

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

## CHAPTER II

### *Entry and use of data by central authorities*

#### *Article 5*

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

[<sup>F1</sup> For each convicted third-country national, the central authority of the convicting Member State shall create a data record in ECRIS-TCN. The data record shall include:]

- a as concerns alphanumeric data:
  - (i) information to be included unless, in individual cases, such information is not known to the central authority (obligatory information):
    - surname (family name),
    - first names (given names),
    - date of birth,
    - place of birth (town and country),
    - nationality or nationalities,
    - gender,
    - previous names, if applicable,
    - the code of the convicting Member State,
  - (ii) information to be included if it has been entered in the criminal record (optional information):
    - parents' names,
  - (iii) information to be included if it is available to the central authority (additional information):
    - identity number, or the type and number of the person's identification documents, as well as the name of the issuing authority,
    - pseudonyms or aliases;
- b as concerns fingerprint data:
  - (i) fingerprint data that have been collected in accordance with national law during criminal proceedings;
  - (ii) as a minimum, fingerprint data collected on the basis of either of the following criteria:
    - where the third-country national has received a custodial sentence of at least 6 months;

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or

- where the third-country national has been convicted of a criminal offence which is punishable under the law of the Member State by a custodial sentence of a maximum period of at least 12 months.

[<sup>F2</sup>1a The CIR shall contain the data referred to in point (b) of paragraph 1 and the following data of point (a) of paragraph 1: surname (family name), first names (given names), date of birth, place of birth (town and country), nationality or nationalities, gender, previous names, if applicable, where available pseudonyms or aliases, where available, the type and number of the person's travel documents, as well as the name of the issuing authority. The CIR may contain the data referred to in paragraph 3. The remaining ECRIS-TCN data shall be stored in the central system.]

2 The fingerprint data referred to in point (b) of paragraph 1 of this Article shall have the technical specifications for the quality, resolution and processing of fingerprint data provided for in the implementing act referred to in point (b) of Article 10(1). The reference number of the fingerprint data of the convicted person shall include the code of the convicting Member State.

3 The data record may also contain facial images of the convicted third-country national, if the law of the convicting Member State allows for the collection and storage of facial images of convicted persons.

4 The convicting Member State shall create the data record automatically, where possible, and without undue delay after the conviction has been entered into the criminal records.

5 The convicting Member States shall also create data records for convictions handed down prior to the date of start of entry of data in accordance with Article 35(1) to the extent that data related to convicted persons are stored in their national databases. In those cases, fingerprint data shall be included only where they have been collected during criminal proceedings in accordance with national law, and where they can be clearly matched with other identity information in criminal records.

6 In order to comply with the obligations set out in points (b)(i) and (ii) of paragraph 1, and in paragraph 5, Member States may use fingerprint data collected for purposes other than criminal proceedings, where such use is permitted under national law.

#### Textual Amendments

- F1** Substituted by [Regulation \(EU\) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations \(EU\) 2018/1726, \(EU\) 2018/1862 and \(EU\) 2019/816.](#)
- F2** Inserted by [Regulation \(EU\) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations \(EU\) 2018/1726, \(EU\) 2018/1862 and \(EU\) 2019/816.](#)

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## Article 6

### Facial images

1 Until the entry into force of the delegated act provided for in paragraph 2, facial images 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 fingerprint data.

2 The Commission is empowered to adopt delegated acts in accordance with Article 37 supplementing this Regulation 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 such persons, when it becomes technically possible. Before exercising this empowerment, the Commission, taking into account necessity and proportionality, as well as technical developments in the field of facial recognition software, shall assess the availability and readiness of the required technology.

## Article 7

### Use of ECRIS-TCN for identifying the Member States holding criminal records information

1 The central authorities shall use ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in order to obtain information on previous convictions through ECRIS, when criminal records information on that person is requested in the Member State concerned for the purposes of criminal proceedings against that person, or for any of the following purposes, if provided for under and in accordance with national law:

- checking a person's own criminal record at his or her request,
- security clearance,
- obtaining a licence or permit,
- employment vetting,
- vetting for voluntary activities involving direct and regular contacts with children or vulnerable persons,
- visa, acquisition of citizenship and migration procedures, including asylum procedures, and
- checks in relation with public contracts and public examinations.

However, in specific cases other than those in which a third-country national asks the central authority for information on his or her own criminal record, or where the request is made in order to obtain criminal records information pursuant to Article 10(2) of Directive 2011/93/EU, the authority requesting criminal records information may decide that such use of ECRIS-TCN is not appropriate.

2 Any Member State which decides, if provided for under and in accordance with national law, to use ECRIS-TCN for purposes other than those set out in paragraph 1 in order to obtain information on previous convictions through ECRIS, shall, by the date of start of operations as referred to in Article 35(4), or any time thereafter, notify the Commission of such other purposes and any changes to such purposes. The Commission shall publish such notifications in the *Official Journal of the European Union* within 30 days of receipt of the notifications.

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3 Eurojust, Europol and the EPPO are entitled to query ECRIS-TCN to identify the Member States holding criminal records information on a third-country national in accordance with Articles 14 to 18. However, they shall not enter, rectify or erase any data in ECRIS-TCN.

4 For the purposes referred to in paragraphs 1, 2 and 3, the competent authorities may also query ECRIS-TCN to verify whether, in respect of a citizen of the Union, any Member State holds criminal records information concerning this person as a third-country national.

5 When querying ECRIS-TCN, the competent authorities may use all or only some of the data referred to in Article 5(1). The minimum set of data that is required to query the system shall be specified in an implementing act adopted in accordance with point (g) of Article 10(1).

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

7 In the event of a hit, the central system shall automatically provide the competent authority with information on the Member States holding criminal records information on the third-country national, along with the associated reference numbers and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third-country national concerned. The result of a search in the central system may only be used for the purpose of making a request according to Article 6 of Framework Decision 2009/315/JHA or a request referred to in Article 17(3) of this Regulation.

8 In the event that there is no hit, the central system shall automatically inform the competent authority.

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**Changes and effects yet to be applied to :**

- Regulation revoked by [2023 c. 28 Sch. 1 Pt. 2](#)