

SENATE OF THE REPUBLIC

17TH PARLIAMENTARY
TERM

DOC. XVIII
No 111

RESOLUTION OF THE FIRST STANDING COMMITTEE

(Constitutional affairs, affairs of the Prime Minister's Office and home affairs, general legal system of the State and the civil service)

(Rapporteur BISINELLA)

approved at the session of 9 March 2016

ON THE

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL AMENDING REGULATION (EC) NO 562/2006
AS REGARDS THE REINFORCEMENT OF CHECKS AGAINST
RELEVANT DATABASES AT EXTERNAL BORDERS, COM(2015) 670
FINAL OF 15 DECEMBER 2015

pursuant to Article 144(1) and (6) of the Rules of Procedure

Sent to the President's Office on 14 March 2016

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The Committee,

Having examined the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the reinforcement of checks against relevant databases at external borders, pursuant to Article 144(1) and (6) of the Rules of Procedure,

whereas:

the proposal is one of the EU's initiatives to combat the growing terrorist threat in Europe, with particular reference to foreign fighters;

the proposal contains a targeted amendment to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) in order to increase security within the area without internal border controls,

noting, in particular, that:

the proposal introduces a requirement for the Member States of the European Union to carry out systematic checks on persons enjoying the right of free movement under Union law (i.e. EU citizens and members of their families who are not EU citizens) when they cross the external border against databases on lost and stolen documents as well as in order to verify that those persons do not represent a threat to public order and internal security. This requirement applies at all external borders i.e. at air, sea and land borders, both at entry and exit;

where a systematic consultation of databases on all the persons enjoying the right of free movement under Union law could lead to disproportionate impact on the flow of traffic at the border, Member States may carry out only targeted checks against databases based on an assessment of risks related to internal security, public policy, international relations of the Member States or a threat to public health. The risk analysis should be communicated to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('Frontex') and should be the subject of regular reporting to the Commission and to Frontex;

the proposal also reinforces the need to verify biometric identifiers as contained in Council Regulation (EC) No 2252/2004 of 13 December 2004. The latter Regulation introduced the facial image and fingerprints as security elements in the passport of EU citizens in order to render them more secure and establish a reliable link between the holder and the passport. Therefore, in case of doubts about the authenticity of the passport or the legitimacy of the holder, border guards should verify these biometric identifiers.

whereas, in addition:

Member States are currently obliged to check third country nationals systematically against all databases on entry; the current provisions do not, however, require checks for public order and internal security purposes to be carried out systematically on exit. The

amendment will require systematic checks that a third country national does not present a threat to public policy and internal security also to be carried out on exit;

having examined the Government's report, drawn up pursuant to Article 6(4) and (5) of Law No 234 of 24 December 2012;

whereas:

the legal basis has been correctly identified as Article 77(2)(b) of the Treaty on the Functioning of the European Union, which provides that measures concerning the checks to which persons crossing external borders are subject are to be adopted under the ordinary legislative procedure. This is the same legal basis as for the Schengen Border Code (Regulation (EC) No 562/2006);

as regards the principle of subsidiarity, the provision for controls at external borders is introduced in the interest of all the Member States which have abolished controls at internal borders and should help to prevent any threat to the Member States' internal security. Therefore such controls need to be performed in accordance with common rules. Accordingly, the objective of establishing common rules concerning the scope and type of checks carried out at the external borders can be better achieved at the level of the Union;

the proposal also respects the principle of proportionality since it does not go beyond what is necessary to ensure the safety of EU citizens. The content of the databases consulted is limited to aspects relevant for internal security; the grounds for triggering an alert in the Schengen Information System all relate to preserving internal security in the Schengen States given the absence of internal border checks. Thus, carrying out checks against relevant databases in a systematic way also with regard to the persons enjoying the right of free movement under Union law does not go beyond what is necessary to pursue one of the objectives of the controls at the external borders,

issues a favourable opinion,

OPINION OF THE 14th STANDING COMMITTEE

(EU POLICIES)

(Rapporteur: Romano)

3 March 2016

The Committee, having examined the document,

whereas the proposal is one of the European Union's initiatives to provide a response to the growing terrorist threat in Europe, with particular reference to foreign fighters, i.e. European Union citizens who go to Syria and Iraq to support terrorist groups, receive training and carry out attacks on European territory;

whereas the proposal amends the Schengen Border Code (Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006) to establish systematic controls on EU citizens and other 'persons enjoying the right of free movement under Union law' at external borders, including on exit, and to step up controls on entry;

whereas, in particular, EU citizens, both those entering and those exiting across European external borders, will be subject to systematic dual checks: 1. a check on their identity, citizenship and the authenticity of their travel document through consultation of the Schengen Information System (SIS), the Interpol database on travel documents stolen or lost and the relevant national databases; 2. a check to establish that they do not constitute a threat to internal security, public policy or international relations, including by consulting the relevant Union and national databases, in particular the Schengen Information System. In cases of doubt, the checks can include verification of biometric data integrated in the passports issued in accordance with Council Regulation (EC) No 2252/2004 of 13 December 2004;

whereas the proposal also provides that where the systematic controls involve a disproportionate impact on the flow of traffic at the border, Member States may, on the basis of risk assessments that must be transmitted to the Agency for the Management of Operational Cooperation at the External Borders, carry out targeted checks, on which they must report every three months to the Agency and the European Commission;

whereas, with regard to checks on third country nationals, both on entry and on exit, already provided for under existing legislation, the proposal enhances exit checks, providing that they must also systematically verify that the person does not constitute a threat to internal security, public policy or international relations, including by consulting the relevant national and EU databases, and in particular the Schengen Information System;

having examined the Government's report, drawn up pursuant to Article 6(4) and (5) of Law No 234 of 24 December 2012,

hereby issues a favourable opinion within its area of competence, with the following comments:

the legal basis has been correctly identified as Article 77(2)(b) of the Treaty on the Functioning of the European Union, which provides that measures concerning the checks to which persons crossing external borders are subject are to be adopted under the ordinary legislative procedure, which is the same legal basis as that for Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code);

the proposal fully complies with the principle of subsidiarity, since its provisions are designed to establish uniform procedures for all the Member States with EU external borders, which can only be ensured by means of EU-level intervention, in the interests of effective European security policy. The two criteria that European action is necessary and that it has value added are therefore met;

the principle of proportionality is also fully respected, since the proposed provisions do not go beyond what is necessary to reinforce internal security by establishing systematic controls on all individuals whether they are entering or leaving EU territory. Moreover, the possible disadvantages affecting movement in terms of queues and time-consuming checks are addressed in the proposal by allowing the possibility of targeted controls by way of derogation from the systematic controls. Furthermore, the proposed measures do not affect the exercise of the right to free movement within the Union;

with reference to the possibility of using targeted checks where there is a disproportionate effect on the flow of traffic at borders, by way of derogation from the systematic controls, the Committee feels that it should be made clear that such derogations should be limited in scope and duration to the essential minimum, and not exceed what is necessary based on the risk assessment drawn up by the Member State and evaluated by the European Commission and the Agency for the Management of Operational Cooperation at the External Borders;

with reference to the use of databases containing information on individuals, the Committee considers that the databases should be organised in a more consistent manner, including as regards the persons authorised to access them.