REPORT

From: Presidency
To: Delegations

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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
- Presidency note with questions

I. Introduction

On 30 and 31 October 2018, the Presidency had informal meetings with the European Parliament (EP) and the Commission (COM) on the draft Regulation and the draft Directive on ECRIS.

Further to these meetings, Member States will find a new four column table on the draft Regulation in 13741/18. A revised text of the Directive with suggested changes is set out in 13742/18.
In view of the fourth trilogue, scheduled for 20 November 2018, the Member States are invited to reply to the questions set out below:

II. REGULATION (cf 13741/18)

**Line 17 - Recital 11c2**

The EP considers that the last sentence "*However, the Commission should not refuse any notification for any reason whatsoever.*" is redundant, since it is already said that the Commission should publish the notifications in the OJ.

PRES considers that the last sentence could possibly be deleted, but in order to make things crystal clear, the word "all" could perhaps be inserted before "notifications", so that the text reads as follows:

"*However, in order to enhance the transparency of the use of the ECRIS-TCN system, Member States should notify such other purposes to the European Commission, which should ensure publication of all the notifications in the Official Journal of the European Union.*"

**Q:** Member States are invited to indicate if they could accept this proposal.

**Line 26, recital 16**

EP suggested deleting the words "*Furthermore, Member States should process fingerprints only for the purposes provided for by national law.*" According to EP, this text seems to state the obvious.

However, this ECRIS Regulation provides other purposes. Therefore, PRES suggests deleting only the word "national", so that the text reads: "*Furthermore, Member States should process fingerprints only for the purposes provided for by national law.*"

**Q:** Member States are invited to indicate if they could accept this proposal.
**Line 33, recital 22a:**

The EP agrees with the deletion of its proposed recital 22a (AM 16), except for the last sentence: "The confirmation should also specify the reasons why the request was handled by the convicting Member State." At the meeting on 30 October, it was suggested to insert this text in Art. 23.

**Q: Could Member States accept this suggestion?**

**Line 89, Art. 5(2)**

EP would like its amendment 29 to be included. "The data record may also contain facial images of the convicted third country national, if the national law of a Member State where a conviction is handed down allows for the collection and storage of facial images of a convicted person." PRES considers that this is probably acceptable, since it seems in line with the text in recital 11, line 14.

**Q: Member States are invited to indicate if they could accept this request.**

**Line 278, Art. 33(1)(c)**

EP requested if the word "anonymised" could be insert before "test-data". PRES does not consider that to be a major problem - aren't test data by definition anonymous? - but it would like to hear the opinion of the MS.

**Q: Member States are invited to indicate if they could accept this request.**
Line 294, Art. 34(5a)

EP requested inserting the words "in addition". This seems to make sense, given the text of paragraph 5.

Q: Member States are invited to confirm that they could accept this request.

Line 308 and further, Art. 37

In the light of the new eu-LISA Regulation, COM has redrafted the text of Art. 37. EP is fine with that new text.

Q: Could Member States accept the new text as well?

Line 345, Art. 38(2)

The EP would like to insert the words "to the extent that such data are stored in their national criminal records or other national database(s)" in the text. This seems not be controversial, but PRES would like to hear the opinion of Member States about it.

Q: Could Member States accept the text proposed by EP?

III. DIRECTIVE (cf 13742/18)

In 13742/18, the proposed changes/insertions are clearly indicated. Member States are invited to assess whether these would be acceptable, subject, where appropriate, to modifications.