

European Criminal Records Information System (ECRIS): exchange of information on third country nationals

2016/0002(COD) - 19/01/2016 - Legislative proposal

PURPOSE: to improve the existing European Criminal Records Information System (ECRIS) to enable rapid and efficient exchange of criminal record information on third country nationals.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: ECRIS is an electronic system for exchanging information on previous convictions handed down against a specific person by criminal courts in the EU for the purposes of criminal proceedings against a person and, if so permitted by national law, for other purposes. The system is based on [Council Framework Decision 2009/315/JHA](#) and [Council Decision 2009/316/JH](#).

The ECRIS legal framework, however, **does not sufficiently cover the particularities of requests concerning third country nationals**. Although it is now possible to exchange information on third country nationals (TCN) through ECRIS, there is no procedure or mechanism in place to do so efficiently. The recent terrorist attacks demonstrated in particular the **urgency of enhancing relevant information-sharing**, notably as regards the extension of ECRIS to third country nationals.

The Commission recalls that efficient cooperation between Member States and exchange of information extracted from criminal records of convicted persons is a **necessary cornerstone of a properly functioning common area of justice and security**.

The European Council and the Justice and Home Affairs Council of Ministers have stated on several occasions the importance of improving ECRIS. The Riga Statement of 29 January 2015 issued by the Justice and Home Affairs Ministers stressed that exchanging information on criminal convictions is important in any strategy to combat crime and counter terrorism.

Improving ECRIS is also part of the [European Agenda on Security](#).

IMPACT ASSESSMENT: three policy alternatives were examined. **The preferred option** is legislation on a search mechanism to identify Member States holding criminal record information on TCN consisting of identity data of convicted TCN (index-filter) that can be searched by a hit-/no-hit search mechanism.

- **The decentralised index-filter** that would be anonymised and distributed to all other Member States enabling them to search at their own premises is the preferred option because it offers a mechanism to identify efficiently which Member States hold criminal record information on a particular TCN.
- **As regards fingerprints**, the sub-options preferred is that fingerprints should be included in the identification data to be stored in the person's criminal record and in the index-filter.

CONTENT: the proposal aims to amend 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. The objectives are:

- to **improve information exchange** in criminal matters with regard to TCN;
- to **reduce crime** and foster crime prevention (also with regard to terrorism);
- to **ensure equal treatment of TCN and EU nationals** with regard to an efficient exchange of criminal record information.

The main amendments proposed are as follows:

Purpose: to improve the exchange of information on convictions of TCN, the purpose of the instrument now includes an obligation of the convicting Member State to store criminal record information on a TCN, including fingerprints.

The definition of ‘convicting Member State’: this now covers convictions, irrespective of whether they were handed down against a national of another Member State or a TCN.

Obligations of the convicting Member State: the Framework Decision is amended to ensure that Member States’ obligation to add the nationality (or nationalities) of a convicted person to the criminal record now also applies to the nationality or nationalities of TCN.

The proposal imposes **the following obligations of a Member State as regards convictions on TCN handed down in its territory:**

- an obligation to store criminal record information;
- an obligation to distribute to the other Member States an anonymised index-filter with identity information on the TCN convicted in its territory for the purpose of identifying the Member States holding criminal record information on a TCN; and
- the obligation to update the index-filter in line with any deletion or alteration of the data included in it.

A Member State complies with **the storage obligation** even if the information is stored in another database than the criminal record database, as long as the central authority has access to the database in which the information is stored.

Furthermore, the obligation applies **regardless of whether a person also holds an EU nationality** in order to ensure that the information can be found whether or not the additional nationality is known.

Request for information on convictions: a Member State is obliged to supplement an extract of a criminal record for which a TCN has asked (his/her own record) **with information from the other Member States** in the same way that it would for EU nationals.

Response to a request for information on convictions: a request for information on a TCN is treated similarly to a request for information on EU nationals. Accordingly, the requested central authority has to transmit information on a conviction handed down in its Member State against the TCN plus any convictions handed down in third countries that have been entered in its criminal record.

Personal data: the references to personal data are extended to the new provisions on TCN.

Format and organisational arrangements: the proposal:

- provides that central authorities of Member States shall transmit the information, the index-filter, requests, replies and other relevant information electronically using ECRIS and a standardised format in accordance with the standards laid down in implementing acts;
- sets out the technical obligations of Member States in relation to the tasks to be fulfilled by the Directive. This concerns both the current information exchange system and the new 'hit'/'no hit' system based on an anonymised index-filter. The technical and administrative arrangements for facilitating the exchange of information will be set out in implementing acts;
- governs the transmission of information if ECRIS is not available;
- requires Member States to notify the Commission instead of the Council in future when they are able to use ECRIS and the new index-filter.

European Criminal Records Information System (ECRIS): a new Article incorporates the main points contained in Council Decision 2009/316/JHA, which established ECRIS, in order to organise the exchange of information from criminal records between the Member States.

Comitology: a comitology procedure has been introduced to give the Commission the necessary tools in order to implement the technical aspects of the exchange of information so it will work in practice.

BUDGETARY IMPLICATIONS: the financial envelope for the implementation of the Directive for the period January 2017 to December 2020 is **EUR 10 760 000**. It is compatible with the current Multi-annual Financial Framework and costs will be met through [the Justice programme](#).