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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 23 September 2020, the Commission adopted a Communication on a New Pact on Migration and Asylum that aims, *inter alia*, to put in place a common framework for asylum and migration management at EU level and to promote mutual trust between the Member States. One of the legislative proposals accompanying that Communication is the proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 ('proposed Screening Regulation'[1]).

The proposed Screening Regulation addresses the challenges of managing mixed flows of migrants, by introducing a pre-entry screening at external borders, as an important step towards closing the gaps between external border controls and asylum and return procedures. The objective of the pre-entry screening is to ensure that the identity of the third-country nationals who cross the external border without authorisation as well as any health and security risks are quickly established and that the third-country nationals concerned are swiftly referred towards the applicable procedure (asylum, or procedures respecting Directive (EU) 2008/115/EC (Return Directive))[2]. The proposed Screening Regulation also creates an EU framework for the screening of irregular migrants apprehended within the territory of the Member States and who eluded border controls on entering the Schengen area, with a view to better protecting the Schengen area.

The security checks as part of the screening should be at least of a similar level as the checks performed in respect of third country nationals that apply beforehand for an authorisation to enter the Union for a short stay, whether they are under a visa obligation or not.

It follows from the above that the automated verifications for security purposes in the context of the screening should be carried out against the same systems as for applicants for a visa or for a travel authorisation under the European Travel Information and Authorisation System (ETIAS) [3], the Visa Information System (VIS) [4], the Entry/Exit System (EES) [5] and the Schengen Information System (SIS) [6]. Persons submitted to the screening should also be

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1 COM(2020)612.

2 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98–107

3 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).

4 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. 60–81.

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

6 Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 381, 28.12.2006, p. 4–23.

checked against the European Criminal Records Information System for Third Country Nationals (ECRIS-TCN)[7] as regards persons convicted in relation to terrorist offences and other forms of serious criminal offences, Europol data, the Interpol Stolen and Lost Travel Documents database (SLTD) and Interpol Travel Documents Associated with Notices databases (TDAWN).

Since access to the Entry/Exit System ('EES'), the European Travel Information and Authorisation System ('ETIAS'), the Visa Information System ('VIS') and the European Criminal Records Information System for third country nationals ('ECRIS-TCN') is necessary for the authorities designated to carry out the screening, the regulations establishing those databases need to be amended to provide for this additional access right. The proposed Screening Regulation amends the Regulations establishing the VIS, the EES and ETIAS. Those regulations are all developments of the Schengen acquis regarding borders, as is the proposed Screening Regulation as a whole.

In view of the fact that Regulation (EU) No 2019/816, which establishes ECRIS-TCN, is not a development of the Schengen acquis, its amendment could not be part of the proposed Screening Regulation. Therefore, there is a need for a self-standing amendment of Regulation 2019/816 to provide for access rights in view of the proposed Screening Regulation.

In addition, the proposed Screening Regulation introduces an obligation to check the biometric data of the third country nationals concerned against the Common Identity Repository (CIR) established by Regulations (EU) 2019/817[8] and (EU) 2019/818[9]. The purpose of consulting CIR in the context of the screening is to allow checking identity data present in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in one go, in a fast and reliable manner, while ensuring a maximum protection of the data and avoiding unnecessary processing of or duplication of data.

While the proposed Screening Regulation provides for changes to Regulation (EU) 2019/817 which applies to the EES, VIS, ETIAS, due to variable geometry, the amendment to Regulation 2019/818 which applies to ECRIS-TCN and Eurodac was not part of the proposed Screening Regulation.

It follows from this that in order to provide access to all data stored in the Common Identity Repository (CIR) for the designated authorities in the context of screening, it is also necessary to amend Regulation (EU) 2019/818.

- **Consistency with existing policy provisions in the policy area**

The proposal contributes to achieving the objective of offering Union citizens an area of freedom, security and justice without internal frontiers, where appropriate measures are taken to prevent and combat crime, including organised crime and terrorism.

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7 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. 1–26.

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 OJ L 135, 22.5.2019, p. 27.

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, OJ L 135, 22.5.2019, p. 85.

The proposal is in line with the purposes of the ECRIS-TCN as provided for in Article 7 of Regulation (EU) 2019/816, in particular paragraph 1 of that Article provides that authorities can use ECRIS-TCN in the context of "visa, acquisition of citizenship and migration procedures, including asylum procedures".

It is without prejudice to the mechanism of exchanging criminal records information on Union citizens between Member States through the European Criminal Records Information System (ECRIS), as established by the Framework Decision 2009/315/JHA[10] and Decision 2009/316/JHA[11].

- **Consistency with other Union policies**

The proposal enables the comprehensive verification of the relevant databases during the screening at the external borders and within the territory in line with the proposed Screening Regulation. As such, it contributes to the protection of the external borders and the prevention of unauthorised movements within the Schengen area. It is also consistent with the objectives of Regulation (EU) 2019/816 to improve the European Criminal Records Information System with regard to third country nationals and to contribute to the development of interoperability between all centralised EU information systems for security, border and migration management.

The proposal is also consistent with the modifications to be made by the proposed Screening Regulation in the interoperability framework as established by Regulations (EU) 2019/817[12] and (EU) 2019/818[13] by ensuring the same access rights to the European Criminal Records Information System for third country nationals during the screening as to the other relevant databases, such as the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), and the Visa Information System (VIS).

The proposal also takes into consideration the interoperability framework established by Regulations (EU) 2019/817 and (EU) 2019/818.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 82(1), second subparagraph, point (d) of the Treaty on the Functioning of the European Union ('TFEU') which concerns facilitation of cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions. That is the Treaty provision which served as legal basis for the regulations which it is proposed to amend.

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[10] Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, OJ L 93, 7.4.2009, p. 23–32.

[11] Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA, OJ L 93, 7.4.2009, p. 33–48.

[12] 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 OJ L 135, 22.5.2019, p. 27.

[13] 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, OJ L 135, 22.5.2019, p. 85.

- **Subsidiarity (for non-exclusive competence)**

Action in the area of freedom, security and justice falls within an area of competence shared between the EU and the Member States in accordance with Article 4(2) TFEU. Therefore, the subsidiarity principle is applicable by virtue of Article 5(3) of the Treaty on European Union: the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States (either at central level or at regional and local level), but rather at Union level (by reason of the scale or effects of the proposed action).

The objectives of this proposal cannot be sufficiently achieved by the Member States acting alone, and can be better achieved at the level of the Union. This is because they concern the access to information contained in an EU database and the facilitation of cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

- **Proportionality**

The proposal is proportionate to the identified objectives.

The proposal aims at aligning the access rights to the European Criminal Records Information System for third country nationals (ECRIS-TCN) with other databases automatically verified for security purposes during the screening at the external borders and within the territory to the access rights already granted in the context of the screening of applicants for a visa or of the screening of applicants for a travel authorisation under the European Travel Information and Authorisation System.

In line with the proposed Screening Regulation, the security checks including the consultation of the the European Criminal Records Information System for Third Country Nationals (ECRIS-TCN) database will be limited to identification of terrorist offences and other forms of serious criminal offences. Article 1 of the proposal reflects the modification made in Article 5(1)(c) of Regulation 2019/816 by the Proposal COM/2019/3 final[14] (ETIAS consequential) which introduces a special flag for terrorist offences and other forms of serious criminal offences. Based on this modification, it will be possible to limit access to data records of third country nationals convicted of terrorism offences and other forms of serious criminal offences, only to those records which are relevant for security checks under the proposed screening Regulation. The consultation of the ECRIS-TCN database should indeed be conducted in a manner that ensures that only data necessary for carrying out the security checks is retrieved from this database. This proposal reflects these requirements.

The necessary changes to Regulation (EU) 2019/818 are limited to providing access rights to data stored in the Common Identity Repository (CIR) for the designated authorities in the context of the screening.

- **Choice of the instrument**

This proposal specifies the conditions of accessing the European Criminal Records Information System for third country nationals (ECRIS-TCN) database which has been set up

[14] Proposal for a Regulation of the European Parliament and of the Council establishing the conditions for accessing the other EU information systems and amending Regulation (EU) 2018/1862 and Regulation (EU) 2019/816.

by an EU regulation with a view to ensure uniform application across the Union and legal certainty by avoiding divergent interpretations in the Member States with regard to the use of this central database.

The proposal also complements the uniform rules on security checks during the screening as set out in the proposed Screening Regulation.

It follows that a regulation is the appropriate instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The evidence-based document prepared in relation to the legislative proposals adopted together with the New Pact on Migration and Asylum remains relevant for this proposal which complements the proposed Screening Regulation.

• Stakeholder consultations

The consultations carried out by the Commission in relation to the New Pact on Migration and Asylum remain valid. In particular, the Commission consulted the European Parliament, Member States, and stakeholders on a number of occasions to gather their views on the New Pact on Migration and Asylum. In parallel, the Romanian, Finnish and Croatian Presidencies have held both strategic and technical exchanges on the future of various aspects of migration policy, including the screening proposal. These consultations showed support for a fresh start on European asylum and migration policy.

Ahead of the launch of the New Pact on Migration and Asylum, the Commission has engaged in continuous discussions with the European Parliament. Member States acknowledged, among others, the need for strong border protection and interest in having clear and efficient procedures at the external borders, notably to prevent unauthorised movements as well as to contribute to the security of the Schengen area. Some Member States, however, stressed that one must not create any unnecessary administrative burden.

• Fundamental rights

The proposal complies with relevant provisions of the Charter of Fundamental Rights of the European Union, including the protection of personal data, and the principle of *non-refoulement*, protection in the event of removal, expulsion or extradition and other relevant standards and guarantees enshrined in EU law on asylum, return and borders.

As regards the protection of personal data (Article 8 of the Charter), the proposal affects this right in a manner that is strictly necessary and proportionate to offering EU citizens an area of freedom, security and justice without internal frontiers, where appropriate measures are taken to prevent and combat crime, including organised crime and terrorism.

First, the proposed modification allows to search the European Criminal Records Information System for third country nationals (ECRIS-TCN) database for the purpose of carrying out security checks during the screening, which will complement the existing border management measures. The screening implies the consultation of identity, travel or other documents as well as processing of biometric data of persons subject to the check, and the consultation of databases, including ECRIS-TCN, in the context of security checks. This implies processing

of personal data. Such checks are required to verify whether that person would pose a threat to the security of the Member States under the proposed Screening Regulation.

Secondly, the debriefing form to be filled out at the end of the screening, should contain information that is necessary to enable the Member States' authorities to refer the persons concerned to the appropriate procedure. The filling out and reading of the debriefing form by the authorities thus constitute forms of processing of personal data which are inherent in referring third-country nationals present at the external border without fulfilling entry conditions (or apprehended within the territory) to the appropriate procedures regarding asylum or return. The debriefing form points at the results of the consultation carried out during the screening for security purposes. The results of such consultation are reflected by hit/no hit. In case of a hit, the database which produced the hit and exact reasons for that should be mentioned in the de-briefing form. It should be underlined that in case of a hit in ECRIS-TCN the de-briefing form will include the result of the consultation only in case of a hit with data related to terrorism and other forms of serious criminal offences.

This proposal is without prejudice to the Member States' responsibilities under their national laws, including rules on entering convictions against minors and children into the national criminal record register. Similarly, it does not prevent the application of Member States' constitutional law or international agreements to which they are bound, in particular those deriving from the European Convention on Human Rights and Fundamental Freedoms, to which all Member States are party.

When reporting on the application of Regulation (EU) 2019/816 in line with Article 36(9) of that Regulation, the Commission will also need to take into account the impact of the use of the European Criminal Records Information System for third country nationals (ECRIS-TCN) database on the fundamental rights of third country nationals in the context of the screening.

The use of this database in the context of the screening should be subject to the monitoring mechanism as set out by the proposed Screening Regulation, to ensure that the fundamental rights of third country nationals are complied with and that the principle of *non-refoulement* is observed in relation to the screening.

4. BUDGETARY IMPLICATIONS

The proposed Regulation has no implications for the EU budget.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 1 modifies Regulation (EU) 2019/816 by adding a new provision allowing the designated authorities in the context of the screening to access and search the ECRIS-TCN database for records relating to persons who have been convicted for a terrorist offence or other serious criminal offences and sets out the conditions and safeguards in that respect.

Article 2 modifies Regulation (EU) 2019/818 by adding a new provision allowing the designated authorities in the context of screening to access data stored in the Common Identity Repository (CIR).

Article 3 contains final provisions.

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amending Regulation (EU) 2019/816 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and Regulation (EU) 2019/818 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 for the purpose of introducing a screening of third country nationals at the external borders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 74, Article 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) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) …/… [*Regulation on Screening*][15] provides for identity, security and health checks of third country nationals who are at the external border without fulfilling the entry conditions or who are apprehended within the territory, and where there are no indications that they have been subject to controls at external borders. Regulation (EU) …/… [*Regulation on Screening*][16] addresses the challenges of managing mixed flows of migrants and creates uniform rules allowing for a quick identification of third country nationals and referral to the applicable procedures.

(2) The Regulation (EU) …/… [*Regulation on Screening*][17] provides that verifications for security purposes in the framework of the screening should be carried out against the same systems as for applicants for visas or for travel authorisations under the European Travel Information and Authorisation System. In particular, Regulation (EU) …/… [*Regulation on Screening*][18] provides that the personal data of the persons submitted to the screening should be checked against Europol data, Interpol Stolen and Lost Travel Documents database (SLTD) and Interpol Travel Documents Associated with Notices database (TDAWN), as well as the European Criminal Records

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

[16] Op. cit. 15.

[17] Op. cit. 15.

[18] Op. cit. 15.

Information System for third country nationals (ECRIS-TCN) as regards persons convicted in relation to terrorist offences and other forms of serious criminal offences.

(3) Access to the ECRIS-TCN is necessary for the authorities designated to carry out the screening provided for in Regulation (EU) …/… [*Regulation on Screening*][19] in order to establish whether a person could pose a threat to internal security or to public policy.

(4) Regulation (EU) …/… [*Regulation on Screening*][20], which constitutes a development of the Schengen acquis regarding borders, amends Regulations (EC) No 767/2008[21], (EU) 2017/2226[22], (EU) 2018/1240[23] and (EU) 2019/817[24], which likewise constitute developments of the Schengen acquis regarding borders, to grant access rights for the purposes of the screening to the data contained in the Visa Information System (VIS), to the Entry-Exit System (EES) and to European Travel Information and Authorisation System (ETIAS) respectively. However, the parallel amendment of Regulation (EU) No 2019/816 to grant access rights for the purposes of the screening to ECRIS-TCN could not be part of the same regulation for reasons of variable geometry, as the regulation establishing ECRIS-TCN does not constitute a development of the Schengen acquis. Regulation 2019/816 should therefore be amended by a distinct legal instrument.

(5) Since the objective of this Regulation, namely to enable access to the ECRIS-TCN for the purposes of the security checks established by Regulation (EU) …/… [*Regulation on Screening*][25], which in turn aims at the strengthening of the control of persons who are about to enter the Schengen area and their referral to the appropriate procedures, cannot be sufficiently achieved by the Member States, but can only be 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. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(6) Regulation (EU) …/… [*Regulation on Screening*][26] provides for specific rules concerning the identification of third-country nationals by means of consulting the Common Identity Repository (CIR) established by Regulations (EU) 2019/817 and

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19 Op. cit. 15.

20 Op. cit. 15.

21 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. 60–81.

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

23 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).

24 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.

25 Op. cit. 15.

26 Op. cit. 15.

(EU) 2019/818 of the European Parliament and of the Council in order to facilitate and assist in the correct identification of persons registered in EES, VIS, ETIAS, Eurodac and ECRIS-TCN, including of unknown persons who are unable to identify themselves.

(7) Since access to data stored in the Common Identity Repository (CIR) for identification purposes is necessary for the authorities designated to carry out the screening, the Regulation (EU) …/… [*Regulation on Screening*][27] amends Regulation (EU) 2019/817. For reasons of variable geometry it was not possible to amend Regulation (EU) 2019/818 in the same Regulation, therefore Regulation (EU) 2019/818 should be amended by a distinct legal instrument.

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

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

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2019/816

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

1. In Article 1, the following point (e) is added:

‘(e) the conditions under which ECRIS-TCN shall be used by the competent authorities in order to perform a security check in accordance with Regulation (EU) …/…[28] [*Regulation on Screening*]*.’

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

2. Article 2 is replaced by the following:

[27] Op. cit. 15.
[28] OJ …

"Article 2
Scope

This Regulation applies to the processing of identity information of third-country nationals who have been subject to convictions in the Member States for the purpose of identifying the Member States where such convictions were handed down [as well as for the purposes of border management][29]. With the exception of point (b)(ii) of Article 5(1), the provisions of this Regulation that apply to third-country nationals also apply to citizens of the Union who also hold the nationality of a third country and who have been subject to convictions in the Member States.

This Regulation also:

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

(b) supports the objectives of Regulation (EU) …/… [*Regulation on Screening*] as regards the carrying out of the security checks.

3. In Article 3, point 6 is replaced by the following:

(6) 'competent authorities' means the central authorities and Eurojust, Europol, the EPPO [, the ETIAS Central Unit established within the European Border and Coast Guard Agency][30] and the authorities referred to in Article 6(7) subparagraph 1 of Regulation (EU) …/… [*Regulation on Screening*], which are competent to access or query ECRIS-TCN in accordance with this Regulation;

4. Article 5 is amended as follows:

(a) in paragraph 1, the following point is added:

'(c) a flag indicating, for the purpose of [Regulation (EU) 2018/1240 and of Article 11 and 12 of Regulation (EU) …/… [*Regulation on Screening*], that the third-country national concerned has been convicted for a terrorist offence or any other criminal offence listed in the annex to Regulation (EU) 2018/1240 if they are punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, and in those cases the code of the convicting Member State(s).';

(b) the following paragraph 7 is added after paragraph 6:

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

[29] COM/2019/3 final.
[30] Op. cit. 29.

5. In Article 7, paragraph 7 is replaced by the following:

‘7. In the event of a hit, the central system shall automatically provide the competent authority with information on the Member States holding criminal records information on the third country national, along with the associated reference numbers referred to in Article 5(1) and any corresponding identity information. Such identity information shall only be used for the purpose of verifying the identity of the third country national concerned. The result of a search in the central system may only be used for the purposes of:

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

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

(c) [border management][31];

(d) assessing whether a third country national subject to screening checks would pose a threat to public policy or public security, in accordance with Regulation (EU) …/… [*Regulation on Screening*].

6. The following Article 7a is inserted after Article 7:

‘Article 7a

Use of ECRIS-TCN for the purposes of the Screening

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

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

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. The relevant national authorities shall provide an opinion to the competent authorties referred to in Article 6(7) of Regulation (EU) …/… [*Regulation on Screening*] within two days where the screening takes place on the territory of the Member States or within four days where the screening takes place at external borders. The absence of opinion within these deadlines shall mean that there are no security grounds to be taken into account.’

7. In Article 24, paragraph 1 is replaced by the following:

[31] Op. cit. 29.

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

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

(b) [border management] [32] or

(c) screening pursuant to Article 11 of Regulation (EU) …/… [*Regulation on Screening*].’

Article 2

Amendments to Regulation (EU) 2019/818

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

1. In Article 7, paragraph 2 is replaced by the following:

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

2. Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

“ Where it is technically impossible because of a failure of the CIR to query the CIR for the purposes of identifying a person pursuant to Article 20 or of verifying or

[32] Op. cit. 29.

establishing the identity of a person pursuant to Article 20a of this Regulation, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.

3. In Article 18, paragraph 3 is replaced by the following:

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

4. The following Article 20a is inserted after Article 20:

"*Article 20a*

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

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

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

5. Article 24 is amended as follow:

(a) paragraph 1 is replaced by the following:

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

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

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

(a) the Member State launching the query;

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

(c) the date and time of the query;

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

(e) the results of the query."

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

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

Article 3

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

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

Done at Brussels,

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