

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 IV

Development, operation and responsibilities

Article 10

Adoption of implementing acts by the Commission

1 The Commission shall adopt the implementing acts necessary for the technical development and implementation of ECRIS-TCN as soon as possible, and in particular acts concerning:

- a the technical specifications for the processing of the alphanumeric data;
- b the technical specifications for the quality, resolution and processing of fingerprint data;
- c the technical specifications of the interface software;
- d the technical specifications for the quality, resolution and processing of facial images for the purposes of and under the conditions set out in Article 6;
- e data quality, including a mechanism for and procedures to carry out data quality checks;
- f entering the data in accordance with Article 5;
- g accessing and querying ECRIS-TCN in accordance with Article 7;
- h modifying and erasing the data in accordance with Articles 8 and 9;
- i keeping and accessing logs in accordance with Article 31;
- [^{F1}(j)] ^{F1}
- k providing statistics in accordance with Article 32;
- l performance and availability requirements of ECRIS-TCN, including minimal specifications and requirements on the biometric performance of ECRIS-TCN in particular in terms of the required false positive identification rate and false negative identification rate.

2 The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 38(2).

Textual Amendments

- F1** Deleted 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 11

Development and operational management of ECRIS — TCN

1 eu-LISA shall be responsible for the development of ECRIS-TCN in accordance with the principle of data protection by design and by default. In addition, eu-LISA shall be responsible for the operational management of ECRIS-TCN. The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination.

2 eu-LISA shall also be responsible for the further development and maintenance of the ECRIS reference implementation.

3 eu-LISA shall define the design of the physical architecture of ECRIS-TCN including its technical specifications and evolution as regards the central system, the national central access point and the interface software. That design shall be adopted by its Management Board, subject to a favourable opinion of the Commission.

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

5 Prior to the design and development phase of ECRIS-TCN, the Management Board of eu-LISA shall establish a Programme Management Board composed of ten members.

The Programme Management Board shall be composed of eight members appointed by the Management Board, the Chair of the Advisory Group referred to in Article 39 and one member appointed by the Commission. The members appointed by the Management Board shall be elected only from those Member States which are fully bound under Union law by the legislative instruments governing ECRIS and which will participate in ECRIS-TCN. The Management Board shall ensure that the members it appoints to the Programme Management Board have the necessary experience and expertise in the development and management of IT systems supporting judicial and criminal records authorities.

eu-LISA shall participate in the work of the Programme Management Board. To that end, representatives of eu-LISA shall attend the meetings of the Programme Management Board in order to report on work regarding the design and development of ECRIS-TCN and on any other related work and activities.

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 ECRIS-TCN and shall ensure consistency between central and national ECRIS-TCN projects, and national ECRIS implementation software. The Programme Management Board shall submit written reports regularly and if possible every month to the Management Board of eu-LISA on the progress of the project. The Programme Management Board shall have no decision-making power nor any mandate to represent the members of the Management Board.

6 The Programme Management Board shall establish its rules of procedure which shall include in particular rules on:

- a chairmanship;
- b meeting venues;

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- c preparation of meetings;
- d admission of experts to the meetings;
- e communication plans ensuring that non-participating Members of the Management Board are kept fully informed.

7 The chairmanship of the Programme Management Board shall be held by a Member State which is fully bound under Union law by the legislative instruments governing ECRIS and the legislative instruments governing the development, establishment, operation and use of all the large-scale IT systems managed by eu-LISA.

8 All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by eu-LISA. Article 10 of the eu-LISA Rules of Procedure shall apply *mutatis mutandis*. The Programme Management Board's secretariat shall be ensured by eu-LISA.

9 During the design and development phase, the Advisory Group referred to in Article 39 shall be composed of the national ECRIS-TCN project managers and chaired by eu-LISA. During the design and development phase it shall meet regularly, if possible at least once a month, until the start of operations of ECRIS-TCN. It shall report after each meeting to the Programme Management Board. It shall provide the technical expertise to support the tasks of the Programme Management Board and shall follow up on the state of preparation of the Member States.

10 In order to ensure the confidentiality and integrity of data stored in ECRIS-TCN at all times, eu-LISA shall, in cooperation with the Member States, provide for appropriate technical and organisational measures, taking into account the state of the art, the cost of implementation and the risks posed by the processing.

11 eu-LISA shall be responsible for the following tasks related to the communication infrastructure referred to in point (d) of Article 4(1):

- a supervision;
- b security;
- c the coordination of relations between the Member States and the provider of the communication infrastructure.

12 The Commission shall be responsible for all other tasks relating to the communication infrastructure referred to in point (d) of Article 4(1), in particular:

- a tasks relating to the implementation of the budget;
- b acquisition and renewal;
- c contractual matters.

13 eu-LISA shall develop and maintain a mechanism and procedures for carrying out quality checks on the data stored in ECRIS-TCN and shall provide regular reports to the Member States. eu-LISA shall provide regular reports to the Commission covering the issues encountered and the Member States concerned.

14 The operational management of ECRIS-TCN shall consist of all the tasks necessary to keep ECRIS-TCN operational in accordance with this Regulation, and in particular the maintenance work and technical developments necessary to ensure that ECRIS-TCN functions at a satisfactory level in accordance with the technical specifications.

15 eu-LISA shall perform tasks related to providing training on the technical use of ECRIS-TCN and the ECRIS reference implementation.

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16 Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68⁽¹⁾, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with data registered in the central system. That obligation shall also apply after such staff leave office or employment or after the termination of their activities.

Article 12

Responsibilities of the Member States

- 1 Each Member State shall be responsible for:
 - a ensuring a secure connection between its national criminal records and fingerprints databases and the national central access point;
 - b the development, operation and maintenance of the connection referred to in point (a);
 - c ensuring a connection between its national systems and the ECRIS reference implementation;
 - d the management of and arrangements for access of duly authorised staff of the central authorities to ECRIS-TCN in accordance with this Regulation and for establishing and regularly updating a list of such staff and the profiles referred to in point (g) of Article 19(3).
- 2 Each Member State shall give the staff of its central authority who have a right to access ECRIS-TCN appropriate training covering, in particular, data security and data protection rules and applicable fundamental rights, before authorising them to process data stored in the [F2the central system and the CIR].

Textual Amendments

- F2** 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.](#)

Article 13

Responsibility for the use of data

- 1 In accordance with applicable Union data protection rules, each Member State shall ensure that the data recorded in ECRIS-TCN are processed lawfully, and in particular that:
 - a only duly authorised staff have access to the data for the performance of their tasks;
 - b the data are collected lawfully in a manner that fully respects the human dignity and fundamental rights of the third-country national;
 - c the data are entered into ECRIS-TCN lawfully;
 - d the data are accurate and up-to-date when they are entered into ECRIS-TCN.
- 2 eu-LISA shall ensure that ECRIS-TCN is operated in accordance with this Regulation, with the delegated act referred to in Article 6(2) and with the implementing acts referred to in Article 10, as well as in accordance with Regulation (EU) 2018/1725. In particular, eu-LISA shall take the necessary measures to ensure the security of [F2the central system, the CIR] and

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the communication infrastructure referred to in point (d) of Article 4(1), without prejudice to the responsibilities of each Member State.

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

4 The Commission shall make the information referred to in paragraph 3 available to the Member States and to the public through a regularly updated public website.

Textual Amendments

- F2** 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.](#)

Article 14

Access for Eurojust, Europol, and the EPPO

1 Eurojust shall have direct access to ECRIS-TCN for the purpose of the implementation of Article 17, as well as for fulfilling its tasks under Article 2 of Regulation (EU) 2018/1727, in order to identify the Member States holding information on previous convictions of third-country nationals.

2 Europol shall have direct access to ECRIS-TCN for the purpose of fulfilling its tasks under points (a) to (e) and (h) of Article 4(1) of Regulation (EU) 2016/794, in order to identify the Member States holding information on previous convictions of third-country nationals.

3 The EPPO shall have direct access to ECRIS-TCN for the purpose of fulfilling its tasks under Article 4 of Regulation (EU) 2017/1939, in order to identify the Member States holding information on previous convictions of third-country nationals.

4 Following a hit indicating the Member States holding criminal records information on a third-country national, Eurojust, Europol, and the EPPO may use their respective contacts with the national authorities of those Member States to request the criminal records information in the manner provided for in their respective founding acts.

Article 15

Access by authorised staff of Eurojust, Europol and the EPPO

Eurojust, Europol and the EPPO shall be responsible for the management of and arrangements for access of duly authorised staff to ECRIS-TCN in accordance with this Regulation and for establishing and regularly updating a list of such staff and their profiles.

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Article 16

Responsibilities of Eurojust, Europol and the EPPO

Eurojust, Europol and the EPPO shall:

- (a) establish the technical means to connect to ECRIS-TCN and be responsible for maintaining that connection;
- (b) provide appropriate training covering, in particular, data security and data protection rules and applicable fundamental rights to those members of their staff who have a right to access ECRIS-TCN before authorising them to process data stored in the central system;
- (c) ensure that the personal data processed by them under this Regulation is protected in accordance with the applicable data protection rules.

Article 17

Contact point for third countries and international organisations

1 Third countries and international organisations may, for the purposes of criminal proceedings, address requests for information on which Member States, if any, hold criminal records information on a third-country national to Eurojust. To that end, they shall use the standard form set out in the Annex to this Regulation.

2 When Eurojust receives a request under paragraph 1, it shall use ECRIS-TCN to identify which Member States, if any, hold criminal records information on the third-country national concerned.

3 If there is a hit, Eurojust shall ask the Member State that holds criminal records information on the third-country national concerned whether it consents to Eurojust informing the third country or the international organisation of the name of the Member State concerned. Where that Member State gives its consent, Eurojust shall inform the third country or the international organisation of the name of that Member State, and of how it can introduce a request for extracts from the criminal records with that Member State in accordance with the applicable procedures.

4 In cases where there is no hit or where Eurojust cannot provide an answer in accordance with paragraph 3 to requests made under this Article, it shall inform the third country or international organisation concerned that it has completed the procedure, without providing any indication of whether criminal records information on the person concerned is held by one of the Member States.

Article 18

Providing information to a third country, international organisation or private party

Neither Eurojust, Europol, the EPPO nor any central authority shall transfer or make available to a third country, an international organisation or a private party information obtained from ECRIS-TCN concerning a third-country national. This Article shall be without prejudice to Article 17(3).

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Article 19

Data Security

1 eu-LISA shall take the necessary measures to ensure the security of ECRIS-TCN, without prejudice to the responsibilities of each Member State, taking the security measures specified in paragraph 3 into consideration.

2 As regards the operation of ECRIS-TCN, eu-LISA shall take the necessary measures in order to achieve the objectives set out in paragraph 3, including the adoption of a security plan and a business continuity and disaster recovery plan, and to ensure that installed systems may, in case of interruption, be restored.

3 The Member States shall ensure the security of the data before and during the transmission to and receipt from the national central access point. In particular, each Member State shall:

- a physically protect data, including by making contingency plans for the protection of infrastructure;
- b deny unauthorised persons access to national installations in which the Member State carries out operations related to ECRIS-TCN;
- c prevent the unauthorised reading, copying, modification or removal of data media;
- d prevent the unauthorised input of data and the unauthorised inspection, modification or erasure of stored personal data;
- e prevent the unauthorised processing of data in ECRIS-TCN and any unauthorised modification or erasure of data processed in ECRIS-TCN;
- f ensure that persons authorised to access ECRIS-TCN have access only to the data covered by their access authorisation, by means of individual user identities and confidential access modes only;
- g ensure that all authorities with a right of access to ECRIS-TCN create profiles describing the functions and responsibilities of persons who are authorised to enter, rectify, erase, consult and search the data and make their profiles available to the national supervisory authorities without undue delay at their request;
- h ensure that it is possible to verify and establish to which Union bodies, offices and agencies personal data may be transmitted using data communication equipment;
- i ensure that it is possible to verify and establish what data have been processed in ECRIS-TCN, when, by whom and for what purpose;
- j prevent the unauthorised reading, copying, modification or erasure of personal data during the transmission of personal data to or from ECRIS-TCN or during the transport of data media, in particular by means of appropriate encryption techniques;
- k monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to self-monitoring and supervision to ensure compliance with this Regulation.

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

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Article 20

Liability

1 Any person who, or any Member State which, has suffered material or non-material damage as a result of an unlawful processing operation or any other act incompatible with this Regulation shall be entitled to receive compensation from:

- a the Member State which is responsible for the damage suffered; or
- b eu-LISA, where eu-LISA has not complied with its obligations set out in this Regulation or in Regulation (EU) 2018/1725.

The Member State which is responsible for the damage suffered or eu-LISA, respectively, shall be exempted from liability, in whole or in part, if it proves that it is not responsible for the event which gave rise to the damage.

2 If any failure of a Member State, Eurojust, Europol, or the EPPO to comply with its obligations under this Regulation causes damage to ECRIS-TCN, that Member State, Eurojust, Europol, or the EPPO, respectively, shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in ECRIS-TCN failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.

3 Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the law of the defendant Member State. Claims for compensation against eu-LISA, Eurojust, Europol and the EPPO for the damage referred to in paragraphs 1 and 2 shall be governed by their respective founding acts.

Article 21

Self-monitoring

Member States shall ensure that each central authority takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the supervisory authorities.

Article 22

Penalties

Any misuse of data entered in ECRIS-TCN shall be subject to penalties or disciplinary measures, in accordance with national or Union law, that are effective, proportionate and dissuasive.

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(1) OJ L 56, 4.3.1968, p. 1.

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