Procedure file

Basic information

COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2017/0144(COD)
Centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (ECRIS-TCN system) See also 2008/0101(CNS) Amending Regulation (EU) No 1077/2011 2009/0089(COD) Amended by 2018/0152B(COD) Subject 7.40.04 Judicial cooperation in criminal matters	Procedure completed

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		31/08/2017
	DALTON Daniel	
	Shadow rapporteur	
	CSÁKY Pál	
	HEDH Anna	
	MLINAR Angelika	
	FRANZ Romeo	
	MEUTHEN Jörg	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets		11/07/2017
	KÖLMEL Bernd	
CONT Budgetary Control	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meeting	Date
General Affairs	3685	09/04/2019
Justice and Home Affairs (JHA)	3584	08/12/2017

European Commission

Commission DG	Commissioner
Justice and Consumers	JOUROVÁ Věra

Key events

29/06/2017	Legislative proposal published	COM(2017)0344	Summary
11/09/2017	Committee referral announced in Parliament, 1st reading		
25/01/2018	Vote in committee, 1st reading		
25/01/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
01/02/2018	Committee report tabled for plenary, 1st reading	A8-0018/2018	Summary
05/02/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
08/02/2018	Results of vote in Parliament		
08/02/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71 - vote)		
23/01/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE632.976 GEDA/A/(2019)000581	
11/03/2019	Debate in Parliament		
12/03/2019	Decision by Parliament, 1st reading	T8-0149/2019	Summary
09/04/2019	Act adopted by Council after Parliament's 1st reading		
17/04/2019	Final act signed		
17/04/2019	End of procedure in Parliament		
22/05/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0144(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	See also 2008/0101(CNS) Amending Regulation (EU) No 1077/2011 2009/0089(COD) Amended by 2018/0152B(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 082-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/10389

Documentation gateway

Legislative proposal		COM(2017)0344	29/06/2017	EC	Summary

Document attached to the procedure		SWD(2017)0248	29/06/2017	EC	
Committee draft report		PE612.310	30/10/2017	EP	
Amendments tabled in committee		PE615.287	30/11/2017	EP	
Document attached to the procedure		N8-0051/2018 OJ C 055 14.02.2018, p. 0004	12/12/2017	EDPS	
Committee opinion	BUDG	PE612.106	14/12/2017	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0018/2018	01/02/2018	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2019)000581	19/12/2018	CSL	
Text agreed during interinstitutional negotiations		PE632.976	17/01/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0149/2019	12/03/2019	EP	Summary
Draft final act		00088/2018/LEX	17/04/2019	CSL	
Commission response to text adopted in plenary		SP(2019)393	30/04/2019	EC	

Final act

Regulation 2019/816
OJ L 135 22.05.2019, p. 0001 Summary

Centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (ECRIS-TCN system)

PURPOSE: to allow the rapid and efficient exchange of information on the criminal records of third-country nationals.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the objective of providing EU citizens with an area of ??freedom, security and justice without internal borders presupposes exchanging information extracted from criminal records between the competent authorities of the Member States.

These exchanges of information are organised and facilitated by the rules laid down in Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States, a new criminal procedure and the European Criminal Records Information System (ECRIS) established by Council Decision 2009/316/JHA.

Although it is possible to exchange information on convictions concerning third-country nationals (TCNs) through ECRIS, there is no procedure or mechanism to do so in an efficient manner.

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

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.

To improve the situation, it is proposed to establish a system 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.

As a result of the terrorist attacks in many European cities, exchange of information on criminal records is crucial to combat cross-border crime. The initiative follows the requests of the European Council and the Justice and Home Affairs Council to improve the existing ECRIS. It also reflects the Commission's new approach to the management of data for borders and security.

IMPACT ASSESSMENT: the creation of a centralised ECRIS-TCN system containing both alphanumeric data and fingerprints is the preferred solution. It would be the most cost efficient, and technically less complex and easier to maintain compared to the others. This option also offers the additional advantages of making the ECRIS-TCN system suitable for participating in a future shared biometric matching service and a

common identity repository, facilitating direct access for Eurojust, Europol, [and the European Public Prosecutor's Office] and creating a central contact point at Eurojust for third States requiring information on convicted TCN.

If Member States were to systematically send blanket requests, the administrative burden in responding to them has been identified as the most costly element (estimated up to EUR 78 million) of the ECRIS-workflow; the proposed solution saves such costs.

CONTENT: this proposal supplements the Commission's 2016 proposal for a Directive to amend the ECRIS Framework Decision and to repeal the ECRIS Council Decision:

- creating a centralised system to efficiently identify which Member State(s) hold conviction information on TCN;
- establishing rules under which the ECRIS-TCN system is used by competent authorities to obtain information on such previous convictions through the European Criminal Records Information System.

The proposed hit/no hit search system, based on alphanumeric data and fingerprints of TCN convicted in the Member States, will allow Member States to quickly identify other Member State(s) having convicted a particular TCN.

The requesting Member State should then request those identified Member States to provide the actual conviction information through the existing ECRIS system as improved by January 2016 proposal.

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

The proposal sets an obligation for the convicting Member State:

- to create a data record in the Central ECRIS-TCN System for each convicted TCN as soon as possible after the conviction was entered into the national criminal records register;
- to create records in the ECRIS-TCN system of 'historical' convictions of third country nationals, i.e. convictions handed down prior to the entry into force of the Regulation.

Member States would be required to use the ECRIS-TCN system in all cases where they receive a request for information on previous convictions of third country nationals in accordance with national law, and to follow up on any hits with the Member States identified through the ECRIS system. They would also be required to verify the accuracy of the data sent to the Central System and to correct them, as well as to amend the data sent to the Central System in case of any subsequent amendment in national criminal records.

The proposal entrusts eu-LISA with the task of developing and operationally managing the ECRIS-TCN system. It nominates Eurojust as the contact point for third countries and international organisations which wish to request conviction information on a TCN.

BUDGETARY IMPLICATIONS: the impact on the EU and national budgets would be as follows: (i) one-off costs for the EU of around EUR 13 002 000; (ii) for the Member States approximately EUR 13 344 000 (a total of approximately EUR 26 346 000). Total on-going costs are expected to increase gradually over the years, starting at EUR 8 220 000 and increasing up to a maximum of EUR 17 520 000.

Centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (ECRIS-TCN system)

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Daniel DALTON (ECR, UK) 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.

The committee recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Subject matter: the Regulation shall enable the rapid, efficient and accurate as possible exchange of criminal record information on third country nationals, by putting in place common Union rules and interoperable systems.

Data entry in the ECRIS-TCN system: for each convicted third country 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.

This recording shall not contain data on the names of parents and shall only contain fingerprint data and facial images only when the national law of a Member State where a conviction is handed down allows for collection and storage of fingerprints and facial images of a convicted person.

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.

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.

The Commission shall adopt delegated acts to provide, 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.

Proportionality, fundamental rights, data protection: any introduction and use of fingerprint data and facial images must:

- never exceed what is strictly necessary to achieve the aim;
- respect fundamental rights, including the best interests of children;
- be in conformity with Directive (EU) 2016/680 of the European Parliament and of the Council 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.

Third country nationals shall 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. An amendment ensured that third-country nationals 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 Member States.

Use of the results obtained in 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, Members included an amendment to make it clear that a hit in the ECRIS-TCN system by itself shall 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.

Right of access for Eurojust, Europol and the European Public Prosecutor's Office: authorised staff of Eurojust, Europol and the European Public Prosecutor's Office shall have direct access to the ECRIS-TCN system.

Staff with a right of access to the system shall be subject 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.

Monitoring and evaluation: the report submitted by eu-LISA on the state of development of the ECRIS-TCN system 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.

In the event of delays in the development process, the European Parliament and the Council shall be informed as soon as possible.

Centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (ECRIS-TCN system)

The European Parliament adopted by 422 votes to 130 with 16 abstentions a legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a centralised system for identifying Member States holding information on convictions of third-country nationals and stateless persons, which aims to complement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

Purpose and scope

The regulation would establish a system to identify Member States holding information on previous convictions of third-country nationals (ECRIS-TCN). The new centralised database should improve the exchange of information on criminal records of third-country nationals throughout the EU and contribute to the EU's fight against cross-border crime and terrorism.

The regulation would apply to the processing of identification data of third-country nationals who have been convicted in Member States to enable the identification of Member States in which such convictions have been handed down.

The provisions would also apply to Union citizens who are also nationals of a third country and who have been convicted in the Member States since it is possible that these persons present themselves as one or more nationalities, and that different conviction decisions are kept in the convicting Member State or in the Member State of which the person concerned is a national.

Data entry in ECRIS-TCN

The convicting Member State should create the data file automatically, if possible, and without undue delay after the conviction has been entered in the criminal record.

The alphanumeric data to be entered by Member States in the central system would include the name (surname) and forenames of the convicted person and, where available to the central authority, any pseudonyms or aliases of that person. They should also include, in addition, the identity number, or the type and number of the identity documents of the person concerned, as well as the name of the authority that issued these documents, where the central authority has this information.

ECRIS-TCN would allow the processing of fingerprint data to identify Member States holding information on the criminal record of a third-country national. It would also allow the processing of facial images in order to confirm his identity if the law of the convicting Member State allows the collection and storage of facial images of convicted persons.

The recording and use of fingerprint data and facial images should not go beyond what is strictly necessary to achieve the objective pursued. They should respect fundamental rights, as well as the best interests of the child, and comply with applicable EU data protection rules.

Use of ECRIS-TCN

Central authorities could use ECRIS-TCN to identify Member States that hold information on the criminal record of a third-country national when the information is requested in the Member State concerned for the purpose of criminal proceedings against that person, or for one of the following purposes, if national law so provides and in accordance with it:

- a person's own criminal record check, at their request;

- security clearance;

- obtaining a licence or permit;

- investigations carried out in the context of professional recruitment and recruitment for voluntary activities involving direct and regular contact with children or vulnerable persons;

- visa, citizenship and migration procedures, including asylum procedures; and

- audits in relation to public contracts and public competitions.

The authority responsible for conducting criminal proceedings could decide that ECRIS-TCN should not be used when this would not be appropriate in the circumstances of the case, for example in the case of minor offences.

Any person would have the right to lodge a complaint and the right to bring an action in the convicting Member State which refused him/her the right of access to data concerning him/her or the right to have them rectified or deleted.

Use of ECRIS-TCN

Central authorities could use ECRIS-TCN to identify Member States that hold information on the criminal record of a third-country national when the information is requested in the Member State concerned for the purpose of criminal proceedings against that person, or for one of the following purposes, if national law so provides and in accordance with it:

- a person's own criminal record check, at their request;

- security clearance;

- obtaining a licence or permit;

- investigations carried out in the context of professional recruitment and recruitment for voluntary activities involving direct and regular contact with children or vulnerable persons;

- visa, citizenship and migration procedures, including asylum procedures; and

- audits in relation to public contracts and public competitions.

The authority responsible for conducting criminal proceedings could decide that ECRIS-TCN should not be used when this would not be appropriate in the circumstances of the case, for example in the case of minor offences.

Any person would have the right to lodge a complaint and the right to bring an action in the convicting Member State which refused him/her the right of access to data concerning him/her or the right to have them rectified or deleted.

The proposed new regulation also defines the conditions under which Eurojust, Europol and the European Public Prosecutor's Office use ECRIS-TCN.

The European Union Agency for the Operational Management of Large-Scale Information Systems in the Area of Freedom, Security and Justice (eu-LISA) would be responsible for the development of ECRIS-TCN in accordance with the principle of data protection from the design stage and by default. It would also be responsible for the operational management of ECRIS-TCN.

Centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (ECRIS-TCN system)

PURPOSE: to enable the rapid and efficient exchange of accurate information on criminal records of third-country nationals.

LEGISLATIVE ACT: Regulation (EU) 2019/816 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 (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726.

CONTENT: this Regulation establishes:

- a system to identify the Member States holding information on previous convictions of third-country nationals (ECRIS-TCN);

- the conditions under which ECRIS-TCN shall be used by the central authorities in order to obtain information on such previous convictions through the European Criminal Records Information System (ECRIS) as well as the conditions under which Eurojust, Europol and the EPPO shall use ECRIS-TCN.

Exchange of information on criminal records

The reformed European Criminal Records Information System (ECRIS) shall include a centralised database containing information on convictions of third country nationals and stateless persons (ECRIS-TCN). The Regulation defines the rules for the creation of a centralised system. It specifies the data to be recorded and sets access rights.

The Regulation shall apply to the processing of identification data of third-country nationals who have been convicted in Member States to enable the identification of Member States in which such convictions have been handed down. It shall also apply to persons with dual EU/third country nationality who have been convicted in the Member States.

Information relating to the conviction itself shall always be available only from the convicting Member State.

Data entry in ECRIS-TCN

For each convicted third-country national, the central authority of the convicting Member State shall create a data record in the central system. The convicting Member State shall create the data file automatically, if possible, and without undue delay after the conviction has been entered in the criminal record.

The alphanumeric data to be entered by Member States in the central system shall include the name (surname) and forenames of the convicted person and, where available to the central authority, any pseudonyms or aliases of that person. They shall also include, in addition, the identity number, or the type and number of the identity documents of the person concerned, as well as the name of the authority that issued these documents, where the central authority has this information.

ECRIS-TCN shall allow the processing of fingerprint data to identify Member States holding information on the criminal record of a

third-country national. It shall also allow the processing of facial images in order to confirm his identity if the law of the convicting Member State allows the collection and storage of facial images of convicted persons.

The recording and use of fingerprint data and facial images should not go beyond what is strictly necessary to achieve the objective pursued. They shall respect fundamental rights, as well as the best interests of the child, and comply with applicable EU data protection rules.

Use of ECRIS-TCN

Central authorities could use ECRIS-TCN to identify Member States that hold information on the criminal record of a third-country national when the information is requested in the Member State concerned for the purpose of criminal proceedings against that person, or for one of the following purposes, if national law so provides and in accordance with it:

- a person's own criminal record check, at their request;

- security clearance;

- obtaining a licence or permit;

- investigations carried out in the context of professional recruitment and recruitment for voluntary activities involving direct and regular contact with children or vulnerable persons;

- visa, citizenship and migration procedures, including asylum procedures; and

- audits in relation to public contracts and public competitions.

The authority responsible for conducting criminal proceedings could decide that ECRIS-TCN should not be used when this would not be appropriate in the circumstances of the case, for example in the case of minor offences.

Any person would have the right to lodge a complaint and the right to bring an action in the convicting Member State which refused him/her the right of access to data concerning him/her or the right to have them rectified or deleted.

Each data record shall be stored in the central system for as long as the data related to the convictions of the person concerned are stored in the criminal records.

Management

The European Union Agency for the Operational Management of Large-Scale Information Systems in the Area of Freedom, Security and Justice (eu-LISA) would be responsible for the development of ECRIS-TCN in accordance with the principle of data protection from the design stage and by default. It would also be responsible for the operational management of ECRIS-TCN.

ENTRY INTO FORCE: 11.6.2019.