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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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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 - Dual nationals and Fingerprints: possible compromise with the European Parliament

Introduction

The European Parliament is strongly opposed to including in the ECRIS-TCN system identity information of EU-nationals who also have the nationality of a third country ("dual nationals"). According to the European Parliament, there is no need to include such information, because identity information of EU-nationals is in any case stored in the national databases and exchanged according to the 'normal' ECRIS system under Framework Decision 2009/315/JHA.

Further, the European Parliament considers that there could be a legal problem, since discrimination would be created between EU-nationals and EU-nationals that in addition have the nationality of a third country. The European Parliament also considers that the quality of being an EU national would be 'devaluated' if EU nationals would be inserted in the ECRIS-TCN system. In addition, the European Parliament would like to see further evidence that there is an actual problem with dual nationals when establishing their criminal history.

During the trilogues, the Presidency and the Commission argued that dual nationals should be included in the system in order to 'close the loopholes', given that people could 'hide' behind another nationality. The Presidency and the Commission also argued that the situations of the two types of EU nationals are objectively different, one having also a third-country nationality, and the other not.

In order to collect evidence and arguments to convince the European Parliament that the approach of the Council is advisable, the Presidency submitted some questions to Member States on the issue of dual nationals (see WK 3806/18). The responses of MS are set out in WK 4207/2018 and WK 5037/2018. Unfortunately, the position of the European Parliament remained unchanged.

Possible solution

Several solutions to find a compromise have already been explored. It has *inter alia* been examined whether identity information of (all) dual nationals could be included in the central system, but without fingerprints, and whether identity information of only dual nationals that have committed terrorist offences and serious offences could be included in the system.

It appears however that there is only one solution that is acceptable to the European Parliament, and that is the solution based on the "*access facility*". This compromise solution consists of the following cumulative elements:

- 1) Dual nationals will, for the time being, not be included in the ECRIS-TCN system;
- 2) However, the Commission will be asked to carry out a study on the advisability, necessity and proportionality of the inclusion of dual nationals in the ECRIS-TCN system in the future and, where appropriate, present a legislative proposal in that respect;
- 3) Further, a facility will be created in the text of the current draft Regulation, under which the competent authorities of the Member States will be able to consult the ECRIS-TCN system in order to ascertain whether an EU national has previous convictions as a third country national; and
- 4) On the issue of fingerprints, the EP agrees to accept the text of the Council general approach.

Concrete texts for this solution are set out in the Annex to this note.

The Presidency is aware that this solution is not ideal. In the preparation for the general approach, the Council had clearly indicated that it would like all dual nationals to be included in the central system. However, in the process of co-decision, it is unavoidable that concessions have to be made.

It is underlined that the facility will allow Member States to check whether an EU national has previous convictions as a third country national; in practical terms, this seems to address the concerns of Member States to a large extent. Further, the solution that the Council had found on the issue of fingerprints, and which the EP is not happy with, will remain untouched.

All-in-all, the Presidency considers that this compromise solution could be acceptable to the Council. If the solution is agreeable, it might allow the Presidency to reach an overall agreement on the text of the draft Regulation and draft Directive before the end of its term in office.

Coreper is invited to indicate whether the compromise solution on dual nationals as described above is acceptable in the context of a global compromise package.

Concrete texts for compromise solution

Facility:

Insertion of a new Article 7(1b), worded as follows:

1b 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.

Accompanying recital:

When EU nationals who also have the nationality of a third country present themselves only with this third country nationality, they will, when they are convicted, only be included in the ECRIS-TCN system. In order to ensure that the competent authorities have a complete overview of the criminal record of such persons, it should be possible to 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.

Feasibility study by the Commission:

Insertion of a new point aa (before a) in Article 34 (5a):

aa) the advisability, necessity and proportionality to include in the ECRIS-TCN system identity information of convicted persons who are citizens of the Union within the meaning of Article 20(1) TFEU, and who also hold the nationality of a third country;