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WORKING PAPER

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From:	General Secretariat of the Council
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 - Compilation of replies from Member States to questions in WK 3806/2018

On 28 March 2018, the Presidency issued two sets of questions regarding the draft Regulation (WK 3806/2018). One set of questions concerned the issue of dual nationality, and the other set of questions concerned the issue of the use of the ECRIS-TCN system for purposes other than that of criminal proceedings.

22 Member States submitted a reply to these questions. These replies are set out in the [Annex](#).

ECRIS-TCN

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

Questions for Member States (see WK 3806/2018)

1. Inclusion of EU-nationals that also have the nationality of a third country

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. According to the EP, 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 established by the Framework Decisions. Further, the EP considers that there could be a legal problem, since discrimination would be created between, on the one side, 'pure' EU-nationals, and, on the other side, EU-nationals that in addition have a third country nationality. The EP also considers that the notion of 'EU national' would be devaluated if EU nationals would be inserted in the ECRIS-TCN system.

During the trilogues, the Presidency and the Commission argued that EU-nationals who also have the nationality of a third country should be included in the system in order to 'close the loopholes', given that people could 'hide' behind another nationality. The Commission also considered that there would be no discrimination, since the situations of the two types of EU nationals would be objectively different, one having also a third-country nationality, and the other not.

The Presidency would appreciate it if Member States could help the Presidency by providing a reply to the following questions:

- a) How many people in your Member State are both EU nationals and have the nationality of a third country?
- b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.
- c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

- d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

By its amendment 34, EP had deleted the possibility of using ECRIS-TCN for purposes other than that of criminal proceedings. The Presidency and the Commission objected that this would exclude using ECRIS-TCN e.g. for employment vetting or for allowing TCN to check their own criminal record and that it would create an undesired difference with the 'normal' ECRIS system. The EP thereupon clarified that their amendment merely aimed at narrowing the notion of 'purposes other than that of criminal proceedings': the EP does not want ECRIS-TCN to be used too widely, also for purposes that are not intended. In that light, it was discussed if 'purposes other than that of criminal proceedings' could be made more specific.

To that end, the Commission informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- Security clearances
- Obtaining a license or permit
- Visa, naturalisation and asylum procedures
- Employment vetting
- Vetting for voluntary activities involving direct and regular contacts with children
- Checking of own criminal record

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

ANSWERS PROVIDED BY THE MEMBER STATES

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AUSTRIA

1. a), b) and c)

Neither the Austrian register of residents nor the Austrian criminal register can indicate comprehensive data to the questions regarding dual nationalities.

Dual nationalities including the Austrian nationality are only accepted from birth if based on extraction.

To obtain the Austrian nationality by request the requesting person is obliged to relinquish his/her nationality of origin. There are only exceptional cases (e.g. special merits) in which a dual nationality can be granted.

However, there is no doubt that there is a considerable number of Austrians with illegal dual nationalities: in order to obtain the Austrian nationality people present a proof of relinquishment of their old nationality to the Austrian authorities. Having obtained the Austrian nationality they easily request and reobtain their old nationality additionally.

Persons who (illegally) own two nationalities mostly do not indicate their dual nationality, neither in criminal nor in administrative proceedings. Especially during criminal proceedings, dual nationals tend to hide as much information as possible. In addition, third countries generally do not deliver any information about these constellations.

It is hence very difficult to trace dual nationalities in criminal or any other proceedings.

1. d)

Example of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system:

A Serbian citizen has been convicted four times in Austria. The fifth conviction in Austria concerning the same person indicates this person as Romanian citizen. (The person obtained apparently in the meanwhile the Romanian citizenship.) However, as it can be assumed that this person has kept her/his Serbian nationality additionally, the person is registered in the criminal register with both nationalities (as Romanian and Serbian).

Pursuant to the EP's position, this person could not be registered in ECRIS-TCN or would even have to be deleted from it after the fifth conviction. In case of a further criminal proceeding in another Member State this dual national could hide his/her Romanian nationality by only indicating the Serbian nationality. In this case, the previous convictions will not be taken into account, as ECRIS-TCN will not indicate any convictions concerning this person.

2.

A reference to national law, as it is already foreseen in the GA, would be a more comprehensive solution than the list proposed by the Commission, as the national provisions concerning the consultation of the criminal register (for other purposes than criminal proceedings) have to fulfil the requirements of Regulation (EU) 2016/679 and especially of its

Article 10:

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

However, the list presented by the Commission is far too general and does not foresee any guarantees as required by Art. 10 leg. cit. A reference to the national law would prevent an undermining of current standards whereas the proposed list would weaken the national data protection safeguards for criminal register consultations in the field of ECRIS-TCN.

BELGIUM

1. Inclusion of EU-nationals that also have the nationality of a third country

- a) How many people in your Member State are both EU nationals and have the nationality of a third country?

In terms of the general population in Belgium, we cannot provide exhaustive statistics on this point as there is no obligation for our nationals to declare to the Belgian public authorities that they have the nationality of another State.

In terms of binationals registered in the Belgian Central Criminal Register, their number is estimated around 17.846 people.

- b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

Yes, all (and only) the nationalities that are known to the Belgian authorities are registered in the Central Criminal Register.

- c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?
- d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

It is not unusual that individuals prosecuted before courts do not reveal, or even hide, such a double nationality. If the person declares himself/herself as a TCN, his/her identity will be registered in the ECRIS-TCN and his/her conviction will only be stored in the criminal record of the Member State of conviction. If another Member State wants to prosecute the same person under his/her EU nationality and is not aware he/she is also TCN, this Member State will not interrogate the ECRIS-TCN but only the Member State of nationality and will not have access to the complete information as the Member State of nationality will not have been informed of the first conviction.

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

At this stage, we are not in favour of limiting the possibilities to use the ECRIS-TCN for other purposes than criminal proceedings.

CROATIA

1.a) How many people in your Member State are both EU nationals and have the nationality of a third country?

In our criminal register we have registered 132 persons who are both EU nationals and have the nationality of a third country.

Within that number, there are 21 persons who are both EU nationals and have the nationality of a third country but not Croatian nationality (retention period for that persons included).

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

We store information about other nationalities of a person, if such information is registered in the system.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

Information about how many people have informed the competent authorities that they are both EU nationals and have the nationality of a third country we do not register in the system.

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

As it was said before we want to close the loopholes given that EU-nationals who also have the nationality of a third country could hide behind another nationality. That could make system less effective and make it more problematic because those people can take this argument and use it to escape from their criminal past.

2.The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

We believe that above list sufficiently covers the notion of 'purposes other than that of criminal proceedings'.

CYPRUS

Question 1(a) Data cannot be provided, because in the police electronics system, there is the possibility of registering only one nationality (one field). The IT Department has already been requested to modify the system to qualify for multiple nationality registration.

Question 1(b) Not electronically

Question 1 (c) N/A

Question 1(d) We believe that it would not be wrong the third-country nationals with dual citizenship to be included in the ECRIS-TCN. In the case of Cyprus, there are cases of third-country nationals who also acquire Cypriot citizenship, so they are considered as European nationals. When these people are detected, the entries are merged, so that to be appeared as one person. For this reason, it was deemed necessary to modify the system for multiple nationalities registrations. These people may have been convicted in another EU Member State, as third-country nationals (before gaining the Cypriot citizenship).

Question 2 We agree.

CZECH REPUBLIC

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

CZ cannot answer such question, because we do not have quality data on the issue. This is due to the fact that information on multiple citizenship in national registers is optional one and therefore any such data would not be tangible.

For example the Foreign Information System (CIS) of the Czech Republic allows that for one person more identities can be held. However, it is necessary for one identity to be designated as primary and for which the residence permit is granted.

CZ + TCN

Unfortunately, citizens of the Czech Republic who have other nationalities are not in the CIS. So that we do not have the data pro provide you.

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

In your Member State, do you store all nationalities of a person in your national registers?

Basically yes, but information on multiple citizenship is an optional one. That means, if at least one citizenship is mentioned in the register, the information on other citizenship(s) is optional. If a person has at least the citizenship of the Czech Republic, than he/she is not kept in other databases such Foreign Information System (CIS).

In the (Basic) Population Register reference data on individuals are kept. The data are kept with regards to:

- citizens of the Czech Republic;
- citizens of the EU (EHS) with a residence permit in the Czech Republic;
- TCNs with a residence permit in the Czech Republic;
- foreigners who have been granted international protection in the form of asylum or supplementary protection in the territory of the Czech Republic.

Data sources for the Basic Population Register are other registers, i.e. Foreign Information System (CIS), Register of Residents, etc.

Explain how you verify whether a person holds multiple nationalities during criminal proceedings.

The judge in the course of the criminal proceedings (at court level) have only general **obligation to identify a person (Sec. 91 Code of Criminal Proceeding)** - his / her surname, surname, date and place of birth, residence, workplace, citizenship, family, property and earnings ratios, previous criminal convictions and other facts that individualize (unambiguous) and characterize (the perpetrator). It usually flows from the information from the accused person and his/her ID (passport, etc.), if he/she has one. Naturally, the judge can only check the accuracy of ID(s)/passport(s) issued in his jurisdiction (i.e the Czech Republic).

If the identity of the accused cannot be ascertained this way, it must be described/indicated so that he cannot be confused with someone else (criminal description of a person, fingerprints, DNA sample, odor, photographs, video, etc.).

Thus, verification of multiple nationalities cannot be taken as 100%.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

Unfortunately not. There is no statistic on the matter and no objective method to collect such data.

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

In order to fill the possible “loopholes”.

To argue with the EP arguments, we can say that it is true that identity information of EU-nationals shall in any case be stored in the national databases and exchanged according to the existing ECRIS system established by the Framework Decision 2009/315.

However, this system (existing ECRIS) stays useless (human factor involved) if the person does not mention that he/she has another (EU) nationality and the judge does not have either means to acquire such information during the criminal proceeding or make no use of such instruments (to quote your WP, that people could “hide” behind another nationality).

The second possible, but not very common obstacle in making maximal use of existing ECRIS is when the convicting MS does not notify the conviction to the MS of nationality (yet).

2. Use of ECRIS-TCN for other purposes:

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

Using ECRIS-TCN also for “other purposes” (i.e. civil or administrative purposes for example) than criminal is very important.

ECRIS as decentralized and already functioning information system is also used for “other” than criminal purposes and will be used so regardless of the ECRIS-TCN. See Art. 6 Para 1, 6 Para 2 FD and Art. 7 Para 2 2009/315/JHA.

According to the Commission report on ECRIS dated 19. 01. 2016¹ “other than criminal purposes” applies to around 20 % of all requests. The Czech Republic recommends to quote to the European Parliament the Commission report on ECRIS dated 19. 01. 2016, Para 5.2, pages 7 – 8, if possible.

As a prospective ECRIS-TCN will be a tool enhancing usage of ECRIS in cases of TCN, i.e. to find to which MS a request via ECRIS shall be sent, it of the essence that the ECRIS-TCN will also be used for “other than criminal purposes” (i.e. civil or administrative purposes).

The Czech Republic is of the opinion that the list prepared in the WK 3806/2018 INIT from 28. 03. 2018 is sufficient, it only gives for a consideration if the “checking of own criminal record” may be ranked first.

As regard bulletpoint Nr. 5 – the contact with children could be redrafted as:” Vetting for activities involving direct and regular contacts with children, especially for voluntary activities”.

Thank you very much for the opportunity to submit written answers.

¹ P. 7 of the Report from the Commission on the implementation of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from criminal record between Member States

FINLAND

1. Inclusion of EU-nationals that also have the nationality of a third country

- a) *How many people in your Member State are both EU nationals and have the nationality of a third country?*

In Finland there are 93 282 people registered to the Population Information System that are both EU and TC nationals (end of 2017).

Finnish citizens have an identity number and are registered to the Population Information System. Persons who are not Finnish nationals but live permanently in Finland also get an identity number and they are registered to the Population Information System. People who live in Finland for a short period can also be registered if needed.

- b) *In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.*

The Population Information System can include up to three nationalities. Nationalities are registered if they are known to the Population Register Centre. All authorities participating to criminal proceedings have access to the Population Information System.

In practice the police checks the data concerning persons who have a Finnish identity document from the Population Information System. This way the nationalities registered in the Population Information System are known.

The aim of the police is to ensure the identity of third country nationals and EU-nationals that have not a Finnish identity document and who are not registered in the Population Information System by documents and databases available. Two nationalities can be stored in the police information system.

The police information system is linked to the Population Information System and the information on nationalities is updated from the Population Information System.

Also the information system of courts and the criminal record system are linked to information systems of the Population Register Centre and information on the person including of nationality is updated once a day.

- c) *Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?*

There is no such data available.

- d) *Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?*

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

The Commission has informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- *security clearances*
- *obtaining a license or permit*
- *visa, naturalization and asylum procedures*
- *employment vetting*
- *vetting for voluntary activities involving direct and regular contacts with children*
- *checking of own criminal record*

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

Finland stresses that negotiations concerning Article 7 of the ECRIS-TCN Regulation were very difficult and that the aim in the trilogues should be to maintain the Council General Approach. It is essential that there is flexibility in the obligation to use the ECRIS-TCN system both in criminal and other matters.

The Presidency nor the Commission have specified how and where the above list would be taken into the ECRIS-TCN Regulation. Finland cannot accept that there would be an obligation to use the ECRIS-TCN system in all matters that the Commission has listed.

If a list was used it could only be taken to the recitals as an example of situations where national law enables the use of criminal record information. The ECRIS-TCN Regulation should not harmonize the use of criminal record information in Member States.

As during the negotiations Finland points out that the ECRIS Framework Decision does not oblige to request criminal record information from another Member State (Article 6.1). The same principle is included in the ECRIS-TCN Regulation and the ECRIS Directive relating to third country nationals. Despite that there is no obligation to request criminal record information from another Member State Article 7 of the ECRIS-TCN Regulation includes an obligation to make a search to the ECRIS-TCN system (first sentence). This obligation without any flexibility would lead to an administrative burden because criminal record information would not be requested from another Member State in all cases. That is why the second sentence of para 1 of Article 7 (in the Council General Approach) is essential because it allows flexibility.

As there is an obligation in Article 7 to make a search to the ECRIS-TCN system (in the Council General Approach and also the EP amendment 34), Finland points out that:

- 1) relating to requests for the purposes of *criminal proceedings* that there is an obligation to transmit criminal record information according to Article 7 of the ECRIS Framework Decision. That is why an obligation to make a search to the ECRIS-TCN system was acceptable in the Council General Approach on the condition that the provision allows flexibility that is needed in different national situations.
- 2) relating to situations where a person asks for information on his *own criminal record* an obligation to make a search to the ECRIS-TCN system was acceptable in the Council General Approach, because there is a similar obligation in Article 6.3 of the Framework Decision.

3) even according to the Directive 2011/93/EU on combating the sexual abuse of children there is no obligation to request criminal record information (Article 10.2). However, relating to these situations there is an obligation to transmit information (Article 10.3) and this is why an obligation to make a search to the ECRIS-TCN system was acceptable in the Council General Approach on the condition that the provision allows flexibility that is needed in different national situations.

4) relating to other requests that are made for *any other purposes other than that of criminal proceedings* Article 7 of the ECRIS Framework Decision does not set an obligation to transmit criminal record information. However, in Finland criminal record information is largely used in different administrative affairs by administrative authorities (e.g. taxi licences, trade licences and business licences). The wording in Article 7 in the Council General Approach is so open that it includes also all these matters. However, relating to these matters there is no obligation to transmit criminal record information to another Member State and that is why criminal record information is often not requested through ECRIS. A wording with an obligation to use the ECRIS-TCN system in these matters would lead to a huge administrative burden relating to the obligation to make searches to the ECRIS-TCN system, but in any case criminal record information would not be requested from another Member State because in many situations it would be known that other Member States would not transmit information. Also a general obligation to use the ECRIS-TCN system cannot be regarded as proportionate. This is why flexibility as in the wording of the Council General Approach (second sentence of para 1 of Article 7) is essential to avoid unnecessary administrative burden and to give proportionality to the use of ECRIS-TCN system.

FRANCE

Objet : Réponse des autorités françaises en réponse aux questions de la présidence concernant le système européen d'information sur les casiers judiciaires (ECRIS-TCN)

Les autorités françaises ont l'honneur de vous adresser les réponses qu'elles sont en mesure d'apporter aux questions suivantes figurant dans le document WK3806/2018 en lien avec le projet de règlement ECRIS-TCN.

1. Sur l'inclusion dans le système ECRIS-TCN des binationaux (UE – Etat tiers) :

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

Les autorités françaises ne disposent pas de données sur le nombre de binationaux vivants en France. D'après un rapport de 2010 de l'Institut nationale d'études démographiques, plus de 40 % des immigrés vivant en France seraient de nationalité française, et 95 % des enfants d'immigrés nés en France sont également Français, mais les situations de double nationalité ne sont pas enregistrées dans le recensement et ne peuvent être connue que par les sources consulaires inégales.

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

L'élément de nationalité n'est pas un élément dont l'absence empêche l'enregistrement de la condamnation dans les données du casier judiciaire. Il appartient donc aux juridictions de le renseigner lorsqu'elles en disposent à la lecture de la procédure. En conséquence, le Casier judiciaire national (CJN) ne dispose pas systématiquement de cette information, ne la stocke donc pas en tant que telle et n'est pas en mesure de vérifier de manière exhaustive si une personne dispose de plusieurs nationalités. Il peut seulement procéder ponctuellement à des rapprochements de dossiers sur les données d'identité renseignées par les juridictions et en informer l'autorité judiciaire. Il sera rappelé que les identités des personnes condamnées qui ne sont pas nées en France ne peuvent faire l'objet d'une vérification de la part du CJN. D'où l'intérêt de la mise en place du système ECRIS-TCN qui palliera cette impossibilité de vérifier les éléments d'identité par l'enregistrement de l'empreinte digitale attribuable à un individu.

La vérification de la nationalité d'un mis en cause est donc réalisée par les enquêteurs sur la base du ou des documents d'identité produits par celui-ci lors de l'enquête. Le mis en cause peut donc choisir de ne faire état que d'une nationalité, alors qu'il en dispose d'une autre. Ceci justifie que l'interrogation du système ECRIS-TCN puisse, elle, recenser et faire le lien entre les nationalités sous lesquelles cette même personne aurait pu être successivement condamnée.

- c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?*

Les autorités françaises ne sont pas en mesure de fournir de telles données.

- d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?*

Les autorités françaises souhaitent rappeler que l'objectif est d'éviter que des personnes n'utilisent leur double nationalité pour éviter qu'une information exhaustive sur leurs antécédents judiciaires soit aisément accessible aux autorités. Ainsi, de la personne qui alternativement pourrait se déclarer d'une nationalité d'un Etat membre de l'UE (impliquant un enregistrement de la condamnation dans le casier judiciaire de cet Etat et non dans ECRIS-TCN) et d'une nationalité hors UE (avec dans ce cas un enregistrement dans ECRIS-TCN seulement et non dans l'Etat membre UE de nationalité). L'enregistrement des données relatives aux binationaux UE-Etats tiers apparaît donc indispensable à l'efficacité du dispositif.

2. Sur l'utilisation du système ECRIS-TCN dans les cas suivants proposés par la Commission:

• **Security clearances :**

Les autorités françaises souhaitent indiquer qu'elles n'y sont pas opposées dans la mesure où la législation française prévoit déjà un certain nombre de vérifications relatives au casier judiciaire pour les habilitations en matière de sécurité.

• **Obtaining a license or permit :**

En droit français, l'obtention d'informations sur le contenu d'un bulletin n°2 du casier judiciaire (B2 sollicité par une administration hors affaire pénale) ou d'un bulletin n°3 (B3 délivré sur demande d'un particulier pour son propre cas), peut être exigée pour obtenir une autorisation d'exercer. Il sera rappelé cependant que la délivrance des bulletins en dehors d'une affaire pénale ressort du droit interne des Etats-membres dans le cadre de la directive ECRIS. Dès lors, même après un hit d'ECRIS-TCN, l'Etat requérant, qui utilisera ECRIS, pour saisir l'Etat ainsi identifié n'aura pas de garantie de réponse.

En effet, il sera observé que la décision-cadre du 26 février 2009 relative au contenu des échanges d'informations entre les Casiers judiciaires européens distingue la réponse à une demande de bulletin selon que celle-ci se fonde sur une procédure pénale ou pas et précise que dans le second cas, le droit de l'Etat requis s'applique (il peut donc refuser les envois d'information). Dans le cadre d'une consultation obligatoire d'ECRIS-TCN, bien que l'Etat sollicitant un bulletin hors affaire pénale dans les cas limités par le Parlement soit contraint de saisir ECRIS-TCN d'une telle demande, l'Etat identifié ensuite par le hit ECRIS-TCN gardera la possibilité de ne pas répondre à l'Etat requérant (puisque la demande utilisera le système ECRIS) en fonction de son droit national.

- **Visa, naturalisation and asylum procedures :**

En France, l'office français de protection des réfugiés et apatrides (OFPRA) utilise déjà le système ECRIS pour obtenir des informations sur les ressortissants de pays tiers.

- **Employment vetting :**

Les autorités françaises considèrent qu'il conviendrait de distinguer la nature de l'emploi considéré afin d'éviter le risque de voir le système ECRIS-TCN saisi de l'ensemble des demandes de B3. En France, les administrations peuvent ainsi obtenir le B2 des candidats à la fonction publique.

- **Vetting for voluntary activities involving direct and regular contacts with children :**

Les autorités françaises souhaiteraient des précisions sur le périmètre des activités volontaires visées et sur les modalités pratiques d'un tel contrôle par le biais du système ECRIS-TCN.

- **Checking of own criminal record :**

Les autorités françaises souhaitent souligner les difficultés organisationnelles qu'une obligation de saisine d'ECRIS-TCN pour les bulletins B3 du casier judiciaire des ressortissants de pays tiers entraînerait.

Enfin, les autorités françaises considèrent que la liste établie devrait être illustrative et non exclusive dans la mesure où une explicitation de toutes les finalités visées rendrait le texte assez illisible. En tout état de cause, cette liste ne pourrait être exhaustive du fait de la référence aux droits nationaux dès lors que chaque Etat membre a des dispositions propres sur cette question. Cette matière n'a pas fait l'objet d'une harmonisation. En France, par exemple, les bulletins n°2 du casier judiciaire peuvent être sollicités par de nombreuses administrations ou associations lors du recrutement de leurs agents ou du contrôle de leurs activités. La liste des administrations pouvant ainsi accéder à ces données du CJN est longue et éparpillée dans divers textes et codes.

GERMANY

I.

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

According to information from the 2016 micro-census, 1.999 million people in Germany have dual nationality. **Of the German dual nationals, 1.034 million people have a second passport from a non-EU country.**

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

We do store all nationalities of a person (as far as these are known) in the German register. The national register receives the information from the public prosecution service.

During investigation proceedings, a person is asked for personal details right at the beginning of each formal questioning – which serves to establish the person's identity. The accused is obliged to provide information about his/her identity. He/she is also required to state which nationalities he/she has. **If the police or public prosecution office have no doubts about the information provided to them by the accused and do not verify the information, it is possible that another nationality could remain "unknown".**

If there is reason to believe that the person has another nationality, the investigating authorities are obliged to carefully examine whether this is the case. In order to do this they can obtain information from the responsible authorities or the population register. However, according to the Federal Registration Act (*Bundesmeldegesetz*), a person is required to indicate "current nationalities" only when registering or de-registering with the registration authorities, or to confirm the accuracy and completeness of the data collected on this by the registration authorities. **Any change or acquisition of another nationality does not trigger a registration requirement with the registration authorities.**

If there are doubts about a person's identity, a person identification procedure is carried out. This can take a long time and may take longer than the criminal proceedings.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

No

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

A good reason to have a broad interpretation of the term 'third country national' (TCN) is that it would help prevent possible abuse of dual nationality.

Example:

An Algerian-French national commits a robbery in Germany. If the TCN definition is narrow his sentence to 4 years' imprisonment would only be entered into the French criminal records register (as the respective home country) and the German criminal records register (as the convicting country), even if his TCN status is known.

Then he commits a theft in Sweden and identifies himself as Algerian, in order to conceal his serious previous conviction. Sweden consults the TCN register, which contains no indication of the French conviction. The penalty imposed on him as a first offender is therefore relatively mild. It is entered into the Swedish register (as the convicting country) and into the TCN register, but – due to lack of knowledge – is not communicated to France.

If an entry indicating his dual nationality had also been made in the TCN register for his first conviction, his previous conviction could have been taken into account in the second conviction and Sweden could have reported the conviction to his home country, France.

II.

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

We feel it necessary to add the following items to the list of “purposes other than those of criminal proceedings”:

- administration of justice (apart from criminal proceedings)
- pardon procedures
- providing information to foreigners authorities
- providing information to supreme federal and *Land* authorities
- Providing information to FIU authorities

HUNGARY

Questions for Member States

1. Inclusion of EU-nationals that also have the nationality of a third country

The Presidency would appreciate it if Member States could help the Presidency by providing a reply to the following questions:

a) How many people in your Member State are both EU nationals and have the nationality of a third country? **We cannot provide any statistical data because there is no such a central register in Hungary which would contain all nationalities of the Hungarian citizens or people who lives in Hungary.**

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings. **No, we do not store:**

- **the register of personal data and address** contains only one data concerning the nationality – Hungarian or foreign nationality, or he/she is a stateless person [Article 11 para (1) point b) of the Act LXVI of 1992],
- **the register of identity data and photos** (as a part of the criminal record system) contains the nationality or the previous nationality of the person concerned [Article 4 para (2) point ah) of the Act XLVII of 2009],
- **the criminal record system and the register of Member State judgements** record the data concerning nationality based on the supplying of data made by the data disseminator,
- prior to the questioning of the defendant his/her identity shall be verified, therefore the defendant shall be requested to state – among others – his/her nationality. The defendant is obliged to respond to such questions even if otherwise he refuses to testify [Article 117 para (1) of the Act XIX of 1998]. **During criminal proceedings** the nationality of the person concerned shall be determined by the available documents and it has to be checked in the registers. If there is no any document, the nationality of the person concerned is determined by the statement of this person. This information shall be recorded in the minutes and in the register.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country? **We do not have any information and statistics of this fact.**

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system? **We can support the argument of the Presidency and the Commission mentioned in the document of WK 3806/2018 INIT.**

Furthermore, it might happen that a third country national gets on the ECRIS-TCN system and later it comes out that he/she has got an EU nationality as well. By this time his/her identity data is stored in the ECRIS-TCN system despite of the provisions of the Regulation (if the ECRIS-TCN system contains only the data of third country nationals).

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

The Commission informally presented the following initial list of “purposes other than those of criminal proceedings” which should in any case be covered:

- Security clearances
- Obtaining a license or permit
- Visa, naturalisation and asylum procedures
- Employment vetting
- Vetting for voluntary activities involving direct and regular contacts with children
- Checking of own criminal record

The Presidency would like to know whether the above list sufficiently covers the notion of “purposes other than that of criminal proceedings”, or whether any other categories should be added.

Hungary expressly supports the last two elements as “purposes other than those of criminal proceedings”. Framework Decision 2009/315/IB concretely specifies the checking of own criminal record, Directive 2011/93/EU concretely specifies the vetting for voluntary activities involving direct and regular contacts with children as purposes other than criminal proceedings.

We think that the other elements of the list mentioned above are not consistent and coherent with the ECRIS system. The ECRIS RI records several types of request sent purposes other than criminal proceedings. It would be very important if the searching in the ECRIS-TCN system and the requests which can be sent were complied with each other because in the case of a hit in the ECRIS-TCN system the request for criminal record information should be sent via ECRIS system. Therefore we believe that the other elements of the list need more precise and clear determination.

IRELAND

Question 1. Inclusion of EU-nationals that also have the nationality of a third country.

Ireland favours a broad approach and we consider for ECRIS to be as effective as possible, that as much information as possible needs to be available in relation to nationality.

a) Figures for all dual EU-TCN nationals are not available. However, from the 2016 census out of a total population of approximately 4.7 million, 105,000 persons declared themselves as having dual Irish nationality. Of this, 65,000 were dual Irish-TCN nationals.

b) Multiple nationalities are not currently recorded.

c) The information is not available.

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

To a degree we would share the EP concerns over how wide this provision is and welcome the proposed clarification from the Commission. However, we would still have some concerns that the categories listed are themselves over broad. For example, employment vetting could mean every time someone goes for a job, there could be an ECRIS inquiry, whereas it would be better to restrict this category to employments which have, for example, a security aspect or access to children or vulnerable persons. In the absence of further clarifications, an overbroad list would undermine the main purpose of the proposals which is preventing crime and terrorism.

ITALY

We have sent questions 1 a) and b) to the Ministry of Interior and we'll send you the answers as soon as they reply. In the meantime, we can tell you, concerning question 1 b), that we store in the criminal register all nationalities which a person declares to hold (but we will double-check this information).

In relation to question 1 c), the number of convicted people that, in the last ten years, have informed the competent authorities during criminal proceedings against them (and at least upon conviction) that they are both EU nationals and have the nationality of a third country, is 9.943.

Concerning question 2, we agree with the proposed list, but we also would add the sector of public contracts and in any case of public examinations.

LATVIA

1) Inclusion of EU nationals that also have the nationality of a third country

The Population Register of LV, inter alia, includes data on LV nationals and nationals of other EU MSs that have received a registration certificate or a permanent residence certificate in LV (including on all known nationalities).

In accordance with the data included in the Population Register, currently (on 03/04/18), there are 4 236 EU nationals who also have the nationality of a third country with the last known address of residence in LV and 12 862 EU nationals who also have the nationality of a third country with the last known address outside of LV.

2) Use of the ECRIS-TCN system for other purposes than criminal proceedings

As regards the exchange of criminal record information between the MSs for other purposes than criminal proceedings, LV believes that **a coherent approach** should be employed towards both the EU nationals and the third-country nationals². Thus, LV would prefer not to have a list of ‘purposes other than criminal proceedings’ for the ECRIS-TCN system (as it is currently the case of ECRIS).

However, if such a list is deemed to be a crucial element in reaching a compromise with the EP, LV would not object to it as far as it would not be exhaustive and would be included in the recitals (not in the operational text) of the ECRIS-TCN Regulation.

Without prejudice to the LV position expressed above, LV suggests introducing the following changes in the initial list of ‘purposes other than that of criminal proceedings’ as informally presented by the Commission:

to replace a reference to “naturalisation” by a reference to “acquisition of citizenship” that is broader in scope (includes also renewal of citizenship).

to add a reference to “return [procedures]” (Directive 2008/115/EC (Return Directive) provides for specific rules where a third-country national to be returned poses a risk to public policy, public security or national security, for instance, Art. 7(4)).

Lithuania

Inclusion of EU-nationals that also have the nationality of a third country:

- a) **How many people in your Member State are both EU nationals and have the nationality of a third country?**

According to the data in the national register, there a bit more than 23 thousand Lithuanian citizens that also have a nationality of the third country (TC).

- b) **In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.**

YES

- c) **Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?**

We do not collect this type of information as a separate indicator.

- d) **Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?**

Nothing new from what has been stated already in the long previous discussions

Use of the ECRIS-TCN system for other purposes than criminal proceedings:

*We would suggest to include a new purpose of check into the list – “**Activities where the impeccable repute is required**”. Checks according to this purpose are foreseen in other EU legal instruments such as REGULATION (EC) No 1071/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 (which regulates the common rules of activity conditions for the carriage by road); DIRECTIVE 2007/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 5 SEPTEMBER 2007 (which regulates the financial sector and appropriate checks).*

LUXEMBOURG

1. Inclusion of EU-nationals that also have the nationality of a third country

The Presidency would appreciate it if Member States could help the Presidency by providing a reply to the following questions:

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

As of January 1st 2017, 4621 persons residing in Luxembourg have both the Luxembourg nationality (3023 persons) or the nationality of another EU Member State (1598 persons) and the nationality of a third country.

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

Persons settling in Luxembourg are obliged to register themselves within the communal administration of their residence. The registration is made on the basis of an identity card or a passport. The identification data includes all nationalities held by the applicant. The data is inserted into a central national database to which the judicial prosecuting authorities have access as it is connected to their criminal database. In case of a conviction, all the nationalities are inserted into the criminal register (which is connected to the criminal database, too). If criminal proceedings are conducted against persons who are not residing in Luxembourg, their identification, including their nationality, is made by the police and the judicial authorities. Such data is stored into the judicial criminal database and, in case of a conviction, into the criminal register.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

No, such information is not available.

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

They should be included into the ECRIS-TCN in order to avoid that they hide convictions linked to one of their nationalities only.

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

By its amendment 34, EP had deleted the possibility of using ECRIS-TCN for purposes other than that of criminal proceedings. The Presidency and the Commission objected that this would exclude using ECRIS-TCN e.g. for employment vetting or for allowing TCN to check their own criminal record and that it would create an undesired difference with the 'normal' ECRIS system. The EP thereupon clarified that their amendment merely aimed at narrowing the notion of 'purposes other than that of criminal proceedings': the EP does not want ECRIS-TCN to be used too widely, also for purposes that are not intended. In that light, it was discussed if 'purposes other than that of criminal proceedings' could be made more specific.

To that end, the Commission informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- Security clearances
- Obtaining a license or permit
- Visa, naturalisation and asylum procedures
- Employment vetting
- Vetting for voluntary activities involving direct and regular contacts with children
- Checking of own criminal record

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

The above list seems to be sufficient.

THE NETHERLANDS

Questions for Member States

1. **Inclusion of EU-nationals that also have the nationality of a third country**
 - a) How many people in your Member State are both EU nationals and have the nationality of a third country?
 - b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.
 - c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?
 - d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

As was thoroughly discussed in Council, and taken into account in the impact assessment of the Commission for the ECRIS TCN regulation, in case of selective use of a suspect holding both a TCN and EU nationality in criminal proceedings, previous convictions may remain unknown during those criminal proceedings. This will lead to insufficient information on previous convictions. As a result, this might lead to situations where criminal courts might pass judgments without knowledge of previous convictions in other Member States on the basis of the TCN nationality. This may result in offenders being able to escape their criminal past or to commit the same criminal offences again.

This is considered a loophole concerning persons with both the nationality of a EU MS and of a third country. Therefore, NL sees added value in including information of convicted persons who have two or more nationalities, with at least one being TCN, in the ECRIS-TCN system to close this loophole of the current ECRIS system.

NL can provide the following numbers.

The number of persons with both the nationality of a EU MS and of a third country, and with a final conviction to a custodial sentence of one year or more are in the past years:

629 - 2016

675 - 2015

730 - 2014

773 - 2013

861 - 2012

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

NL is not in favour of a limitative list of purposes for the use of ECRIS TCN other than for the purpose of criminal proceedings. This would lead to, as stated above, an undesired difference with ECRIS, narrowing the scope of ECRIS TCN compared to ECRIS. Furthermore, the purposes for use of ECRIS TCN other than criminal proceedings might change in the future, due to amongst others developments in society. If the choice would be to work with a list, NL could only agree to including a non-exhaustive list in the recitals that would at least include, in addition to the mentioned list:

- *Vetting for voluntary activities involving direct and regular contacts with vulnerable persons.*

POLAND

1. Inclusion of EU-nationals that also have the nationality of a third country

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

Unfortunately, we cannot provide Presidency with an exact number of people who hold both Polish and a third country nationality. We can provide a total number of TCN's who acquired a Polish citizenship and they live on territory of Poland. The numbers *per year*:

2000 - 1093

2005 – 2446

(based on the data from GUS – Statistics
Poland) 2010 – 2979

2011 – 3409

2012 – 3750

2013 – 4348

2014 – 4629

2015 – 4106

2016 – 4379

2017 – 4836

(based on the data from Ministry of Internal Affairs and Administration)

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

Polish citizens database – PESEL register – stores information of only one citizenship of person concerned. For a Polish citizen who holds also a citizenship of third country or even a nationality of another MS, only information about Polish citizenship will be stored.

National Criminal Register database, on contrary, stores up to 3 nationalities.

Verification of persons citizenship is made by police or other authorities during preparatory stage of criminal proceeding. It is made on the basis of persons Id documents or his/her statement. Of course the check is also made in information systems (SIS, VIS or other databases), especially when a verification of person's identity is needed. If person does not claim to be a refugee, the identity can be confirmed with cooperation with consulate of claimed country of citizenship.

Courts mainly rely on police reports.

b) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

We have no information about how many people have informed the competent authorities about their dual nationality. We can provide Presidency with a number of people holding both EU and third country nationality, that were convicted and data on their conviction were entered into Polish National Criminal Register.

The number is 1097 people (report from 04/04/2018)

c) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

We would invite PE to look on this matter from a different angle.

We should look at the situation in the view of growing numbers of TCNs acquiring a EU citizenship year by year. The numbers listed above are clearly showing this trend. Therefore our actions should aim to overcome the issue now because excluding of dual nationalities (TCN-EU) could lead in a future to growing information gap.

Article 8 states that each data record shall be stored in the Central System as long as the data related to the conviction(s) of the person concerned are stored in the criminal records. If exclusion of EU-nationals is decided, once person becomes an EU citizen, his/hers data should be deleted from ECRIS-TCN Central system, even though they are not deleted from national criminal register databases. Erasure would be possible on the ground of article 9 which gives a right to amend and delete of data. However, the time of receiving of information that there is a reason to believe that the data recorded in the Central System are inaccurate or that data are being processed in the Central System in contravention of this Regulation is crucial. It is possible that we would face the situation that person will acquire EU citizenship and central authority of a Member State becomes aware of that for instance when that person commits another crime, years after. This could mean we will unknowingly be processing data of EU national. Without proper safeguards, in such cases, we would process data of people holding both EU and third country citizenship in ECRIS-TCN Central system, despite exclusion. It would take a lot of work and changes in legal regulations on EU and national level to create the necessary procedures for central authorities to be informed about the acquisition or renunciation/loss of EU citizenship and would take an administrative burden to be following this procedures. And still it may not sufficiently prevent the loss of information about the criminal history of a person, who does not want to inform competent authorities of every nationality that he/she holds.

As a summary it should be underlined that if the exclusion of people holding dual citizenships was to take place, ECRIS-TCN system should be equipped with mechanisms and provisions allowing to respond to situation when person whose data are processed in Central system, becomes EU citizen.

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

We do not support the EP's amendment on Article 7.1 limiting the mandatory use of the ECRIS-TCN system only for purposes other than criminal proceedings with a predefined list. The system represents a significant added value in non-criminal proceedings and should, therefore, be obligatory in this case as well.

In addition, we would like to draw attention to the in-depth discussion in relation to this article when working on the general approach, which led to the conclusion that the unconditional compulsory use of the system in any case of criminal proceedings will not serve the speed and efficiency of such proceedings. In view of the above, according to PL, the competent national authority should retain the option of deciding to exclude the use of the system in a specific case of non-criminal purpose.

The exchange of information on convictions for purposes other than criminal in relation to EU citizens also takes place in accordance with national law (Article 7.2 of Council Framework Decision 2009/315 / JHA) and we see no reason to change this principle. Especially that a separate regimes would be created regarding citizens of the EU (compliance with national law) and third-country nationals (compliance with the list). If a specific request that complies with national law will not be in line with the categories on the list, MS will probably send such request via ECRIS to the 27 remaining MSs just to obtain information on the criminal record of a TCN in old fashioned way. We have to remember that ECRIS-TCN system is being made to supplement and support the European Criminal Records Information System, and the exchange of information on convictions will still be held according to provisions of Framework Decision 2009/315/JHA that allow to request for information for 'any purposes other than that of criminal proceedings'.

If forming a list of purposes should be considered as the best way to make 'purposes other than that of criminal proceedings' more specific, this list should be made in implementing acts and be in line with the one used in nowadays exchange of criminal information via ECRIS. It would serve a full consistency in treatment of both EU nationals and TCN's.

However, if the short list was to be created and located in this Proposal of Regulation, Poland indicates that provisions of the Regulation should also stipulate obligation to answer to queries for the purposes indicated in the list (currently MSs for non-criminal purposes provide information in accordance with their national law).

PORTUGAL

- a) How many people in your Member State are both EU nationals and have the nationality of a third country?

Please note that our response only takes into account the information available in the criminal record. 6229 people were identified who, besides being Portuguese nationals are also nationals of another State (Excel file attached).

- b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

In the Portuguese criminal registry, all the nationalities declared by the defendants at the stage of investigation and reported by the Courts, regardless of their legal confirmation, are registered.

- c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

The available information only reflects the final information at the level of the conviction decision. It doesn't include information gathered at the level of criminal investigation by police forces.

- d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

We defend the inclusion of citizens with dual TCN/EU nationality, without prejudice to the fact that there is a nationality of a MS and as such can be lifted all rights arising therefrom, we understand that there is a connecting element that allows for their inclusion, that is, one of the nationalities is a third country.

Moreover, in the same way as the dual nationality of MS/ MS, in which conviction is communicated to both countries of nationality, it makes perfect sense and it is consistent that the same process occurs when we are dealing with dual nationality TCN.

It must be considered that registration in the various databases of criminal records of a citizen cannot be considered as a discriminatory factor.

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

The Commission informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- Security clearances
- Obtaining a license or permit
- Visa, naturalisation and asylum procedures
- Employment vetting
- Vetting for voluntary activities involving direct and regular contacts with children
- Checking of own criminal record

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

We believe that the consultation should comply with the same criteria and requirements as that where designed for ECRIS in relation to a citizen of a MS, under penalty of once again being exposed to discrimination on the grounds of the nationality of the person concerned.

ROMENIA

1. Dual nationals

- a) **How many people in your MS are both EU nationals and have the nationality of a third country?**

N/A yet.

NB: if there is additional informal on the subject, we shall forward it to you asap.

- b) **In your MS, do you store all nationalities of a person in your national register? If not, please explain how you verify whether a person holds multiple nationalities during the criminal proceedings?**

The Central Criminal Record, functioning within the General Inspectorate of the Romanian Police/Romanian Police keeps the record of the natural persons born abroad. So, in Romania, the criminal record is organized according to the place of birth, not according to the nationality. However, the national system allows the registration of the person's nationality/ nationalities if they are mentioned in documents issued by the court. This specific mentioning is not compulsory.

- c) **Do you have information about how many people have informed the competent authorities, during the criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?**

N/A yet.

NB: if there is additional informal on the subject, we shall forward it to you asap.

- d) **Do you have any good argument, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?**

The Romanian Police doesn't have any further arguments or examples, but as we have stated over the time, we support the inclusion of EU-nationals who also have the nationality of a third country in the ECRIS-TCN system.

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings.

We consider that the list sufficiently covers the notion of `purposes other than that of criminal proceedings`, but we don't exclude the addition of other purposes.

SLOVAKIA

1. Inclusion of EU-nationals that also have the nationality of a third country

- a) How many people in your Member State are both EU nationals and have the nationality of a third country? **These statistics are not available.**
- b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings. **There are no special proceedings regarding verifying whether a person holds multiple nationalities. It's being checked only if the person himself has stated that has multiple nationalities or it's being checked when a character of the case demands. The most relevant is the ID or passport of the person. If there are doubts concerning the identity of the person, the database of false documents could be used. Other possibilities are the verification through the authorities of Interpol, Europol, foreign police or fingerprints. In case the person has EU and TCN nationalities or multiple EU nationalities the only source is ECRIS. When person declared that hasn't EU nationality, for the verification are used other available resources (e.g. embassies).**
- c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country? **These statistics are not available. However according to the Slovak prosecutor's offices we do not record any specific cases of criminal proceedings in which there have been fundamental problems as a result of hiding or misuse of the fact that the person was simultaneously a citizen of the EU and of a third-country national.**
- d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system? **We have to bear in mind that these people we are referring to criminals and they will gladly "hide" themselves behind another nationality and use the one which is more convenient for them. Therefore we need to fill all loopholes in this system.**

2. Use of the ECRIS-TCN system for other purposes than criminal proceedings

By its amendment 34, EP had deleted the possibility of using ECRIS-TCN for purposes other than that of criminal proceedings. The Presidency and the Commission objected that this would exclude using ECRIS-TCN e.g. for employment vetting or for allowing TCN to check their own criminal record and that it would create an undesired difference with the 'normal' ECRIS system. The EP thereupon clarified that their amendment merely aimed at narrowing the notion of 'purposes other than that of criminal proceedings': the EP does not want ECRIS-TCN to be used too widely, also for purposes that are not intended. In that light, it was discussed if 'purposes other than that of criminal proceedings' could be made more specific.

Approach of EP is strictly in contrary to the basic essence/functionality of ECRIS. Within this perspective it is unclear why the TCN persons should be regulated differently. If so, then there is a risk that we will have to change to whole ECRIS system.

To that end, the Commission informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- Security clearances
- Obtaining a license or permit
- Visa, naturalisation and asylum procedures
- Employment vetting
- Vetting for voluntary activities involving direct and regular contacts with children
- Checking of own criminal record

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

We are not sure whether this list is sufficient, e.g. the security of the state or the security of bank secrecy is missing.

The Slovak Law on Criminal Record stipulated general rule: “An extract from the criminal record shall also be issued at the request of another authority, organization or institution for a need other than criminal proceedings, as provided for by a separate law.”

SLOVENIA

Point 1:

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

SI: In the Republic of Slovenia we do not keep information about double or multiple citizenships for citizens of the Republic of Slovenia, so we cannot give the exact number of citizens who have also the nationality of a third country.

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

SI: In the Civil Register information on citizenship of the Republic of Slovenia is kept. If a foreign citizen has acquired citizenship of the Republic of Slovenia by naturalization, the Register of foreigners keeps records of the original nationality.

Point 2:

To that end, the Commission informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- *Security clearances*
- *Obtaining a license or permit*
- *Visa, naturalization and asylum procedures*
- *Employment vetting*
- *Vetting for voluntary activities involving direct and regular contacts with children*
- *Checking of own criminal record*

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

SI: The above list sufficiently covers the notion of 'purposes other than that of criminal proceedings'.

SPAIN

1. Inclusion of EU-nationals that also have the nationality of a third country

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

It's not possible to know how many people in Spain have the nationality of a third country, but according to the last official statistics (2016), there were more than 2 million Spanish people that were born abroad; and also, between 2013 and 2016, 698.000 people acquired Spanish nationality.

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

At first step, Spanish Criminal Records Register does not store every nationality of a convicted person, as we do not know that circumstance; when a person is convicted, the Court sends his/her nationality (the nationality that person has been identify with), and many other personal data; if that person is already included in our Register with a different nationality, we store the new nationality as an alias.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

No idea

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

1. - The Central Authority, which is responsible for communicating with the Central System, normally does not know if a TCN possesses also the nationality of any Member State, unless the convicted person had already identified himself as national of that Member State. It is not possible to previously verify if a TCN possesses also the nationality, not only of convicting Member State, but also of any other EU Member State, so that it can be decided if it is necessary to notify the conviction to that nationality Member State or the identity of the convicted person needs to be sent to the Central System.

2. - So far, we have thought about not registering a citizen with two nationalities (EU/non-EU) in the Central System. However, if a TCN that was previously convicted and registered in the Central System obtains the nationality of a Member State, should his personal information be deleted from the Central System? How can a Central Authority of a Member State know if that convicted person has previously obtained the nationality of other Member State, in order to be able to delete his personal information from the Central System? Should the Central Authority of a Member State verify if every citizen who obtains the nationality of that State is registered in the Central System to delete that registration? And what about if he/her was registered by other Member State?

As a result, and in addition to the security problems already explained by the Commission, if citizens with dual nationality (EU/non-EU) were not included in the Central System would turn into an inefficient and very difficult to manage System.

2) Use of the ECRIS-TCN system for other purposes than criminal proceedings

We should also introduce cases of granting residence permits and expulsion from the national territory, so we should talk in general terms of **Immigration Procedures** (visa, naturalisation, asylum, etc), and **any other purpose with the consent of the citizen**.

SWEDEN

Question No. 1 (multiple nationalities).

Double or previous nationalities are not systematically registered in SE population registers.

The numbers of convicted TCN with multiple nationalities recorded in the Swedish criminal register are:

- SE and TCN (active): 192 persons.
- SE and previous TCN (inactive): 14,868 persons.
- Other EU nationalities (active) and TCN (active): 810 persons.
- Other EU nationalities (active, not previous) and previous TCN (inactive): 50 persons.
- Previous other EU nationalities (inactive) and previous TCN (inactive): 76 persons.
- Previous other EU nationalities (inactive) and TCN (active, not previous): 37 persons
- TCN (active): 57,417 persons
- Previous TCN (inactive): 18,783 persons

We assume that there is a substantial number of unrecorded double or previous (double) nationalities also in the criminal register, since the nationalities are not always known to the authorities.

A scenario that could be used as an example and an argument for the need to include EU/TCN:

X is a Russian citizen and an SE conviction against him is registered in Ecris-TCN.

In a later investigation in SE against X it becomes known that he is also a BG citizen and notification of this conviction is sent to BG. The conviction is not registered in Ecris-TCN.

The old SE conviction registered in TCN will have to be deleted if EU citizens are not to be registered there. However, the old conviction will not be notified to BG. It will be known only upon a direct Ecris request from BG to SE.

If, at a later occasion in another MS, X again claims only the Russian identity, a check in Ecris-TCN will not reveal the SE convictions, neither old nor new, since they were deleted/not registered there. If X claims his BG nationality, a direct query to BG will not reveal the old SE conviction, see above.

Question No. 2 (“other purposes”)

The Presidency compromise proposal makes the use of Ecris-TCN obligatory for the purposes of criminal proceedings and for certain other purposes, while also preventing the use of the system for all other purposes. SE believes that there is a need for more flexibility than this would provide. Therefore, instead of an exhaustive list of all the purposes for which the use of Ecris-TCN should be obligatory (which can never be perfectly balanced), SE suggests a compromise wherein the use of the Ecris-TCN system is **obligatory** (with the possibility of exceptions in specific cases, in accordance with the GA) only when criminal records information on a third country national is requested for the purposes of criminal proceedings against that third country national. When criminal records information on a third country national is requested for any other purpose in accordance with national law, the central authority of that Member State **may** use the Ecris-TCN system.

This would enable the central authorities to use the Ecris-TCN system in all cases where it is deemed to be of importance, while also addressing the concerns of the EP. It would also be in line with the current Ecris regulation, which only makes it obligatory for the requested member state to provide information on convictions for the purposes of criminal proceedings (while for other purposes the requested member state shall reply in accordance with its national law), as well as the proposed article 7 paragraph 4a in Council Framework Decision 2009/315/JHA.

UNITED KINGDOM

Inclusion of dual EU-TCN nationals

a) How many people in your Member State are both EU nationals and have the nationality of a third country?

The UK is unable to provide statistics on this question.

However, the Office of National Statistics publish the population of the UK by country of birth and nationality in the public domain. In 2016, the non-UK born population was 9.2 million, the non-British population was 6.0 million and there were 3.6 million people resident in the UK who were born abroad and held British nationality².

b) In your Member State, do you store all nationalities of a person in your national registers? If not, please explain how you verify whether a person holds multiple nationalities during criminal proceedings.

The UK's national criminal register, the Police National Computer, can hold up to three nationalities which allows dual and multiple nationalities to be recorded during criminal proceedings.

c) Do you have information about how many people have informed the competent authorities, during criminal proceedings against them (and at the latest upon conviction), that they are both EU nationals and have the nationality of a third country?

The UK does not have any centrally held statistics on how many people have informed the authorities of their dual nationality during criminal proceedings. During proceedings in Magistrates' Courts and Crown Courts, the nationality of a defendant can be captured in the Court database at the first hearing that the defendant is present and can be amended at any point during the proceedings.

d) Do you have any good arguments, or examples, of why EU-nationals who also have the nationality of a third country should be included in the ECRIS-TCN system?

The Commission and the Council have together identified a loophole in which dual nationals could hide their past criminality by failing to disclose the nationalities that they hold. The EP amendment would weaken the legislation and re-open the loophole that the General Approach sought to close. Therefore, the EP suggestion to remove dual nationals from the proposal would be detrimental to the effectiveness of the system; the UK supports the General Approach.

²<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/bulletins/ukpopulationbycountryofbirthandnationality/2016>

Example: Mr A holds both UK and Nigerian nationality. He is arrested in France and, upon arrest, he presents his UK nationality. An ECRIS check is carried out with the UK to identify previous EU convictions as Mr A is a British citizen. Upon conviction, Mr A's pseudonymised biometric and alphanumeric data is not added into the ECRIS-TCN centralised system as there is no evidence provided that Mr A also holds a third country nationality and therefore may have spent time in a third country. After completing his custodial sentence, Mr A travels to Spain and commits a further crime. This time, Mr A presents his Nigerian nationality to the Spanish authorities – the Spanish authorities conduct a query of the ECRIS-TCN system which returns no hit. It is decided that no action will be taken upon Mr A as it is seemingly a first-time low-level offence, so Mr A is released into the public. The Spanish authorities do not have knowledge of a previous offence and therefore no public protection measures are put in place - Mr A poses a serious risk to the safety of the public.

Use of ECRIS-TCN for other purposes than criminal proceedings

The Commission informally presented the following initial list of 'purposes other than those of criminal proceedings' which should in any case be covered:

- *Security clearances*
- *Obtaining a license or permit*
- *Visa, naturalisation and asylum procedures*
- *Employment vetting*
- *Vetting for voluntary activities involving direct and regular contacts with children*
- *Checking of own criminal record*

The Presidency would like to know whether the above list sufficiently covers the notion of 'purposes other than that of criminal proceedings', or whether any other categories should be added.

The UK does not support the creation of a list of “other purposes” due to the potential to unnecessarily restrict the use of ECRIS-TCN. It is very important for Member States to use the ECRIS and ECRIS-TCN systems for purposes other than criminal proceedings – such as in employment vetting – and sufficient restrictions are already placed on this usage by limiting “other purposes” to only in accordance with national law. Under no circumstances should a list of “other purposes” be inserted within the main legal text of the legislation.

As a compromise, an example list of “other purposes” could be used in a recital under the condition that it explicitly states that the purposes listed are examples of usage and not an exhaustive list.