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From:	Presidency
To:	Delegations
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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 - Questions concerning the EP amendments

I. Introduction

The Commission (COM) presented its proposal for a Regulation in June 2017 (10940/17). The Council reached a general approach in December 2017 (15448/17). The LIBE Committee adopted its (draft) amendments on 25 January 2018 (5727/18).

In view of the first trilogue, which is scheduled for Wednesday 7 March, the Presidency (PRES) would like to obtain a view of the positions of the Member States on the EP amendments. PRES would also very much appreciate Member States bringing forward arguments that could be used during the negotiations.

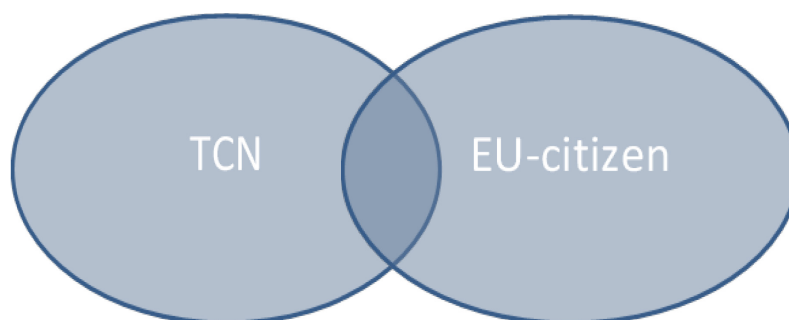
II. Issues for discussion

A. Exclusion of EU-nationals (AM 23 relating to Art. 3(g), and Art. 2a)

The EP has adopted (basically) the same definition of 'third country national' as the Council, see Art. 3(g). This means that EU-nationals that also have the nationality of a third country are not considered to be third country nationals.

During its discussions, however, the EP has made it clear that it does not want EU nationals to be covered at all by the Regulation. Therefore, the EP has not introduced a provision in the draft Regulation that is similar to Article 2a of the GA. It is recalled that in accordance with that Article, which has been adopted in line with the wish of a large majority of Member States, the provisions of the Regulation that apply to third country nationals should also apply to citizens of the Union within the meaning of Article 20(1) TFEU who also hold the nationality of a third country.

Adopting the position of the EP would mean that the ECRIS-TCN system would become less complete, since identity data of certain persons with a criminal record, who hold the nationality of a third country - marked in bold in the design below - would not be stored in ECRIS-TCN. This could lead to the undesirable situation that a person holding a double nationality (EU and of a third country) and whose criminal record has been registered in the Member State of his EU nationality, could - when re-offending - only state that he/she has a third country nationality. In that way the authorities wouldn't be able to get any information in respect of his/her previous conviction.



Q: Member States who consider that any specific arguments on this issue should be submitted during the trilogues, are invited to bring these arguments forward.

B. Fingerprints (AM 28 relating to Art. 5)

The issue of fingerprints has been discussed at length in the Council. COM had proposed to insert fingerprints in the Central System in all cases in accordance with Framework Decision 2009/315/JHA. The Council, however, decided to restrict such insertion to cases where fingerprints have been collected in accordance with national law during criminal proceedings, with in addition a minimum rule based on a choice between two criteria.

EP has suggested inserting fingerprint data in the Central System *only when the national law of a Member State where a conviction is handed down allows for collection and storage of fingerprints of a convicted person*, and in accordance with Framework Decision 2009/315/JHA.

PRES suggests inviting EP at the first trilogue to explain its position. While PRES does not want to repeat at this stage the intense discussions that took place in the Council during the last two years, it would not want to prevent MS who so wish to comment on the EP position.

Q: Member States who wish to comment on the EP amendment, are invited to do so.

C. Use of the ECRIS-TCN system (AM 34 relating to Art. 7)

In its proposal, COM had proposed providing that when criminal record 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 would be obliged to use the ECRIS-TCN system.

Both the Council and the EP have made restrictions to this text.

The Council has kept the text of the Commission, but has made a general limitation, by providing that in specific cases the authority requesting criminal record information could decide that the use of the ECRIS-TCN system is not appropriate.

EP has deleted the words "*or for any purposes other than that of criminal proceedings in accordance with its national law,*" thus making the use of the ECRIS-TCN system only obligatory in the context of criminal proceedings. Where criminal record information would be requested in the context, for example, of obtaining background information for fulfilling a sensitive position, the use of the ECRIS-TCN would not be obligatory.

Q: Member States are invited to state their position on the amendment of the EP.

D. Implementing and delegated acts (AM 41-47 and AM 102 relating to Art. 10, 10a and 34a)

The EP has proposed that the power of the Commission to adopt implementing acts should be reduced. To that effect, the EP has proposed, on the one side, that in respect of several issues the Commission should have no power to adopt implementing acts and, on the other side, in respect of other issues, that the power of the Commission to adopt implementing acts should be substituted by a power to adopt delegated acts. As regards the latter acts, the EP would obtain substantial powers, through a clause by which the EP (or the Council) can revoke the delegation of power (Art. 34a(3)) and through a 'non-objection' clause (Art. 34a(6)).

Q: Member States are invited to state their position on these amendments of the EP.

E. Time-limits (inter alia AM 30 relating to Art. 5(3); AM 36 relating to Art. 8(2); AM 37 relating to Art. 9(3); AM 38 relating to Art. 9(4); AM. 39 relating to Art. 10(1); AM 57 relating to Art. 13(3); AM 75 relating to Art. 23 (2); AM 78 relating to Art. 23(7); AM 83 relating to Art. 26(2); AM 86 relating to Art. 27(2); AM 88 relating to Art. 29(4); AM 99 relating to Art. 34 (4)).

The EP on several points has introduced a time-limit, or it has made an existing time-limit stricter. PRES suggests inviting EP to explain the need for such (stricter) time-limits.

Q: Member States who so wish are invited to comment on these EP amendments.

III. Concluding remarks

A provisional schedule of trilogues has been drawn up, which reads as follows:

Wed 7 March: first trilogue (Brussels)

Thu 22 March: second trilogue (Brussels)

Tue 24 Apr: third trilogue (Brussels)

Wed 16 May: fourth trilogue (Brussels)

Tue 12 June: fifth trilogue (Strasbourg)

It is underlined that this is a provisional schedule, which may be subject to change.
