



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

Directorate E : HOME Affairs Funds
The Director

Brussels
HOME.E/CHG

HOME-Funds/2022/71

COMMITTEE FOR THE HOME AFFAIRS FUNDS

SUBJECT: Use of BMVI funding in relation to ECRIS TCN's operation, stemming from the interoperability legal framework

Dear Members of the Home Affairs Funds Committee,

This note describes the use that Member States can make of the Border Management and Visa Policy Instrument (BMVI) funding to meet their obligations stemming from the EU Regulations on interoperability^{1:2} in relation to the operation of the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN), once developed.

Background

The BMVI contributes to achieving a high level of security within the area of freedom, security and justice of the Union, by funding the development of large-scale IT systems in accordance with Union law in the area of border management.

ECRIS-TCN³ is a system for judicial cooperation in criminal matters, adopted under Article 82(2) TFEU and, as such, it does not represent a development of the Schengen acquis.

ECRIS-TCN, once developed, will be a centralised system allowing Member State's authorities to identify which other Member States hold criminal records on the third country nationals or stateless persons being checked. The checks could be conducted at the external borders and/or within the territory of the EU Member States.

¹ 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.

² 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.

³ 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.

When the interoperability architecture will be achieved, as per the two interoperability regulations in force, ECRIS-TCN will contribute as well to an effective and secure border control. Then, a Member State wishing to identify the Member State(s) holding criminal record information on a particular third country national - convicted for terrorist offences and other forms of serious criminal offences -, and interested to cross the Union's external borders, can do so by performing a 'hit/no hit' search in the ECRIS-TCN system.

The activities to be performed nationally by the Member States to develop the ECRIS-TCN system are not eligible under BMVI. However, the Justice Programme, managed by DG JUST, provided EU financial support (grants) to the Member States for their connection to ECRIS-TCN.

Given the importance of ECRIS-TCN in relation to EU information systems in the area of border management and visa policy, in particular VIS, ETIAS and the proposed screening Regulation⁴, currently under negotiation, and given that so far only eight⁵ out of the 25 Member States⁶ applied successfully for the funding support (EU grants) under the Justice Programme for their connection to ECRIS-TCN system, DG JUST and DG HOME are exploring ways to provide further support to Member States with the development of ECRIS-TCN.

BMVI support for meeting Member States obligations on the operation and use of ECRIS-TCN, stemming from interoperability

Although activities developing the ECRIS-TCN system at national level are not eligible under BMVI, **activities to meet Member State's obligations under the interoperability Regulations in relation to ECRIS-TCN's operation could be eligible**, provided that those actions contribute to the specific objectives of BMVI and they are not financed by other EU programmes.

As per the recital 19 of the Regulation (EU) 2021/1148, BMVI should support the setting-up of **interoperability** for migration, borders and security, as established by Regulations (EU) 2019/817 and (EU) 2019/818, so that the relevant Union information systems and their data supplement each other. The recital refers, among other Union information systems, to the ECRIS-TCN. Moreover, the BMVI should contribute to the necessary developments at national level following the implementation of the interoperability components⁷ at central level. Once developed by eu-LISA, the interoperability components are expected to also access ECRIS-TCN and Member States have the obligation to take certain actions for proper operation and use of ECRIS-TCN within the interoperability framework at EU level.

The BMVI Regulation allows for such support under Member States programmes. See, in particular:

- **Annex II “Implementation measures”** point 1(e) and point 2 (e) of Regulation (EU) 2021/1148, referring to **actions to enhance data quality and the**

⁴Proposal 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 [2020/0278 (COD)]

⁵BE, EE, FI, HU, LU, LV, SK, SE.

⁶EU Member States with the exception of IE and DK

⁷The European search portal (ESP), a shared biometric matching service (shared BMS), a common identity repository (CIR) and a multiple-identity detector (MID)

provision of information for the EU large-scale IT systems in the area of border management and visa policy.

- **Annex III “Scope of support”** point 3e) of Regulation (EU) 2021/1148, according to which Member States can fund “studies, proof of concepts, pilot projects and **other relevant actions related to the implementation of large-scale IT systems, including their interoperability**”.
- **Annex IV on actions eligible for higher co-financing rates** - point 12 “**Measures which aim to improve the interoperability of ICT systems**” of Regulation (EU) 2021/1148.
- Moreover, the Member States can make also use of Article 13 (14c) of the Regulation (EU) 2021/1148, according to which “*as regards (...) ICT systems required for effective and secure border control, (...) purchased with the support of the Instrument:*

c) they may be additionally used in the following complementary areas: (...) and for achieving the objectives of the Internal Security Fund and of the Asylum, Migration and Integration Fund”. (...)

ICT systems developed for the purposes of point (c) of the first subparagraph shall provide data and services to the border management systems at national or Union level.”

In principle, the following **three categories of actions** of Member States in relation to ECRIS-TCN may justify the support of BMVI, as they stem from interoperability:

1. **Specific training for the national authorities having the “yellow link”⁸ resolution in their attribution.** Such training can be provided to the end-users introducing identity data (fingerprints and facial images) in ECRIS-TCN, not to those who only search in ECRIS-TCN.
2. If necessary, **the development of the tool supporting the resolution of “yellow links”**, so to exchange accurate criminal records information on third-country nationals. However, the collection and preparation of fingerprints/ facial images are not eligible.
3. **Member States’ follow-up solutions when a hit is generated after querying the ECRIS-TCN by ETIAS**, indicating that third-country nationals have been convicted of a terrorist offence or of any other criminal offence listed in the Annex to ETIAS Regulation (EU) 2018/1240. This is needed, as a hit indicated by ECRIS-TCN should not by itself be taken to mean that the third-country national concerned ⁽⁹⁾ has been convicted in the indicated Member States. The existence of previous convictions should be confirmed only on the basis of information received from the criminal records of the Member States concerned.

⁸As defined in Article 30 of the Regulation (EU) 2019/818.

⁹See recital 31 of Regulation (EU) 2019/816.

Should you have any further questions, please send your e-mail to:
HOME-AFFAIRS-FUNDS-COMMITTEE@ec.europa.eu.

Yours faithfully,

Electronically signed

Chiara GARIAZZO

c.c.: Permanent Representations – JHA Counsellors