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**NOTE**

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From:	Presidency
To:	Delegations
No. Cion doc.:	10940/17 + ADD 1
Subject:	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 - Summary of the proceedings of the COPEN meeting on 18 July 2017

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**Introduction**

On 18 July 2017, the COPEN Working Party discussed the proposal for a Regulation on ECRIS-TCN for the first time.

The Commission presented its proposal as set out in doc. 10940/17 + ADD 1. The Commission observed that the current ECRIS system is hardly used for third country nationals and stateless persons (TCN), since it is not known which Member State holds the information relating to such person and the competent authority of a Member State would therefore be obliged to send out blanket requests to all other 27 Member States. This could be a costly affair, estimated at 78 million euros per year if Member States were systematically to send such requests. The costs of setting up a centralised system as foreseen in the proposal, estimated at 26 million euros (13 million to be borne by the EU and the other half by the Member States), would therefore be reasonable, even if the yearly maintenance costs of around 6 million euros would be taken into account.

The Commission announced that more legislation would be necessary regarding the important interoperability aspects of the ECRIS system, and that proposals in this regard would be presented around the end of the year 2017 as a single IT-systems interoperability package. Therefore the discussion on the interoperability of the ECRIS system should not be dealt in the framework of the draft ECRIS legislation. The Commission expressed the hope that all necessary legislation would be in place by early/mid 2018, so as to allow eu-LISA to start establishing the system. This would take about two years, in order for the system to be operational as from mid 2020.

### **General exchange of views**

Although the Member States noted they had not had enough time to study the proposal in detail, they indicated that they were preliminarily satisfied with the draft as presented by the Commission and felt that the proposal constituted an excellent basis to work on.

Most Member States entered a scrutiny reservation and several Member States entered a Parliamentary scrutiny reservation.

Some comments of a general nature were presented, including the following:

- The question was asked whether the Commission, in setting out its time-table, had taken account of the fact that the Member States also have to adopt legislation and to set up systems locally in order to allow the ECRIS-TCN system to work properly.
- It was observed that it would be difficult to distinguish between EU-citizens and TCN. For this reason, inter alia, some delegations recommended it would be good to collect fingerprints for every conviction.
- The extent of the obligation to exchange information on fingerprints was said to be a key issue.
- In general, the consistency with data protection legislation was felt to be very important and it was agreed to discuss this important issue in the subsequent meetings of the Working Party in more detail.
- As regards alphanumeric identifiers, it was suggested to clarify in the Regulation what would happen if some identifiers are not available in the convicting Member State (for example parents' names, or aliases). A definition of "availability" could be useful.
- On the issue of retroactive inclusion of TCN convicted before the entering into force of ECRIS-TCN, it was observed that in particular the reliable inclusion of fingerprints would be technically difficult, at high costs and with a significant administrative burden. Some identifiers might not be available. In this regard, the Commission stressed that the effectiveness of the system would to a large extent depend on this information being included, and that the obligation would be limited to data already available.
- It was observed that technological neutrality of the system is important.

- It was noted that eu-LISA recently had been given a lot of new tasks, and that this Regulation would give other new tasks to this body. The question was raised if eu-LISA would have the resources to handle all these tasks properly.
- It was felt that the access to the ECRIS-TCN by Europol, Eurojust and EPPO and the role of Eurojust as a contact point for third countries and international organisations could be an issue of concern.
- It was said that the costs and funding of the system should be further scrutinised.

### **First examination of the proposal article-by-article**

The Commission presented each article. While several Member States repeated that they hadn't had the time or opportunity yet to scrutinise the (entire) proposal in detail yet and hence made reservations, Member States were able to present various preliminary comments.

A summary of these comments, as drawn up by the Presidency, is set out in the form of footnotes in the Annex to this note.

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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 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)(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,

Whereas:

*(recitals not reproduced)*

**CHAPTER 1**

**General Provisions**

*Article 1*

**Subject matter**

This Regulation:

- (a) establishes a system to identify the Member State(s) holding information on previous convictions of third country nationals ('ECRIS-TCN system');
- (b) lays down the conditions under which the ECRIS-TCN system shall be used by competent authorities in order to obtain information on such previous convictions through the European Criminal Records Information System (ECRIS) established by Decision 2009/316/JHA.

## Article 2

### Scope<sup>1</sup>

This Regulation applies to the processing of identity information of third country nationals who have been subject to final decisions against them of criminal courts in the Member States for the purpose of identifying the Member State(s) where such decisions were handed down.<sup>2</sup>

## Article 3

### Definitions

*For the purposes of this Regulation, the following definitions shall apply:*<sup>3</sup>

- (a) 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent that the decision is entered in the criminal record of the convicting Member State;
- (b) 'criminal proceedings' means the pre-trial stage, the trial stage itself and the execution of the conviction;
- (c) 'criminal record' means the national register or registers recording convictions in accordance with national law;
- (d) 'convicting Member State' means the Member State in which a conviction is handed down;
- (e) 'central authority' means the authority(ies) designated in accordance with Article 3(1) of Framework Decision 2009/315/JHA;

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<sup>1</sup> FI observed that this article seemed to duplicate the rules on ECRIS. It was suggested to take a different angle, and mention only the supplementing rules (instead of modifying the existing rules).

<sup>2</sup> CZ suggested using the term "conviction" instead of the term "who have been subject to final decisions against them of criminal courts".

<sup>3</sup> As regards definitions (a), (b) and (c), FI raised the question whether these definitions are appropriate in the light of the current legislation on ECRIS. Compare the FI comment under Art. 2.

- (f) 'competent authorities' means the central authorities and the Union bodies competent to access <sup>4</sup> the ECRIS-TCN system in accordance with this Regulation;
- (g) 'third country national' means a national of a country other than a Member State regardless of whether the person also holds the nationality of a Member State, or a stateless person or a person whose nationality is unknown to the convicting Member State; <sup>5</sup>
- (h) 'Central System' means the database(s) holding identity information on third country nationals who have been subject to final decisions against them of criminal courts in the Member States <sup>6</sup>, developed and maintained by eu-LISA;
- (i) 'Interface Software' means the software hosted by the competent authorities allowing them to access the Central System through the Communication Infrastructure referred to in Article 4;
- (j) 'identification' means the process of determining a person's identity through a database search against multiple sets of data;
- (k) 'alphanumeric data' means data represented by letters, digits, special characters, spaces and punctuation marks;
- (l) 'fingerprint data' means the data relating to plain and rolled impressions of the fingerprints of all ten fingers;
- (m) 'facial image' means a digital image of the face;

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<sup>4</sup> DE felt that "access" in this context should be better defined, to reflect the *read-only* access rights of the Union bodies.

<sup>5</sup> BG and SE felt that the wording of this definition was not clear. NL suggested aligning the definition with the definition in the SIS Regulation. CLS observed that this definition should be changed with regard to persons holding the nationality of a Member State. The citizenship of the Union is the fundamental status of nationals of the Member States and they cannot be defined as third country nationals even if they also hold the nationality of a third country. Furthermore, according to CLS it might be necessary to assimilate citizens with a double EU-nationality with EU nationals holding also the nationality of a third country, since these people can otherwise "hide" one of their nationalities; AT, however, rejected this idea, since there should be a difference between people with multiple EU nationalities and those who have a third country nationality. In this line, DE stated that EU citizens should not be subject to two systems. COM said that it would study the questions raised, in particular that on double nationality. The Presidency considers taking this issue to the JHA Council in October and invites delegations to share their initial views regarding the dual nationalities issue (together with Art. 7).

<sup>6</sup> CZ suggested using "conviction" on this point.

- (n) 'hit' means a match or matches established by comparison between data recorded in the Central System and those used for search by a Member State <sup>7</sup>;
- (o) 'national central access point' means the national connection point to the Communication Infrastructure referred to in Article 4;
- (p) 'ECRIS reference implementation' means the software developed by the Commission <sup>8</sup> and made available to the Member States for the exchange of criminal records information through ECRIS.

#### *Article 4*

### **Technical architecture of the ECRIS-TCN system**

1. The ECRIS-TCN system shall be composed of:
    - (a) a Central System where identity information on convicted third country nationals is stored;
    - (b) a national central access point in each Member State;
    - (c) Interface Software enabling the connection of the central authorities to the Central System via the national central access point and the Communication Infrastructure;
    - (d) a Communication Infrastructure between the Central System and the national central access point.
  2. The Central System shall be hosted by eu-LISA in its two technical sites.
  3. The Interface Software shall be integrated with the ECRIS reference implementation. The Member States shall use the ECRIS reference implementation to query the ECRIS-TCN system, as well as to send subsequent requests for criminal records information.
- (...<sup>9</sup>)

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<sup>7</sup> CZ observed that if Eurojust, Europol and possibly EPPO may use the system, then there should also be a reference to a search by a "competent authority / body".

<sup>8</sup> ES suggested referring equally to software developed by the Member States.

<sup>9</sup> ES observed that four MS are using their own systems in parallel to the reference implementation and that these MS want to keep these systems in use. ES therefore proposed adding a paragraph 4, with wording on the following line: "*MS who use their own system rather than the reference implementation, shall be obliged to make the appropriate technical amendments to that system in order to ensure interoperability with the ECRIS-TCN system as developed by eu-LISA.*"

## CHAPTER II

### Entry and use of data by central authorities

#### Article 5

##### Data entry in the ECRIS-TCN system

1. For each convicted third country national, the central authority of the convicting Member State shall create a data record in the Central System. The data record shall include the following data: <sup>10</sup>
  - (a) surname (family name); first name(s) (given names); date of birth; place of birth (town and country); nationality or nationalities; gender; parents' names <sup>11</sup>; where applicable previous names, pseudonym(s) and/or alias name(s); the code of the convicting Member State;
  - (b) fingerprint data in accordance with Framework Decision 2009/315/JHA <sup>12</sup> and with the specifications for the resolution and use of fingerprints referred to in point (b) of Article 10(1); the reference number of the fingerprint data of the convicted person including the code of the convicting Member State. <sup>13</sup>

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<sup>10</sup> ES wondered why national identity documents of the MS or documents from the country of origin were not included. While acknowledging that no new administrative burdens should be created, ES felt that the identification process might benefit from such additional information. NL observed, however, that such documents are known to be unreliable.

<sup>11</sup> HU, SE and FI said that they have problems with storing the parents' names. It was suggested adding "if available".

<sup>12</sup> As amended by Directive of the European Parliament and the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (...).

<sup>13</sup> According to initial comments from delegations, it seems more desirable to regulate all issues relating to the fingerprints in ECRIS-TCN in the Regulation and not make references to the Directive. This would also include the issue regarding which crimes should the fingerprints be inserted into the system, which issue was also mentioned by many delegations. The Presidency considers submitting the question which crimes should result in a fingerprint record in ECRIS-TCN to the JHA Council in October, in the light of the CATS discussion in March 2017.



2. The data record may also contain facial images of the convicted third country national.<sup>14</sup>
3. The convicting Member State shall create the data record as soon as possible<sup>15</sup> after the conviction was entered into the national criminal records register.
4. The convicting Member States shall create data records also for convictions handed down prior to [*date of entry into force of this Regulation*] to the extent that such data are stored in its national criminal records or<sup>16</sup> national fingerprints database.<sup>17</sup>

## *Article 6*

### **Specific rules for facial images**

1. Facial images as referred to in Article 5(2) shall 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 fingerprints.
2. 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. Before this functionality is implemented in the ECRIS-TCN system, the Commission shall present a report on the availability and readiness of the required technology, on which the European Parliament shall be consulted.

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<sup>14</sup> DE and NL wondered whether facial images would bring any added value to the fingerprints. DE also raised the question whether anyone would verify the image, and if there would be any grading or additional technical layer. FI wondered whether requesting facial images was proportional.

COM underlined that adding facial images is an option; since fingerprints are not always available, such images could be of help for identification.

<sup>15</sup> NL doubted whether the words "as soon as possible" were useful.

<sup>16</sup> PL and SE have a problem with the word "or"; according to PL, fingerprints should be sent for convictions that are valid and not expired. COM confirmed that the idea was that the fingerprints must be deleted once the conviction info from national criminal records is deleted so the wording should be amended to reflect this.

<sup>17</sup> CZ, DE and FI observed that this paragraph could create problems. CZ feared a substantial administrative burden; DE stated that it could be difficult to connect old data with fingerprints reliably; FI expressed worries on the costs.

COM said that the success of the system is partially dependent on the backlog data.

However, it is only requested to insert data that are available within reason to the criminal records authorities. The Presidency considers bringing the questions concerning old convictions to CATS, as the issue regards administrative burden on the one hand and effectiveness of the system on the other.

## Article 7

### Use of the ECRIS-TCN system for identifying the Member State(s) holding criminal record information

1. When criminal records information on a third country national is requested in a Member State for the purposes of criminal proceedings against that third country national or for any purposes other than that of criminal proceedings in accordance with its national law, the central authority of that Member State shall use the ECRIS-TCN system to identify the Member State(s) holding criminal record information on that third country national in order to obtain information on previous convictions through ECRIS.<sup>18</sup>
2. Europol, Eurojust [*and the European Public Prosecutor's Office*] shall have access to the ECRIS-TCN system for identifying the Member State(s) holding criminal record information on a third country national in accordance with Articles 14, 15 and 16.<sup>19</sup>
3. The competent authorities may query the ECRIS-TCN system using the data referred to in Article 5(1).
4. The competent authorities may also query the ECRIS-TCN system using the facial images referred to in Article 5(2), provided that such functionality has been implemented in accordance with Article 6(2).
5. In the event of a hit, the Central System shall automatically provide the competent authority with information on the Member State(s) holding criminal record information on the third country national, along with the associated reference number(s) and any corresponding identity information. Such identity information shall only be used for the purpose of verification of the identity of the third country national concerned.
6. In the event that there is no hit, the Central System shall automatically inform the competent authority thereof.

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<sup>18</sup> DE felt that it was not clear why there should be an obligation to consult in all cases, even if such obligation does not exist under national law. On the same line, CZ referred to the Framework Decision, where no obligation to consult is provided. COM observed that decisions should be taken on the basis all available information. For this reason, there should be an obligation to consult in respect of TCN. The Presidency notes that this issue is closely related to the definition of third country nationals and the inclusion or non-inclusion of dual nationals, as the only way to identify whether an EU citizen also has convictions and is in the ECRIS-TCN as a third country national, would be to try to identify them through ECRIS-TCN also.

<sup>19</sup> DE and NL underlined that Europol and Eurojust should only have access for reasons of consultation, not for modification of data. NL added that it has concerns over requests by third countries - MS might become under pressure to hand over data. CLS indicated that it will scrutinise this paragraph 2 carefully in view of other EU legislation. COM confirmed that Europol and Eurojust should only have access for reasons of consultation, not for modification of data.

## CHAPTER III

### Retention and amendment of the data

#### *Article 8*

##### **Retention period for data storage**

1. Each individual data record shall be stored in the Central System as long as the data related to the conviction(s) of the person concerned are stored in the national criminal records register.
2. Upon expiry of the retention period referred to in paragraph 1, the central authority of the convicting Member State shall erase the individual data record without delay from the Central System, and in any event no later than one month after the expiry of that retention period.<sup>20</sup>

#### *Article 9*

##### **Amendment and deletion of data**

1. The Member States shall have the right to amend or delete the data which they have introduced into the ECRIS-TCN system.
2. Any subsequent amendment in the national criminal records of the information which led to the creation of a data record in accordance with Article 5 shall entail identical amendment of the information stored in that data record in the Central System by the convicting Member State.
3. If a Member State has reason to believe that the data it has recorded in the Central System are inaccurate or that data were processed in the Central System in contravention of this Regulation, it shall check the data concerned and, if necessary, amend them or delete them from the Central System without delay.
4. If a Member State other than the Member State which entered the data has reason to believe that data recorded in the Central System are inaccurate or that data was processed in the Central System in contravention of this Regulation, it shall contact the central authority of the convicting Member State without delay. The convicting Member State shall check the accuracy of the data and the lawfulness of its processing within one month.<sup>21</sup>

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<sup>20</sup> AT suggested deleting the words "*and in any event .... retention period*". COM said that it was open to such change.

<sup>21</sup> PL felt that the deadline of one month was too short. DE agreed, and suggested putting three months.

## CHAPTER IV

### Development, Operation and Responsibilities

#### *Article 10*

##### **Adoption of implementing acts by the Commission**

1. The Commission shall adopt the acts necessary for the development and technical implementation of the ECRIS-TCN system, and in particular rules on:
  - (a) the technical specifications for the processing of the alphanumeric data;
  - (b) the technical specifications for the resolution and processing of fingerprints in the ECRIS-TCN system;
  - (c) the technical specifications of the Interface Software referred to in point (c) of Article 4(1);
  - (d) the technical specifications for the processing of facial images;
  - (e) data quality, including a mechanism and procedures to carry out data quality checks;
  - (f) entering the data in accordance with Article 5;
  - (g) accessing the data in accordance with Article 7;
  - (h) amending and deleting the data in accordance with Articles 8 and 9;
  - (i) keeping and accessing the logs in accordance with Article 29;
  - (j) providing statistics in accordance with Article 30;
  - (k) performance and availability requirements of the ECRIS-TCN system.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 35(2).

## Article 11

### Development and operational management

1. eu-LISA shall be responsible for the development and operational management of the ECRIS-TCN system. 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 the ECRIS-TCN system including its technical specifications and their evolution as regards the Central System referred to in point (a) of Article 4(1), the national central access point referred to in point (b) of Article 4(1) and the Interface Software referred to in point (c) of Article 4(1). That design shall be adopted by its Management Board, subject to a favourable opinion of the Commission.
4. eu-LISA shall develop and implement the ECRIS-TCN system before [*two years after the entry into force of this Regulation*] and following the adoption by the Commission of the measures provided for in Article 10.
5. Prior to the design and development phase, a Programme Management Board composed of a maximum of ten members shall be established by the Management Board of eu-LISA. It shall be composed of eight representatives appointed by the Management Board, the Chair of the ECRIS-TCN system Advisory Group referred to in Article 36 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 the ECRIS and which will participate in the ECRIS-TCN system. The Management Board shall ensure that the representatives it appoints shall have the necessary experience and expertise in the development and management of IT systems supporting judicial and criminal records authorities. 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 the ECRIS-TCN system. The Programme Management Board shall submit written reports every month to eu-LISA's Management Board on progress of the project. It 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;
  - (c) preparation of meetings;
  - (d) admission of experts to the meetings;
  - (e) communication plans ensuring full information to non-participating Members of the Management Board.
7. The chairmanship shall be held by the Member State holding the Presidency of the Council of the European Union, provided that it is fully bound under Union law by the legislative instruments governing the ECRIS and which will participate in the ECRIS-TCN system. If this requirement is not met, the chairmanship shall be held by the Member State which shall next hold the Presidency and which meets that requirement.
8. All travel and subsistence expenses incurred by the members of the Programme Management Board shall be paid by the Agency and 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 ECRIS-TCN system Advisory Group referred to in Article 36 shall be composed of the national ECRIS-TCN system project managers. During the design and development phase it shall meet at least once a month until the start of operations of the ECRIS-TCN system. It shall report after each meeting to the Management Board of eu-LISA.<sup>22</sup> It shall provide the technical expertise to support the tasks of the Management Board and shall follow-up on the state of preparation of the Member States.
10. eu-LISA shall ensure, in cooperation with the Member States, at all times the best available technology, subject to a cost-benefit analysis.
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.

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<sup>22</sup> SE said that it didn't have a problem with this paragraph as such, but that it was concerned with the fact that only 8 MS would be on the management board of eu-LISA. DE expressed the same concerns. COM replied that all MS are involved at technical level; at management level, however, it would not be necessary that all MS be represented.

12. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure, 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 in the ECRIS-TCN system and shall provide regular reports to the Member States. eu-LISA shall provide a regular report to the Commission covering the issues encountered and the Member States concerned.
14. Operational management of the ECRIS-TCN system shall consist of all the tasks necessary to keep the ECRIS-TCN system operational in accordance with this Regulation, and in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality in accordance with the technical specifications.
15. eu-LISA shall perform tasks related to providing training on the technical use of the ECRIS-TCN system and the ECRIS reference implementation.
16. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, 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 their national criminal records databases 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 their national systems and the ECRIS reference implementation;
  - (d) the management and arrangements for access of duly authorised staff of the central authorities to the ECRIS-TCN system in accordance with this Regulation and to establish and regularly update a list of such staff and their profiles.

2. Each Member State shall give the staff of its authorities which have a right to access the ECRIS-TCN system appropriate training, in particular on data security and data protection rules and on relevant fundamental rights, before authorising them to process data stored in the Central System.

### *Article 13*

#### **Responsibility for the use of data**

1. In accordance with Directive (EU) 2016/680, each Member State shall ensure that the data recorded in the ECRIS-TCN system is 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 and fully respect the human dignity of the third country national;
  - (c) the data are included lawfully in the ECRIS-TCN system;
  - (d) the data are accurate and up-to-date when they are included in the ECRIS-TCN system.<sup>23</sup>
2. eu-LISA shall ensure that the ECRIS-TCN system is operated in accordance with this Regulation and the implementing acts referred to in Article 10, as well as in accordance with Regulation (EC) No 45/2001 [or its successor Regulation]. In particular, eu-LISA shall take the necessary measures to ensure the security of the Central System and the Communication Infrastructure between the Central System and the national central access point, 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 of the measures it takes pursuant to paragraph 2 for the start of operations of the ECRIS-TCN system.
4. The Commission shall make the information referred to in paragraph 3 available to the Member States and the public by a regularly updated public website.

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<sup>23</sup> DE felt that there was an overlap in points (b), (c) and (d). COM said that it would verify if this could be clarified.



## Article 14

### **Contact point for third countries and international organisations**

1. Third countries and international organisations may address their requests for information on previous convictions of third country nationals to Eurojust.
2. When Eurojust receives a request as referred to in paragraph 1, it shall use the ECRIS-TCN system to determine which Member State(s) hold information on the third country national concerned, and shall, in cases where Member State(s) are identified, transmit the request immediately to the central authorities of those Member State(s). The Member States concerned shall be responsible for further dealing with such requests in accordance with their national law.<sup>24</sup>
3. Neither Eurojust, Europol, [the European Public Prosecutor's Office] nor any central authority of a Member State may transfer or make available to a third country, any international organisation nor a private party, information obtained from the ECRIS-TCN system on previous convictions of a third country national, or information on the Member State(s) which may hold such information.

## Article 15

### ***Access for Eurojust, Europol[, and the European Public Prosecutor's Office]***<sup>25</sup>

1. Eurojust shall have direct access to the ECRIS-TCN system for the purpose of the implementation of Article 14, as well as for fulfilling its statutory tasks.
2. Europol [and the European Public Prosecutor's Office] shall have direct access to the ECRIS-TCN system for the purpose of fulfilling their statutory tasks.
3. Following a hit indicating the Member State(s) holding criminal records information on a third country national, Eurojust, Europol[, and the European Public Prosecutor's Office] may use their contacts with the national authorities of those Member States established in accordance with their respective constituting legal instruments to request the conviction information.
4. Each of the bodies referred to in this Article shall be responsible for the management of and arrangements for access of duly authorised staff to the ECRIS-TCN system in accordance with this Regulation and shall also be responsible for establishing and regularly updating a list of such staff and their profiles.

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<sup>24</sup> NL, AT, SK expressed concerns over requests by third countries, as MS might become under pressure to hand over information. COM insisted that MS would not be under an obligation in that regard.

<sup>25</sup> FR, NL, AT, SK, FI have doubts on the advisability of this article and said that they would further scrutinise the text. The Presidency considers submitting to CATS the question of access of Europol, Eurojust and EPPO.

*Article 16*

**Responsibilities of Eurojust, Europol[, and the European Public Prosecutor's Office]**

1. Eurojust, Europol[, and the European Public Prosecutor's Office] shall establish the technical means <sup>26</sup> to connect to the ECRIS-TCN system and shall be responsible for maintaining that connection.
2. The bodies referred to in paragraph 1 shall give their staff who have a right to access the ECRIS-TCN system appropriate training, in particular on data security and data protection rules and on relevant fundamental rights, before authorising them to process data stored in the Central System.
3. The bodies referred to in paragraph 1 shall ensure that the personal data processed by them under this Regulation is protected in accordance with the applicable data protection provisions.

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<sup>26</sup> DE wondered what these "technical means" would be. COM said that it would examine this issue and come back to it at a later stage.

## Article 17

### Data Security

1. eu-LISA shall take the necessary measures to ensure the security of the ECRIS-TCN System, 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 the ECRIS-TCN system, 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.
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 critical infrastructure;
  - (b) deny unauthorised persons access to national installations in which the Member State carries out operations related to the ECRIS-TCN system;
  - (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 deletion of stored personal data;
  - (e) prevent the unauthorised processing of data in the ECRIS-TCN system and any unauthorised modification or deletion of data processed in the ECRIS-TCN system;
  - (f) ensure that persons authorised to access the ECRIS-TCN system 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 the ECRIS-TCN system<sup>27</sup> create profiles describing the functions and responsibilities of persons who are authorised to enter, amend, delete, consult and search the data and make their profiles available to the national supervisory authorities referred to in Article 25 without delay at their request;
  - (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment;
  - (i) ensure that it is possible to verify and establish what data has been processed in the ECRIS-TCN system, when, by whom and for what purpose;

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<sup>27</sup> Following a request by DE, COM confirmed that these authorities are criminal record authorities. CLS underlined that this point (g) is important from a data protection point of view.

- (j) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from the ECRIS-TCN system 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 internal monitoring to ensure compliance with this Regulation.

### *Article 18*

#### **Liability**<sup>28 29</sup>

1. Any person or Member State that has suffered damage as a result of an unlawful processing operation or any act incompatible with this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered. That Member State shall be exempted from its 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 to comply with its obligations under this Regulation causes damage to the ECRIS-TCN system, that Member State shall be held liable for such damage, unless and insofar as eu-LISA or another Member State participating in the ECRIS-TCN system 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 national law of the defendant Member State.

### *Article 19*

#### **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 authority and national supervisory authority.

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<sup>28</sup> DE wondered if in this Article, reference should also be made to Eurojust, Europol and EPPO. COM would examine this.

<sup>29</sup> ES would like to have more details about possible disputes concerning the respect of data protection legislation. COM would look into this.

*Article 20*

**Penalties**<sup>30</sup>

Member States shall take the necessary measures to ensure that any use<sup>31</sup> of data entered in the ECRIS-TCN system in contravention of this Regulation is punishable by penalties in accordance with national law, that are effective, proportionate and dissuasive.

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<sup>30</sup> DE raised the question if this article was necessary at all, in view of sanctions provided in the data protection Regulation. AT, on the other hand, wondered if "penalties" would suffice, and if "sanctions" should be used instead.

<sup>31</sup> DE suggested using the word "processing" instead of "use". COM indicated that it would be open to such a change.

## CHAPTER V

### Rights and supervision on data protection

#### *Article 21*

##### **Data controller and data processor**

1. Each central authority of the Member State is to be considered as controller in accordance with Directive (EU) 2016/680 for the processing of the personal data by that Member State under this Regulation.
2. eu-LISA shall be considered as data processor in accordance with Regulation (EC) No 45/2001 as regards the personal data entered into the Central System by the Member States.

#### *Article 22*

##### **Purpose of the processing of personal data**

1. The data included in the Central System shall only be processed for the purpose of the identification of the Member State(s) holding the criminal records information of third country nationals.
2. Access to the ECRIS-TCN system for entering, amending, deleting and consulting the data referred to in Article 5 shall be reserved exclusively to duly authorised staff of the central authorities, and to duly authorised staff of the bodies referred to in Article 15 for consulting the data. That access shall be limited to the extent needed for the performance of the tasks in accordance with the purpose referred to in paragraph 1, and proportionate to the objectives pursued.

## Article 23

### Right of access, correction and deletion

1. The requests of third country nationals related to the rights set out in Articles 14 and 16 of Directive (EU) 2016/680 may be addressed to the central authority of any Member State.<sup>32</sup>
2. If a request is made to a Member State other than the convicting Member State, the authorities of the Member State to which the request has been made shall check the accuracy of the data and the lawfulness of the data processing in the ECRIS-TCN system within a time limit of one month if that check can be done without consulting the convicting Member State. Otherwise, the Member State other than the convicting Member State shall contact the authorities of the convicting Member State within 14 days and the convicting Member State shall check the accuracy of the data and the lawfulness of the data processing within one month from the contact.
3. In the event that data recorded in the ECRIS-TCN system are factually inaccurate or have been recorded unlawfully, the convicting Member State shall correct or delete the data in accordance with Article 9. The convicting Member State or, where applicable, the Member State to which the request has been made shall confirm in writing to the person concerned without delay that action has been taken to correct or delete data relating to that person.
4. If the Member State to which the request has been made does not agree that data recorded in the ECRIS-TCN system are factually inaccurate or have been recorded unlawfully, that Member State shall adopt an administrative decision explaining in writing to the person concerned without delay why it is not prepared to correct or delete data relating to him.
5. The Member State which has adopted the administrative decision pursuant to paragraph 4 shall also provide the person concerned with information explaining the steps which that person can take if he or she does not accept the explanation. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and any assistance, including from the supervisory authorities, that is available in accordance with the national law of that Member State.
6. Any request made pursuant to paragraphs 1 and 2 shall contain the necessary information to identify the person concerned. That information shall be used exclusively to enable the exercise of the rights referred to in paragraphs 1 and 2 and shall be erased immediately afterwards.
7. Whenever a person requests data relating to him- or herself in accordance with paragraph 2, the central authority shall keep a record in the form of a written document that such a request was made and how it was addressed and by which authority and shall make that document available to the supervisory authorities without delay.

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<sup>32</sup> AT felt that the TCN should only be able to introduce a request to the Member State of conviction. DE and SK expressed similar views. COM objected, stating that that would make it very complicated for the TCN to introduce the request.

## *Article 24*

### **Cooperation to ensure the rights on data protection**

1. The central authorities of the Member States shall cooperate with each other in order to enforce the rights laid down in Article 23.
2. In each Member State, the supervisory authority shall, upon request, assist and advise the person concerned in exercising his or her right to correct or delete data relating to him or her.
3. In order to achieve those aims, the supervisory authority of the Member State which transmitted the data and the supervisory authorities of the Member States to which the request has been made shall cooperate with each other.

## *Article 25*

### **Remedies**

1. In each Member State any person shall have the right to bring an action or a complaint in the Member State which refused the right of access to or the right of correction or deletion of data relating to him or her, provided for in Article 23.
2. The assistance of the supervisory authorities shall remain available throughout the proceedings.

## *Article 26*

### **Supervision by the supervisory authority**

1. Each Member State shall ensure that the supervisory authority or authorities designated pursuant to Article 41 of Directive (EU) 2016/680 shall monitor the lawfulness of the processing of personal data referred to in Article 6 by the Member State concerned, including their transmission to and from the ECRIS-TCN system.
2. The supervisory authority shall ensure that an audit of the data processing operations in the national criminal records and fingerprints databases is carried out in accordance with relevant international auditing standards at least every four years from the start of operations of the ECRIS-TCN system.
3. Member States shall ensure that their supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.



4. Each Member State shall supply any information requested by the supervisory authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 12, 13 and 17. Each Member State shall grant the supervisory authorities access to their records pursuant to Article 29 and allow them access at all times to all their ECRIS-TCN system related premises.

#### *Article 27*

#### **Supervision by the European Data Protection Supervisor**

1. The European Data Protection Supervisor shall ensure that the personal data processing activities of eu-LISA concerning the ECRIS-TCN system are carried out in accordance with this Regulation.
2. The European Data Protection Supervisor shall ensure that an audit of the Agency's personal data processing activities is carried out in accordance with relevant international auditing standards at least every four years. A report of that audit shall be sent to the European Parliament, the Council, eu-LISA, the Commission, the supervisory authorities and the national supervisory authorities. eu-LISA shall be given an opportunity to make comments before the report is adopted.
3. eu-LISA shall supply information requested by the European Data Protection Supervisor, give him or her access to all documents and to its records referred to in Article 29 and allow him or her access to all of its premises at any time.

#### *Article 28*

#### **Cooperation among supervisory authorities and the European Data Protection Supervisor**

Coordinated supervision should be ensured in accordance with Article 62 of [new data protection Regulation for Union institutions and bodies].

## Article 29

### Keeping of logs

1. eu-LISA and the competent authorities shall ensure, in accordance with their respective responsibilities, that all data processing operations in the ECRIS-TCN system data are logged for the purposes of checking the admissibility of the request, monitoring the lawfulness of the data processing and data integrity and security, and self-monitoring.
2. The log or documentation shall show:
  - (a) the purpose of the request for access to ECRIS-TCN system data;
  - (b) the data transmitted as referred to in Article 5;
  - (c) the national file reference;
  - (d) the date and exact time of the operation;
  - (e) the data used for a query;
  - (f) the identifying mark of the official who carried out the search and of the official who ordered the search.
3. The logs of consultations and disclosures shall make it possible to establish the justification of such operations.
4. Logs and documentation shall be used only for monitoring the lawfulness of data processing and for ensuring data integrity and security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 34. Those logs shall be protected by appropriate measures against unauthorised access and deleted after one year, if they are no longer required for monitoring procedures which have already begun.
5. On request, eu-LISA shall make the logs of its processing operations available to the central authorities without undue delay.
6. The competent national supervisory authorities responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security shall have access to those logs at their request for the purpose of fulfilling their duties. On request, the central authorities shall make the logs of their processing operations available to the competent supervisory authorities without undue delay.

## CHAPTER VI

### Final provisions

#### *Article 30*

#### **Use of data for reporting and statistics**

1. The duly authorised staff of eu-LISA, the competent authorities, and the Commission shall have access to the data processed within the ECRIS-TCN system solely for the purposes of reporting and providing statistics without allowing for individual identification.
2. For the purpose of paragraph 1, eu-LISA shall establish, implement and host a central repository in its technical site(s) containing the data referred to in paragraph 1 which would not allow for the identification of individuals and would allow to obtain customisable reports and statistics. Access to the central repository shall be granted by means of secured access with control of access and specific user profiles solely for the purpose of reporting and statistics.
3. Detailed rules on the operation of the central repository and the data protection and security rules applicable to the repository shall be adopted in accordance with the examination procedure referred to in Article 35(2).
4. The procedures put in place by eu-LISA to monitor the functioning of the ECRIS-TCN system referred to in Article 34 as well as the ECRIS reference implementation shall include the possibility to produce regular statistics for ensuring that monitoring.

Every month eu-LISA shall submit to the Commission non-personal statistics relating to the recording, storage and exchange of information extracted from criminal records through the ECRIS-TCN system and the ECRIS reference implementation. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation.

5. The Member States shall provide eu-LISA with the statistics necessary to fulfil its obligations referred to in this Article. They shall provide statistics on the number of convicted third country nationals, as well as the number of convictions of third country nationals on their territory to the Commission.

## *Article 31*

### **Costs**

1. The costs incurred in connection with the establishment and operation of the Central System, the Communication Infrastructure, the Interface Software and the ECRIS reference implementation shall be borne by the general budget of the Union.
2. The costs of connection of Eurojust, Europol and [the European Public Prosecutor's Office] to the ECRIS-TCN system shall be borne by the budget of those bodies.
3. Other costs shall be borne by the Member States, specifically the costs incurred by the connection of the existing national criminal record registers, fingerprints databases and the central authorities to the ECRIS-TCN system, as well as the costs of hosting the ECRIS reference implementation.

## *Article 32*

### **Notifications**

The Member States shall notify eu-LISA of their central authorities which have access to enter, amend, delete consult or search data. eu-LISA shall regularly publish a list of these central authorities.

## *Article 33*

### **Start of operations**

1. The Commission shall determine the date from which the ECRIS-TCN system is to start operations, after the following conditions are met:
  - (a) the measures referred to in Article 10 have been adopted;
  - (b) eu-LISA has declared the successful completion of a comprehensive test of the ECRIS-TCN system, which shall be conducted by eu-LISA in cooperation with the Member States;
  - (c) the Member States have validated the technical and legal arrangements to collect and transmit the data referred to in Article 5 to the ECRIS-TCN system and have notified them to the Commission.
2. eu-LISA shall notify the Commission of the successful completion of the test referred to in point (b) of paragraph (1). The Commission shall inform the European Parliament and the Council of the results of the test carried out pursuant to point (b) of paragraph 1.

3. The Commission decision referred to in paragraph 1 shall be published in the *Official Journal*.
4. The Member States shall start using the ECRIS-TCN system from the date determined by the Commission in accordance with paragraph 1.

#### *Article 34*

#### **Monitoring and evaluation**

1. eu-LISA shall ensure that procedures are in place to monitor the development of the ECRIS-TCN system in light of objectives relating to planning and costs and to monitor the functioning of the ECRIS-TCN system and the ECRIS reference implementation in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.
2. For the purposes of monitoring the functioning of the system and its technical maintenance, eu-LISA shall have access to the necessary information relating to the data processing operations performed in the ECRIS-TCN system and the ECRIS reference implementation.
3. By [six months after the entry into force of this Regulation] and every six months thereafter during the development phase, eu-LISA shall submit a report to the European Parliament and the Council on the state of play of the development of the ECRIS-TCN system. Once the development is finalised, a report shall be submitted to the European Parliament and the Council explaining how the objectives, in particular relating to planning and costs, were achieved, as well as justifying any divergences.
4. Two years after the start of operations of the ECRIS-TCN system and every year thereafter, eu-LISA shall submit to the Commission a report on the technical functioning of the ECRIS-TCN system and the ECRIS reference implementation, including the security thereof, based in particular on the statistics on the functioning and use of ECRIS-TCN system and on the exchange, through the ECRIS reference implementation, of information extracted from the criminal records.
5. Three years after the start of operations of the ECRIS-TCN system and every four years thereafter, the Commission shall produce an overall evaluation of the ECRIS-TCN system and the ECRIS reference implementation. That overall evaluation shall include an assessment of the application of the Regulation, an examination of results achieved against objectives and the impact on fundamental rights, and an assessment of the continuing validity of the underlying rationale, the application of the Regulation, the security of the system and any implications on future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation report to the European Parliament and the Council.

6. The Member States, Eurojust, Europol[, and the European Public Prosecutor's Office] shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in this Article according to the quantitative indicators predefined by the Commission or eu-LISA or both. That information shall not jeopardise working methods or include information that reveals sources, staff members or investigations of the designated authorities.
7. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.

#### *Article 35*

#### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.<sup>33</sup>
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 36*

#### **Advisory Group**

An Advisory Group shall be established by eu-LISA and provide it with the expertise related to the ECRIS-TCN system and the ECRIS reference implementation, in particular in the context of preparation of its annual work programme and its annual activity report. During the design and development phase, Article 11 applies.

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<sup>33</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

*Article 37*

**Amendment of Regulation (EU) No 1077/2011**

Regulation (EU) No 1077/2011 is amended as follows:

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

“2. The Agency shall be responsible for the operational management of the Information System, the Visa Information System, Eurodac, [the Entry/Exit System], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] the ECRIS-TCN system and the ECRIS reference implementation.

(2) The following Article is inserted:

*"Article 5a*

*Tasks related to the ECRIS-TCN system*

In relation to the ECRIS-TCN system and the ECRIS reference implementation, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) No XXX/20XX of the European Parliament and of the Council\*;
- (b) tasks relating to training on the technical use of the ECRIS-TCN system and the ECRIS reference implementation.

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\* Regulation (EU) No XXX/20XX of the European Parliament and of the Council\* of X.X.X 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 (OJ L ...).”

(3) In Article 7, paragraph 5 is replaced by the following:

“5. Tasks relating to the operational management of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Regulation (EC, Euratom) No 966/2012. In such a case, the network provider shall be bound by the security measures referred to in paragraph 4 and shall have no access to SIS II, VIS, Eurodac, [EES], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] the ECRIS-TCN system operational data, or to the SIS II-related SIRENE exchange, by any means.

(4) In Article 8, paragraph 1 is replaced by the following:

“1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, Eurodac, [EES], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection], the ECRIS-TCN system and other large-scale IT systems”.

(5) In Article 12, paragraph 1 is amended as follows:

(a) a new point (sa) is added after point (s):

“(sa) adopt the reports on the development of the ECRIS-TCN system pursuant to Article 34(3) of Regulation (EU) No XXX/20XX of the European Parliament and of the Council of X.X.X 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 (OJ L ...)”.

(b) point (t) is replaced by the following:

“(t) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively [or Article 54(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and Article 71(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU] and of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, [of EES pursuant to Article 64(4) of Regulation (EU) XX/XX of XXX and of ETIAS pursuant to Article 81(4) of Regulation (EU) XX/XX of XXX, and of the ECRIS-TCN system and the ECRIS reference implementation pursuant to Article 34(4) of Regulation (EU) XX/XXX;”



(c) point (v) is replaced by the following:

"(v) adopt formal comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, Article 50(2) of Regulation (EU) XX/XX of XXX [establishing the EES) and Article 57 of Regulation (EU) XX/XX of XXX [establishing the ETIAS) and to Article 27(2) of Regulation (EU) XX/XXXX) [establishing the ECRIS-TCN system] and ensure appropriate follow-up of those audits;"

(d) the following point is inserted after point (xa):

"(xb) Publish statistics related to the ECRIS-TCN system and to the ECRIS reference implementation pursuant to Article 30 of Regulation XXXX/XX;" .

(e) Point y is replaced by the following:

"(y) ensure annual publication of the list of competent authorities authorised to search directly the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of Offices of the national systems of SIS II (N.SIS II) and SIRENE Bureaux as referred to in Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively [or by Article 36(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and by Article 53(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU together with the list of Offices of the national systems of SIS II (N.SIS II) and SIRENE Bureaux as referred to in Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks and Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters respectively; [as well as the list of competent authorities pursuant to Article 8(2) of Regulation (EU) XX/XXXX establishing the EES]; [the list of competent authorities pursuant to Article 11 of Regulation (EU) XX/XXXX establishing the ETIAS] and [the list of central authorities pursuant to Article 32 of Regulation XX/XXX establishing the ECRIS-TCN system];"

(6) In Article 15, paragraph 4 is replaced by the following:

"4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. [The European Border and Coast Guard may attend the meetings of the Management Board as observers when a question concerning SIS in relation to the application of Regulation (EU) 2016/1624 or of Regulation XXX of XXX is on the agenda]. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, is on the agenda. [Europol may also attend the meetings of the Management Board as an observer when a question concerning EES in relation to the application of Regulation XX/XXXX (establishing the EES) is on the agenda or when a question concerning ETIAS in relation to Regulation XX/XXXX (establishing ETIAS) is on the agenda. The European Border and Coast Guard may also attend the meetings of the Management Board when a question concerning ETIAS in relation with the application of Regulation XX/XX of XXX is on the agenda.] [EASO may also attend the meetings of the Management Board as an observer when a question concerning the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM(2016) 270 final-2016/0133(COD), is on the agenda.] [Eurojust, Europol and the European Public Prosecutor's Office may also attend the meetings of the Management Board as observers when a question concerning Regulation XX/XXXX (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), and amending Regulation (EU) No 1077/2011 (ECRIS-TCN system) is on the agenda.]The Management Board may invite any other person whose opinion may be of interest, to attend its meetings as an observer.

(7) In Article 17, paragraph 5, point (g) is replaced by the following:

“(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013, [Article 34(4) of Regulation (EU) XX/XX of XX (establishing the EES)]<sup>34</sup>, Article 64(2) of Regulation XX/XXXX (establishing the ETIAS)and Article 11(16) of [Regulation (EU) XX/XX of XXX establishing the ECRIS-TCN system.]”

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<sup>34</sup> Regulation on EES.

(8) In Article 19, paragraph 1 is replaced by the following:

- “1. The following Advisory Groups shall provide the Management Board with expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the annual work programme and the annual activity report:
- (a) SIS II Advisory Group;
  - (b) VIS Advisory Group;
  - (c) Eurodac Advisory Group;
  - (d) [EES-ETIAS] Advisory Group;
  - (e) ECRIS-TCN system Advisory Group;
  - (f) any other Advisory Group relating to a large-scale IT system when so provided in the relevant legislative instrument governing the development, establishment, operation and use of that large-scale IT system.”

#### *Article 38*

#### **Implementation and transitional provisions**

1. Member States shall take the necessary measures to comply with the provisions of this Regulation by 24 months<sup>35</sup> after its entry into force.
2. For convictions handed down prior to [date of entry into force of this Regulation], the central authorities shall create the individual data records in the Central System at the latest by 24 months after the entry into force of this instrument, to the extent that such data are stored in its national criminal records or national fingerprint database(s).

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<sup>35</sup> DE and NL felt that this period was too short.

*Article 39*

**Entry into force and applicability**

This Regulation shall enter into force on the 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

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