Meijers Committee
standing committee of experts on international immigration, refugee and criminal law

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To MEP Claude Moraes
Chair of the LIBE Committee
European Parliament
by email

Date 1 October 2018

Reference CM1812

Subject Registration of criminal records of Union citizens in ECRIS-TCN

Dear Member,

The Meijers Committee took notice of the note of the Council where the Presidency presented text for a solution on the issue of ´dual nationals´ and ´fingerprints.´ Under this option, ECRIS-TCN system will contain information of both third country nationals (TCN) and dual nationals (=Union citizens that also have the nationality of a third country).[1]

The proposal of the Presidency to insert a second paragraph in Article 2 reads:
´*The provisions of this Regulation that apply to third country nationals also apply to citizens of the Union within the meaning of Article 20(1) TFEU who also hold the nationality of a third country. With respect to such persons, by derogation from Article 5(1)(b) fingerprints shall only be inserted in the ECRIS-TCN system where they have been collected in accordance with national law*.*'*

Also a new article Article 7(2a) is inserted, worded as follows:
´*The competent authorities may also query the ECRIS-TCN system to verify whether, in respect of a person having the nationality of a Member State, any Member State holds criminal record information concerning this person as a third country national*.´

The Meijers Committee recalls that in its position on the proposal for the ECRIS-TCN Regulation, the European Parliament clearly expressed the wish that EU nationals should not be covered by the Regulation. Moreover, the number of Union citizens with dual nationality that will be included in ECRIS-TCN is unknown. This makes it difficult to balance the possible advantages and negative effects of the proposal and to see whether the unequal treatment between Union citizens created by the proposal is justified or not.
The Meijers Committee advises the European Parliament to request the Council to provide information (a) on the estimated number in relation to the total number of Union citizens also having the nationality of a third country and (b) on the four alternative solutions for this issue discussed by the Bulgarian Presidency with Member States prior to making a decision that can affect EU citizens (with third country nationality) in a negative way.

With regard to the suggested compromise proposal, the Meijers Committee is still not convinced that the ´discrimination´ of dual citizenship is ´solved.´ The negative symbolic effects of the proposed treatment in Article 2(2), which introduces for the first time in Union law the treatment of Union citizens as third-country nationals will negatively affect large numbers of EU nationals of immigrant origin.
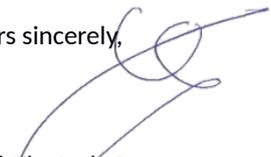
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1   Council Document 11310/18 of 6 September 2018

According to the proposed new Article 2(2), the fingerprints (and other personal data) of these dual nationals will be stored in the ECRIS-TCN when the data are registered in a national criminal data base. The second sentence of the proposed Article 2(2) should specify that data on dual nationals can only be stored in the ECRIS-TCN when the dual national has been convicted and the two minimum conditions of Article 5(1)(b)(ii) are fulfilled. Otherwise, these dual nationals would be in a worse position than persons who are only third-country national. To avoid this undesirable and unreasonable effect in the proposed Article 2(2) should at least be added the words: "and the person has been convicted according to the criteria of Article 5(1)(b)."

As always, we are available for your questions and remarks.

Yours sincerely,

Prof. Th. A. de Roos
Chairman