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From:	Presidency
To:	CATS
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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 - Selected issues

I. Introduction

In December 2017, the Council reached a general approach on the abovementioned proposal for a Regulation.

In February 2018, the European Parliament adopted its draft amendments.

The trilogue negotiations started in March 2018; political trilogues were held on 7 and 22 March, and on 24 April. In between, several technical trilogues took place.

The fourth political trilogue is scheduled to take place on 6 June.

While substantial progress has been made in order to reach an agreement, one issue – regarding dual nationals – continues to pose a problem in the negotiations. This note serves to inform CATS about this issue, to invite Member States to reflect on possible solutions and to obtain a confirmation of the negotiation mandate.

II. Dual nationals (Art. 2a GA and Art. 3(g) – definition Third Country National)

The European Parliament is strongly opposed to including in the central 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 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 in order 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.

Several solutions to find a compromise have already been explored. It was notably suggested from the side of the Council that dual nationals should be included in the system, but that an additional reference in the review clause of Article 34(5a) should invite the Commission to assess the application of this inclusion in its evaluation report. The European Parliament, however, stated that it could not accept this solution.

The Presidency has organised some meetings with shadow rapporteurs, but so far no concrete results have come out of these meetings.

The Presidency considers that the strategy of the Council should, in principle, continue to be that dual nationals should be included in the system, just like third country nationals who are not EU nationals.

However, in view of the diametrically opposed positions of the Council and the European Parliament, the Presidency invites the Member States to reflect and give guidance on the following questions:

- 1) Do Member States confirm the negotiation mandate that dual nationals should be included in the ECRIS-TCN system?
- 2) Is there a solution that could bridge the gap between the Council and the European Parliament?
- 3) Would the position of the European Parliament not to have dual nationals included in the system – with a possible reference in the review clause to examine such inclusion in the future – also be acceptable (in return for flexibility by the European Parliament on other issues, e.g. fingerprints)?¹

¹ In any case, it should be clarified that authorities can consult the ECRIS-TCN system in order to ascertain whether an EU national has a previous conviction as a national of a third country.