



Council of the European Union  
General Secretariat

---

---

**Interinstitutional files:  
2017/0144(COD)**

---

---

**Brussels, 19 October 2018**

**WK 12512/2018 INIT**

**LIMITE**

**COPEN  
DAPIX  
EJUSTICE  
JURINFO**

**WORKING PAPER**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

**WORKING DOCUMENT**

---

From:	Presidency
To:	Delegations

---

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 on dual nationals
----------	---

---

Delegations will find attached a note on dual nationals which will be discussed under AOB at the end of the e-evidence meeting on Tuesday 23 October 2018.

### **ECRIS-TCN: dual nationals**

Following discussions in the Council, at the beginning of September the Presidency submitted to the European Parliament a compromise proposal on dual nationals. According to this proposal, identity information of EU citizens who also hold the nationality of a third country (“EU-TCN”) would be included in the ECRIS-TCN system. However, since these ‘dual nationals’ hold Union citizenship, the conditions under which fingerprint data would be included in the ECRIS-TCN system with regard to these persons would be comparable to the conditions under which fingerprint data are exchanged between Member States with respect to citizens of the Union under the ECRIS system established by Framework Decision 2009/315/JHA.

As discussed in the previous meeting of the JHA Counsellors, the European Parliament has indicated that it could not accept this compromise proposal. The Presidency has made several efforts to change the situation, i.a. by talking to various MEP’s, but without success.

On Tuesday 9 October, the Presidency met with the EP negotiating team, the EP Legal Service and the Commission to discuss the situation. During that discussion, the EP Legal Service advanced a line of reasoning that is very close to the line of reasoning that has been put forward by the Council Legal Service in its opinion of 2017 (12740/17).

The EP negotiating team suggested that a solution on the issue of dual nationals could possibly be found by including identity data of all dual nationals in the ECRIS-TCN system, so not only of EU-TCN but also of EU-EU dual nationals. In respect of all these dual nationals, the conditions under which fingerprint data would be included in the ECRIS-TCN system should be comparable to the conditions under which fingerprint data are exchanged between Member States with respect to citizens of the Union under the ECRIS system established by Framework Decision 2009/315/JHA.

The inclusion of EU-TCN in ECRIS-TCN aims at closing the loopholes of the system and at the prevention of fraud through people hiding their other nationality and therefore making it impossible to have a complete criminal history through ECRIS. However, the same problem could occur with EU-EU nationals. They could as well, when convicted, use their documents from one Member State only, hiding their other EU nationality(ies). The relevant conviction would then be registered in the criminal record of one Member State of nationality only. Those EU nationals would thus have different Member States of nationality and different criminal records.

The EP negotiating team indicated that this solution would most probably be acceptable to the political parties of the EPP and ECR, and that it is likely – but not surely – to be acceptable to ALDE (the EP negotiating team has proposed the solution to ALDE, but they are still reflecting). If ALDE is on board, a majority of the EP would be able to accept the proposal.

The Presidency would like to know the position of the Member States on this new proposal. It is true that the possibility of including identity data of EU-EU dual nationals was already briefly touched upon during the October 2017 JHA Council, but circumstances were different at that time, and so it seems a new discussion is justified.

The Presidency notes that at this time in the negotiations, this new proposal seems to be one of the two solutions that are left to address the issue of dual nationals, those two being the following:

- 1) the new proposal: inclusion of identity data of all dual nationals (both EU-TCN and EU-EU) in ECRIS-TCN, together with the access facility and possibly a review clause;
- 2) no inclusion at all of identity data of dual nationals that are EU citizens in the central system, but keeping only the access facility and possibly a review clause.

Member States are invited to express their opinion on this issue.

---