated biometric matching, provided that the technical and policy requirements to do so have been met. The Commission, taking into account necessity and proportionality, as well as the technical developments in the field of facial recognition software, should assess the availability and readiness of the required technology before adopting a delegated act concerning the use of facial images for the purpose of identifying third-country nationals in order to identify the Member States holding information on previous convictions concerning those persons.

(25) 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.

(26) Member States should enter in the central system fingerprint data of convicted third-country nationals that have been collected in accordance with national law during criminal proceedings. In order to have as complete identity information as possible available in the central system, Member States should also be able to enter into the central system fingerprint data that have been collected for other purposes than criminal proceedings, where those fingerprint data are available for use in criminal proceedings in compliance with national law.

(27) This Regulation should establish minimum criteria as regards the fingerprint data that Member States should include in the central system. Member States should be given the choice either to enter the fingerprint data of third-country nationals who have received a custodial sentence of at least 6 months, or to enter the fingerprint data of third-country nationals who have been convicted of a criminal offence which is punishable under the law of the Member State concerned by a custodial sentence of a maximum period of at least 12 months.