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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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
- Outcome of the European Parliament's first reading
(Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 21) to the abovementioned proposal for a Regulation, for which Birgit SIPPEL (S&D, DE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 21) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

P9_TA(2024)0182

European Criminal Records Information System - Third Country Nationals

European Parliament legislative resolution of 10 April 2024 on the 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 (COM(2021)0096 – C9-0088/2021 – 2021/0046(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0096),
- having regard to Article 294(2), Article 16(2), Article 74, Article 78(2)(e), Article 79(2)(c), Article 82(1), second subparagraph, point (d), Article 85(1), Article 87(2)(a) and Article 88(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0088/2021),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3), Article 78(2)(e), Article 79(2)(c), Article 82(1), second subparagraph, point (d), and Article 87(2)(a) of the Treaty on the Functioning of the European Union,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 8 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rules 59 and 40 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0148/2023),

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council amending Regulations (EU) 2019/816 and (EU) 2019/818 for the purpose of introducing the 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* 78(2)(e), Article 79(2)(c), Article 82(1), second subparagraph, point (d), *and* Article 87(2)(a) 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 procedure¹,

Whereas:

¹ Position of the European Parliament of 10 April 2024.

- (1) Regulation (EU) 2024/... *of the European Parliament and of the Council*²⁺ provides for the identification or verification of identity, security checks, *preliminary* health checks *and preliminary vulnerability* checks of third-country nationals at the external *borders or within the territory of the Member States who have not been subject to border checks at the external borders of the Member States, as well as of those third-country nationals who have made an application for international protection at border crossing points or in transit zones, without fulfilling the entry conditions set out in Regulation (EU) 2016/399 of the European Parliament and of the Council*³. Regulation (EU) 2024/...⁺⁺ creates uniform rules allowing for a *swift* identification or verification of identity of third-country nationals and their referral to the applicable procedures. *It aims to strengthen the control of third-country nationals crossing the external borders and to provide for the consultation of the relevant EU information systems and databases in order to verify whether the third-country nationals subject to the screening might pose a threat to internal security.*

² Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the 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 L 2024/..., ..., ELI: ...)**.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

³ *Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).*

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

- (2) Regulation (EU) 2024/...⁺ provides that the *verification of persons subject to screening* for security purposes is to 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) 2024/...⁺ provides that the personal data of persons submitted to the screening are to be checked against the European Criminal Records Information System for third-country nationals (ECRIS-TCN) established by Regulation (EU) 2019/816 of the European Parliament and of the Council⁴ as regards persons convicted in relation to terrorist offences *or* other serious criminal offences.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁴ 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).

- (3) Access to the ECRIS-TCN is necessary for the screening authorities defined in Regulation (EU) 2024/...⁺ in order to establish whether a person *might* pose a threat to internal security ■ .
- (4) *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.*

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

- (5) Regulation (EU) 2024/...⁺ constitutes a development of the provisions of the Schengen *acquis* regarding borders and amends Regulations (EC) No 767/2008⁵, (EU) 2017/2226⁶, (EU) 2018/1240⁷ and (EU) 2019/817 *of the European Parliament and of the Council*⁸, which also constitute developments of the provisions 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), *in the Entry/Exit* System (EES) and *in* ETIAS **█** .
- However, the parallel amendment of Regulation (EU) **2019/816** to grant access rights for the purposes of the screening to the data contained in ECRIS-TCN could not be part of Regulation (EU) 2024/...⁺ for reasons of variable geometry, as Regulation (EU) 2019/816 does not constitute a development of the provisions of the Schengen *acquis*. **Regulation (EU) 2019/816** should therefore be amended by a separate legal act.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁵ 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~~).

⁶ 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, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

⁷ 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).

⁸ 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).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

- (6) Regulation (EU) 2024/...⁺ provides for specific rules concerning the identification or verification of identity of third-country nationals by means of consulting the Common Identity Repository (**CIR**) established by **Regulations** (EU) 2019/817 and (EU) 2019/818 of the European Parliament and of the Council⁹ in order to facilitate and assist in the correct identification *or verification of identity* of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN, including of unknown persons who are unable to identify themselves.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁹ ***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).***

- (7) Since access to data stored in the *CIR* for purposes of identification *or verification of identity* is necessary for the screening authorities, Regulation (EU) .../...⁺ amends Regulation (EU) 2019/817. For reasons of variable geometry it was not possible to amend Regulation (EU) 2019/818 in Regulation (EU) .../...⁺, as Regulation (EU) 2019/818 does not constitute a development of the provisions of the Schengen acquis. Regulation (EU) 2019/818 should therefore be amended by a separate legal act.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

- (8) Since the objective of this Regulation, namely to enable the screening authorities to access the data contained in ECRIS-TCN or in the CIR for the purposes of identification or verification of identity and the security checks established by Regulation (EU) 2024/...⁺, cannot be sufficiently achieved by the Member States, but can *rather, by reason of its scale and effects, 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 Treaty on European Union (*TEU*). 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.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the *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.
- (10) 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*, 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:

Article 1
Amendments to Regulation (EU) 2019/816

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

(1) in Article 1, the following point is added:

“(f) the conditions under which ***data in*** ECRIS-TCN ***may*** be used by the ***screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/... of the European Parliament and of the Council***^{*} ***for the purpose of performing a security check*** in order to ***assess whether a third-country national might pose a threat to internal*** security ***as referred to in Article 15 of*** that Regulation (EU).

* Regulation (EU) 2024/...of the European Parliament and of the Council of ... introducing the 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 L 2024/..., ..., ELI: ...)***.”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

(2) *in Article 2, second subparagraph, the following point is added:*

“(d) enables access to ECRIS-TCN for the purpose of supporting the performance of a security check established by Regulation (EU) 2024/...⁺”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

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

“(6) ‘competent authorities’ means the central authorities, 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 and the screening authorities as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺, which are competent to access or query ECRIS-TCN in accordance with this Regulation;

”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

(4) Article 5 is amended as follows:

(a) █ in paragraph 1, point (c) *is replaced by the following*:

“(c) a flag indicating, for the purpose of **Regulations (EC) No 767/2008 and (EU) 2018/1240** and of **Articles 15 and 16** of Regulation (EU) 2024/...⁺, that the third-country national concerned has been convicted ***in the previous 25 years of*** a terrorist offence or ***in the previous 15 years of*** any other criminal offence listed in the Annex to Regulation (EU) 2018/1240 if ***it is*** punishable █ by a custodial sentence or a detention order for a maximum period of at least three years ***under national law, including*** the code of the convicting Member State.

”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

(b) *in* paragraph 7, first subparagraph, *the following point is added*:

“(c) *the screening authorities, as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺, for the purpose of assessing whether a third-country national might pose a threat to internal security where hits are reported following the security check referred to in Articles 15 and 16 of that Regulation.*

”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

(5) in Article 7(7), *the following point is added*:

“(e) *supporting the objective of* assessing whether a *third-country* national subject to a *security check might* pose a threat to *internal* security, in accordance with Regulation (EU) 2024/...⁺”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24(2020/0278(COD)).

(6) the following Article is inserted:

“Article 7c

Use of ECRIS-TCN for the purposes of the screening

The screening authorities, as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺, shall have the right to access and search █ ECRIS-TCN █ data 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 Articles 15 and 16 of Regulation (EU) 2024/...⁺.

For **the** purpose of performing such tasks, **the screening** authorities, as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺, █ shall have the right to access only those ECRIS-TCN data records in the CIR to which a flag has been added in accordance with Article 5(1), point (c), of this Regulation.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

In the event of a hit, the consultation of national criminal records based on the flagged ECRIS-TCN data shall take place in accordance with national law and using national channels of communication. The relevant national authorities *of the convicting Member State* shall provide an opinion to the *screening authorities*, as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺, *on whether the presence of that person on the territory of the Member States might pose a threat to internal security*, within two days where the screening takes place on the territory of the Member State or within *three* days where the screening takes place at external borders. *Where the relevant national authorities of the convicting Member State do not provide such an opinion within those deadlines, it shall be understood that there are no security grounds to be taken into account. National criminal records shall be consulted by the relevant national authorities of the convicting Member State prior to providing an opinion to the screening authorities*, as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺. *Where, following a hit, no opinion has been provided and there are no security grounds to be taken into account, that absence of opinion and security grounds shall be recorded in the screening form as referred to in Article 17(1), point (h), of Regulation (EU) 2024/...⁺.*”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

(7) in Article 24(1), *first subparagraph*, the following *point is added*:

“(d) supporting the objective of assessing whether a third-country national subject to a security check might pose a threat to internal security, in accordance with Regulation (EU) 2024/...⁺”.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

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.”;

(2) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. A 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 purposes of facilitating and assisting in the correct identification or verification of identity of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a, 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:

“4. 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 identifying or verifying the identity of a person pursuant to Article 20a, 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 is inserted:

“Article 20a

Access *to the* common identity repository for the *identification or verification of identity* *in* accordance with Regulation (EU) 2024/...⁺

1. Queries of the CIR shall be carried out by the *screening authorities*, as defined in Article 2, point (10), of Regulation (EU) 2024/... of the European Parliament and of the Council^{*++}, solely for the purpose of *identifying or* verifying ■ the identity of a person in accordance with Article 14 of that Regulation, provided that the *process* was initiated in the presence of that person.

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

⁺⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title, OJ reference and ELI reference of that Regulation in the footnote.

2. Where the query indicates that data on that person are stored in the CIR, the **screening authorities**, as defined in Article 2, point (10), of Regulation (EU) 2024/...⁺, **shall have access to consult the data** referred to in **Article 18(1) of this Regulation as well as** the data referred to in Article 18(1) of Regulation (EU) 2019/817 of the European Parliament and the Council.

* Regulation (EU) 2024/... of the European Parliament and of the Council of ... introducing the 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 L 2024/..., ..., ELI: ...)**.”;

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

(5) Article 24 is amended as *follows*:

(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 is inserted:

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

(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 subparagraph is replaced by the following:

“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 and application

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

It shall apply from ... [24 months from the date of entry into force of this Regulation].

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

Done ...,

For the European Parliament
The President

For the Council
The President
