



EUROPEAN COMMISSION

Brussels, 7.6.2016

C(2016) 3509 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Commission's proposal for a Directive amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records System (ECRIS), and replacing Council Decision 200/316/JHA, {COM(2016) 7 final}.

ECRIS is an efficient electronic system connecting Member States and enabling them to efficiently and rapidly exchange criminal record information on persons convicted in the EU.

The Commission's proposal aims at improving ECRIS' efficiency with regard to third country nationals. It introduces a mechanism to efficiently identify Member States holding criminal record information on convicted third country nationals. This will lead to a more systematic use of ECRIS with regard to third country nationals and thus to better informed decisions in court proceedings and other decisions according to national law.

The Commission welcomes the Bundesrat's political support for the overall aims of the proposal but notes its doubts relating to the proportionality of the mandatory inclusion of certain identity data, notably fingerprints. The Commission is pleased to have this opportunity to provide clarifications regarding the technical details of its proposal in the annex attached to this letter.

The Bundesrat's Opinion has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators involving both the European Parliament and the Council. It is the aim of the Commission to provide for a solution that addresses the problem while fully respecting fundamental rights, being proportionate and working in practice.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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First Vice-President*

*Věra Jourová
Member of the Commission*

*Mr Stanislaw TILLICH
President of the Bundesrat
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ANNEX

The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following comments:

The Bundesrat does not consider the compulsory storage of the parents' names of convicted third country nationals, the place of the crime committed, identity numbers and fingerprints as necessary and proportionate. The Commission has proposed to use these identification data, because it is often particularly difficult to establish the identity of third country nationals, for example because of widely used names and surnames. The data mentioned contribute to more secure identification. Contrary to the legal situation in Germany, some other Member States rely on parents' names and identity numbers to establish the identity of a person. Specific software can overcome spelling mistakes. Too many results produced by a software tolerating spelling mistakes can be reduced by adding more identity data to the search. For example, several hits produced for a person with a very common name can be reduced by adding the date and/or place of birth. More identity data can, but need not, be used to specify the search.

Moroever, the Commission considers that the use of fingerprints for identification purposes of third country nationals is both necessary and proportionate.

The Commission would like to clarify that it does not propose any obligation to store fingerprints of convicted third country nationals in the national criminal record registers themselves; they may be stored in other registers which are made available to the criminal record register. The Commission proposal also does not contain any obligation to take fingerprints of a convicted third country national if such fingerprints already exist in other accessible databases.

With regard to fingerprints in particular, Member States have supported the Commission's proposal at the informal Justice and Home Affairs Council on 26 January 2016, including the obligation to use fingerprints of convicted third country nationals for identification purposes. The proposal has been established in full respect of fundamental rights and freedoms as well as data protection rules including judicial and administrative redress.