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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	8259/18, 8669/18
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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 - Note with questions

I. Introduction

At the meeting of the Working Party on 3 May, various points of the draft Regulation were discussed on the basis of 8258/18 and 8259/18. While on most points agreement could be reached, it appeared necessary to refine the texts on some points, in order to allow the Presidency to submit these texts to the technical trilogue on 16 May 2018.

The texts as refined are set out in yellow in the fourth column of 8669/18. The Presidency would appreciate it if the Member States could confirm the texts as set out under point II below.

a) Purposes other than criminal proceedings: Art. 7(1) (line 96)

This issue was discussed at the last Working Party. Member States would prefer a clarifying recital, but it seems that this is not enough for EP. Following a proposal by COM, it is suggested inserting a list indicating explicitly the "other purposes" in the operative part, complemented by the Member States having the possibility to notify the Commission other purposes for which they use the system. The proposal of COM is set out in the fourth column.

PRES considers that the solution proposed by COM basically allows MS the same freedom as an open list (or "not a list"). It is true that the solution requires MS to make an administrative effort, but is a small effort, since the purposes are quite broadly defined in the text and MS are not expected to make additional notifications frequently (if it is necessary to declare additional purposes, perhaps one notification will suffice).

In order to address concerns of MS, PRES has revised the text on some points (see underlining), and it has added a recital stating that the Commission cannot refuse any notification (first part of recital 11c with addition; the other part of recital 11c could become a separate recital).

MS are invited to scrutinise this proposal in a spirit of compromise.

Q: MS are invited to indicate whether the revised text proposed in line 96, with the recital, is acceptable in the context of an overall compromise package.

b) Composition of Programme Management Board - Art. 11(5) (line 134)

EP would like a representative of eu-LISA to be appointed in the Programme Management Board. PRES observed, on behalf of the Council, that this would lead to a conflict of interests' situation, in the sense that a representative of eu-LISA would have to supervise its own work. COM endorsed the position of the PRES.

As a solution, it is proposed that eu-LISA can participate as an observer, on a case-by-case basis.

Q: MS are invited to indicate whether they can accept the compromise text set out in the fourth column of line 134.

c) Penalties - Art. 20 (line 213, 214)

Council had deleted this Article, since the GDPR/Data Protection Directive would be sufficient, but EP prefers maintaining the Article.

Following comments at the meeting on 3 May, PRES has redrafted the Article, merging lines 213 and 214.

Q: MS are invited to indicate if the text for Article 20, as set out in the fourth column of line 213, is acceptable in the context of an overall compromise package.

d) Correction of data - Art. 23(4) (line 225)

This last issue was also discussed at the last meeting. Some MS stated that they were not very happy with indicating the possibility that cases may be communicated to the national supervisory authority for data protection. Since EP finds this text very important, PRES suggests maintaining it, but adding "where appropriate".

Q: MS are invited to indicate if the text for Article 23(4), as set out in the fourth column of line 225, is acceptable in the context of an overall compromise package.

e) Facial images - recitals 8a, 13, 25a (lines 9, 20, 38) and Articles 6, 7(4) (lines 93, 94, 99)

It was agreed that the Council could accept to empower the Commission, after a study, to adopt delegated acts in accordance with Article 34a on the use of facial images to identify third country nationals in order to determine the Member State(s) holding information on previous convictions concerning such persons. Council has put some conditions in this respect, which the EP is likely to be able to accept.

Following the Working Party on 3 May, PRES has modified the texts concerned in line with the comments expressed by some delegations.

Q: MS are invited to indicate if they can accept the texts on 'facial images' as set out in lines 9, 20, 38, 93, 94 and 99 in the context of an overall compromise package.