

Meijers Committee

standing committee of experts on international immigration,
refugee and criminal law

To European Parliament
Mr. Claude Moraes
Chair of LIBE Committee
By email

Date 27 February 2018

Reference CM1803

Subject Registration of criminal records of Union citizens in ECRIS-TCN

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Dear Mr. Moraes,

The Meijers Committee once again draws your attention to the issue of registration of criminal records of Union citizens in ECRIS-TCN.

The European Parliament in its position on the proposal for the ECRIS-TCN Regulation clearly expressed the wish that EU nationals should not be covered by the Regulation.

The Council's Presidency in a Note of 8 February 2018 asked Member States which specific arguments on this issue should be submitted during the trialogues. The Presidency stated that the position of the EP would mean that the ECRIS-TCN would become "*less complete*" and lead to "*the undesirable situation that a person holding a double nationality (EU and of a third country) and whose criminal record has been registered in the Member State of his EU nationality, could - when re-offending - only state that he/she has a third country nationality. In that way the authorities wouldn't be able to get any information in respect of his/her previous conviction.*"¹

The Meijers Committee respectfully presents the following five comments with regard to the quoted statement of the Presidency:

1. It is unlikely that a Union national who also is a national of a third country, when suspected of a criminal offense in a Member State, would hide being a Union national, since having the nationality of a Member State will bring him or her obvious advantages, e.g. the impossibility of expulsion from the EU, since the Returns Directive 2008/115 is not applicable to that Union national.

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2. Inclusion of these Union nationals in the ECRIS-TCN and the adoption of the pending proposal for a Regulation on the interoperability between EU policy and judicial cooperation, asylum and migration information systems in COM(2017)794 would result in the inclusion of these Union nationals in the shared biometric matching service and the common identity repository to be established on the basis of that proposal. This would considerably increase the negative effects of the inclusion in ECRIS-TCN for these Union nationals e.g. the risk of being subjected to immigration law measures applicable to third-country nationals only.

3. The image of two overlapping ovals in the Presidency's note creates an incorrect image of the actual size of this category of Union nationals. From the data on dual nationals in Germany and France it appears that less than 5% of the German and French nationals also have the nationality of a third country. Most of these dual nationals are immigrants or children of immigrants.

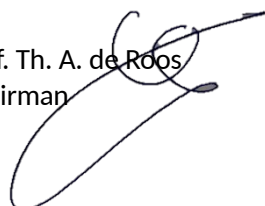
4. The Member States which prefer to include Union nationals with the nationality of a third country in ECRIS-TCN, apparently want a 100% or maximum inclusion. The price of the 'perfect' solution is that Union nationals of mostly immigrant origin will be deprived of the enjoyment of the status full Union citizens and de facto treated as second class Union citizens. This treatment, as explained by the Meijers Committee in its Note of October 2017, will be in breach of Union law, especially of the prohibition of racial discrimination in Article 21 of the EU Charter of Fundamental rights.² That note is attached to this letter.

5. The only 'perfect' and lawful solution would be to include the criminal records of all Union citizens in the proposed ECRIS-TCN. This solution, obviously, would have other significant negative effects, as it changes the basic architecture of ECRIS which is now primarily a decentralised system.

As always, we are available for your questions and remarks.

Yours sincerely,

Prof. Th. A. de Roos
Chairman



² Note on the definition of third-country nationals in the Commission's ECRIS-TCN proposal (CM1710) of 7 October 2017, http://www.commissie-meijers.nl/sites/all/files/cm1710_note_on_ecris-tcn.pdf.