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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10256/22
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/816 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 Regulation (EU) 2019/818 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 for the purpose of introducing a screening of third country nationals at the external borders) - Mandate for negotiations with the European Parliament

Delegations will find attached the mandate on the abovementioned proposal as approved by the Permanent Representatives Committee at its meeting on 29 June 2022.

Changes to the Commission proposal (doc. 6942/21) are marked in **bold** and ~~strikethrough~~.

ANNEX

2021/0046 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2019/816 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 Regulation (EU) 2019/818 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~~ for the purpose of introducing a screening of third country nationals at the external borders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 74, Article**s** 78(2)(e) **and** ~~Article~~ 79(2)(c), Article 82(1), second subparagraph, point (d), Article 85(1), Article 87(2)(a) and Article 88(2) 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,

Whereas:

(1) Regulation (EU) …/… [*Regulation on Screening*] **of the European Parliament and of the Council**[1] provides for identity, security and health checks of third country nationals who are at the external border**s or within the territory of the Member States, who have not been subject of border checks at the external borders of the Member States, as well as of those who have made an application for international protection at border crossing points or in transit zones,** without fulfilling the entry conditions ~~or who are apprehended within the territory, and where there are no indications that they have been subject to controls at external borders~~. Regulation (EU) …/… [*Regulation on Screening*]~~[2]~~ addresses the challenges of managing mixed flows of migrants and creates uniform rules allowing for a **swift** ~~quick~~ identification of third country nationals and referral to the applicable procedures.

(2) ~~The~~ Regulation (EU) …/… [*Regulation on Screening*]~~[3]~~ provides that verifications for security purposes in the framework of the screening should be carried out against the same systems as for applicants for visas or for travel authorisations under the European Travel Information and Authorisation System **(ETIAS)**. In particular, Regulation (EU) …/… [*Regulation on Screening*]~~[4]~~ provides that the personal data of ~~the~~ persons submitted to the screening should be checked against Europol data **as defined in Regulation (EU) …/… [*Regulation on Screening*]**, **the** Interpol Stolen and Lost Travel Documents database (SLTD) and **the** Interpol Travel Documents Associated with Notices database (TDAWN), as well as the European Criminal Records Information System ~~for~~ **-** ~~t~~**T**hird-**C**~~c~~ountry **N**~~n~~ationals (ECRIS-TCN) as regards persons convicted in relation to terrorist offences **or** ~~and~~ other ~~forms of~~ serious criminal offences.

(3) Access to the ECRIS-TCN is necessary for the authorities designated to carry out the screening provided for in Regulation (EU) …/… [*Regulation on Screening*]~~[5]~~ in order to establish whether a person could pose a **security risk** ~~threat to internal security or to public policy~~.

(3a) A hit indicated by ECRIS-TCN should not by itself be taken to mean that the third-country national concerned as defined in Regulation (EU) 2019/816 has been convicted in the Member States that are indicated. The existence of previous convictions should be confirmed only on the basis of information received from the criminal records of the Member States concerned.

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1 Regulation (EU) …/…of the European Parliament and of the Council introducing a screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817(OJ [...]).

~~2 Op. cit. 15.~~

~~3 Op. cit. 15.~~

~~4 Op. cit. 15.~~

~~5 Op. cit. 15.~~

(4) Regulation (EU) …/… [*Regulation on Screening*][6], which constitutes a development of the Schengen acquis regarding borders, amends Regulations (EC) No 767/2008[7], (EU) 2017/2226[8], (EU) 2018/1240[9] and (EU) 2019/817 **of the European Parliament and of the Council**[10], which likewise constitute developments of the Schengen acquis regarding borders, to grant access rights for the purposes of the screening to the data contained in the Visa Information System (VIS), ~~to~~ **in** the Entry/Exit System (EES) and **in** ~~to European Travel Information and Authorisation System (~~ETIAS~~)~~ respectively. However, the parallel amendment of Regulation (EU) ~~No~~ 2019/816 **of the European Parliament and of the Council**[11] to grant access rights for the purposes of the screening to ECRIS-TCN could not be part of the same regulation for reasons of variable geometry, as the regulation establishing ECRIS-TCN does not constitute a development of the Schengen acquis. Regulation **(EU)** 2019/816 should therefore be amended by a distinct legal instrument.

~~6 Op. cit. 15.~~

7 Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008) p. 60.

8 Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes (OJ L 327, 9.12.2017, p. 20).

9 Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

10 Regulation (EU) 2019/817 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 borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

11 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 (OJ L 135, 22.5.2019, p. 1).

(5) Since the objective of this Regulation, namely to enable access to the ECRIS-TCN for the purposes of the security checks established by Regulation (EU) …/… [*Regulation on Screening*][12], which in turn aims ~~at~~ **to** ~~the~~ strengthen~~ing~~ ~~of~~ the control of persons ~~who are about to enter the Schengen area~~ **at the external borders** and their referral to the appropriate procedures, cannot be sufficiently achieved by the Member States, but can **rather, by reasons of its scale and effects,** ~~only~~ 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 **TEU** ~~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.

(6) Regulation (EU) …/… [*Regulation on Screening*][13] provides for specific rules concerning the identification of third-country nationals by means of consulting the Common Identity Repository ('CIR') established by Regulation~~s~~ (EU) 2019/817 and **Regulation** (EU) 2019/818 of the European Parliament and of the Council[14] in order to facilitate and assist in the correct identification **or verification of identity** of persons registered in EES, VIS, ETIAS, Eurodac and ECRIS-TCN, including of unknown persons who are unable to identify themselves.

(7) Since access to data stored in the ~~Common Identity Repository (~~CIR~~)~~ for identification **or verification** purposes is necessary for the authorities designated to carry out the screening, ~~the~~ Regulation (EU) …/… [*Regulation on Screening*][15] amends Regulation (EU) 2019/817. For reasons of variable geometry it was not possible to amend Regulation (EU) 2019/818 in the same Regulation, **and** therefore Regulation (EU) 2019/818 should be amended by a ~~distinct~~ **separate** legal instrument.

(8) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the ~~Treaties~~ **TEU and to the Treaty on the Functioning of the European Union (TFEU)**, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(9) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of **the United Kingdom and** Ireland in respect of the area of freedom, security and justice, annexed to the **TEU and to the TFEU** ~~Treaties~~, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

~~[12] Op. cit. 15.~~

~~[13] Op. cit. 15.~~

[14] 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 (OJ L 135, 22.5.2019, p. 85).

~~[15] Op. cit. 15.~~

Article 1

Amendments to Regulation (EU) 2019/816

Regulation (EU) 2019/816 is amended as follows:

(1) in Article 1, the following point **(f)** ~~(e)~~ is added:

"~~(e)~~**(f)** the conditions under which **data in** ECRIS-TCN ~~shall~~ **may** be used by the **screening** ~~competent~~ authorities **as defined in the first subparagraph of Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*] for the purpose of** ~~in order to perform~~ **supporting the performance of** a security check **in order to assess whether a third-country national could pose a security risk as referred to in Article 11 of** ~~in accordance with~~ Regulation (EU) …/…**of the European Parliament and of the Council**[16] [*Regulation on Screening*]*.

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* Regulation (EU) …/… [Regulation introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817] (OJ …).";

[16] OJ …

(2) **in** Article 2, ~~is replaced by~~ the following **point (d) is added**:

~~*"Article 2*~~

~~*Scope*~~

~~This Regulation applies to the processing of identity information of third-country nationals who have been subject to convictions in the Member States for the purpose of identifying the Member States where such convictions were handed down [as well as for the purposes of border management]~~[17]~~. With the exception of point (b)(ii) of Article 5(1), the provisions of this Regulation that apply to third-country nationals also apply to citizens of the Union who also hold the nationality of a third country and who have been subject to convictions in the Member States.~~

~~This Regulation also:~~

~~(a) facilitates and assists in the correct identification of persons in accordance with this Regulation and with Regulation (EU) 2019/818;~~

~~(b)~~**(d) enables access to the ECRIS-TCN for the purpose of supporting the performance of security checks established by Regulation (EU) …/… [*Regulation on Screening*], which in turn aims to strengthen the control of persons at the external borders and their referral to the appropriate procedures** ~~supports the objectives of Regulation (EU) …/… [*Regulation on Screening*] as regards the carrying out of the security checks~~.";

[17] COM/2019/3 final.

(3) in Article 3, point 6 is replaced by the following:

"(6) 'competent authorities' means the central authorities**,** ~~and~~ Eurojust, Europol, the EPPO, ~~[~~**the VIS designated authorities as referred to in Article 9d and Article 22b(13) of Regulation (EC) No 767/2008,** the ETIAS Central Unit ~~established within the European Border and Coast Guard Agency]~~[18] and the **screening** authorities referred to in **the first subparagraph of** Article 6(7) ~~subparagraph 1 of~~ Regulation (EU) …/… [*Regulation on Screening*], which are competent to access or query ECRIS-TCN in accordance with this Regulation;";

(4) Article 5 is amended as follows:

(a) ~~in~~ paragraph 1 **is replaced by the following**~~, the following point is added~~:

"(c) a flag indicating, for the purpose of **Regulations (EC) No 767/2008 and** ~~[Regulation~~ (EU) 2018/1240 and of Article**s** 11 and 12 of Regulation (EU) …/… [*Regulation on Screening*], that the third-country national concerned has been convicted **in the previous 25 years of** ~~for~~ a terrorist offence or **in the previous 15 years of** any other criminal offence listed in the ~~a~~**A**nnex to Regulation (EU) 2018/1240 if ~~they are~~ **it is** punishable ~~under national law~~ by a custodial sentence or a detention order for a maximum period of at least three years **under national law**, ~~and in those cases~~ **including** the code of the convicting Member State~~(s)~~.";

~~[18] Op. cit. 29.~~

(b) ~~the following~~ **in** paragraph 7 **the following point is inerted** ~~is added after paragraph 6~~:

"(c) the screening authorities referred to in the first subparagraph of Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*], for the purpose of assessing whether a third-country national could pose a security risk where hits are reported following the security checks referred to in Articles 11 and 12 of that Regulation.";

~~"7. Where hits are identified following the security checks referred to in Articles 11 and 12 of Regulation (EU) …/… [*Regulation on Screening*] flags and the code(s) of convicting Member State(s) as referred to in point (c) of paragraph 1 of this article shall be accessible and searchable only, respectively, by the competent authorities referred to in Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*] for the purpose of that Regulation.";~~

(5) in Article 7, paragraph **7, the follwowing point (e) is added** ~~replaced by the following~~:

~~"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 referred to in Article 5(1) 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 purposes of:~~

~~(a) making a request according to Article 6 of Framework Decision 2009/315/JHA;~~

~~(b) making a request referred to in Article 17(3) of this Regulation;~~

~~(c) [border management][19];~~

~~(d)~~**(e) supporting the objective of Regulation (EU) …/… [*Regulation on Screening*] of** assessing whether a third-country national subject to ~~screening~~ **a security** checks ~~would~~ **could** pose a ~~threat to public policy or public~~ security **risk**, in accordance with Regulation (EU) …/… [*Regulation on Screening*].";

~~[19] Op. cit. 29.~~

(6) the following Article 7~~a~~**c** is inserted after Article 7**b**:

*"Article 7~~a~~**c***

*Use of ECRIS-TCN for the purposes of the ~~S~~**s**creening*

The ~~competent~~ **screening** authorities referred to in **the first subparagraph of** Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*] shall have the right to access and search ~~the European Criminal Records Information System for third country nationals (~~ECRIS-TCN~~)~~ ~~database~~ using the European Search Portal provided for in Article 6 of Regulation (EU) 2019/818, for the purpose of performing the tasks conferred upon them by Article 11 of Regulation (EU) …/… [*Regulation on Screening*].

For the purpose of the security check referred to in Article 11 of Regulation (EU) …/… [*Regulation on Screening*], the ~~competent~~ **screening** authorities referred to in the first subparagraph **of Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*]** shall only have access to data records in the CIR to which a flag has been added in accordance with **point (c) of** Article 5(1)~~(c)~~ of this Regulation.

The consultation of national criminal records based on the flagged ECRIS-TCN data **in the event of a hit** shall take place in accordance with national law and using national channels. The relevant national authorities **of the convicting Member State** shall provide an opinion to the ~~competent~~ **screening** authorities ~~referred to in Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*]~~ within ~~two days where the screening takes place on the territory of the Member States or within four~~ **three** days ~~where the screening takes place at external borders~~. **Where the relevant national authorities do not provide such an** ~~The absence of~~ opinion within ~~these~~ **those** deadlines**, this** shall mean that there are no security grounds to be taken into account.

National criminal records shall be consulted prior to providing an opinion to the screening authorities.

In the absence of an opinion, an entry shall be made in the screening form as referred to in Article 13 of Regulation (EU) …/… [*Regulation on Screening*].";

(7) in Article 24, paragraph 1**, a point (d) is added** ~~is replaced by the following~~:

~~"1. The data entered into the central system and the CIR shall only be processed for the purposes of:~~

~~(a) the identification of the Member States holding the criminal records information of third-country nationals~~

~~(b) [border management] [20]; or~~

"~~(c)~~(d) supporting the objective of Regulation (EU) …/… [*Regulation on Screening*] of assessing whether a third country national subject to a security check could pose a security risk, in accordance with ~~screening pursuant to Article 11 of~~ Regulation (EU) …/… [*Regulation on Screening*].".

Article 2

Amendments to Regulation (EU) 2019/818

Regulation (EU) 2019/818 is amended as follows:

(1) in Article 7, paragraph 2 is replaced by the following:

"(2) The Member State authorities and Union agencies referred to in paragraph 1 shall use the ESP to search data related to persons or their travel documents in the central systems of Eurodac and ECRIS-TCN in accordance with their access rights as referred to in the legal instruments governing those EU information systems and in national law. They shall also use the ESP to query the CIR in accordance with their access rights under this Regulation for the purposes referred to in Articles 20, 20a, 21 and 22.";

~~[20] Op. cit. 29.~~

(2) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a ~~of this Regulation~~, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22.";

(b) paragraph 4 is replaced by the following:

"Where it is technically impossible because of a failure of the CIR to query the CIR for the purposes of identifying a person pursuant to Article 20 or of verifying or establishing the identity of a person pursuant to Article 20a of this Regulation, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.";

(3) in Article 18, paragraph 3 is replaced by the following:

"(3) The authorities accessing the CIR shall do so in accordance with their access rights under the legal instruments governing the EU information systems, and under national law and in accordance with their access rights under this Regulation for the purposes referred to in Articles 20, 20a, 21 and 22.";

(4) the following Article 20a is inserted after Article 20:

"*Article 20a*

Access to the ~~common identity repository~~ **CIR** for identification according to Regulation (EU) …/… [*Regulation on Screening*]

1. Queries of the CIR shall be carried out by the ~~designated competent~~ **screening** authority as referred to in **the first subparagraph of** Article 6(7) of Regulation (EU) …/… **of the European Parliament and of the Council** [*Regulation on Screening*] *****, solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.

2. Where the query indicates that data on that person are stored in the CIR, the competent authority referred to in paragraph 1 shall have access **to the CIR** to consult the data referred to in Article18(1) of this Regulation.";

*** Regulation (EU) …/… [Regulation introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817] (OJ …)."; **

(5) Article 24 is amended as follow**s**:

(a) paragraph 1 is replaced by the following:

"1. Without prejudice to Article 29 of Regulation (EU) 2019/816, eu-LISA shall keep logs of all data processing operations in the CIR in accordance with paragraphs 2, 2a, 3 and 4 of this Article.";

(b) the following paragraph 2a is inserted after paragraph 2:

"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following elements:

(a) the Member State launching the query;

(b) the purpose of access of the user querying via the CIR;

(c) the date and time of the query;

(d) the type of data used to launch the query;

(e) the results of the query.";

(c) in paragraph 5, the first sub-paragraph is replaced by the following:

"(5) Each Member State shall keep logs of queries that its authorities and the staff of those authorities duly authorised to use the CIR make pursuant to Articles 20, 20a, 21 and 22. Each Union agency shall keep logs of queries that its duly authorised staff make pursuant to Articles 21 and 22.".

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*