

SENATE OF THE REPUBLIC
17TH PARLIAMENTARY TERM

Doc. XVIII-bis

No 17

RESOLUTION OF THE 14th STANDING COMMITTEE

(European Union Policies)

(Rapporteur: GINETTI)

approved at the morning sitting of 13 July 2016

ON THE

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL FRAMEWORK DECISION 2009/315/JHA, AS REGARDS THE EXCHANGE OF INFORMATION ON THIRD COUNTRY NATIONALS AND AS REGARDS THE EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM (ECRIS), AND REPLACING COUNCIL DECISION 2009/316/JHA

within the meaning of Article 144(1)(5) and (6) of the Rules of Procedure

Sent to the President's Office on 15 July 2016

The Committee, having examined the act,

and considering that, following the serious terrorist attacks in Paris, the European Council of 18 December 2015 had reiterated the urgent need to share more information on terrorist activity, notably as regards the systematic sharing of details from the criminal records of people linked to terrorism (and to organised crime and other serious crimes) and the extension of the European Criminal Records Information System (ECRIS) to third country nationals (point 5);

mindful of the fact that ECRIS is an electronic system for exchanging information which the convicting Member States must use to communicate information and updates related to convictions handed down against a national of another Member State to the Member State of nationality. The Member State of nationality can thus provide exhaustive, up-to-date information on the criminal records of its nationals upon request, regardless of where in the EU convictions were handed down. The system is based on Framework Decisions 2009/315/JHA and 2009/316/JHA;

whereas, as ECRIS is in theory also applicable to third country nationals (TCNs) who do not have citizenship of a Member State, the requesting Member State must ask for their criminal records from all Member States, which creates significant administrative costs estimated at roughly EUR 78 million per year. This system of 'blanket requests' discourages information-gathering so that comprehensive information on the criminal records of TCNs is often not available;

considering that the proposal in question is aimed at extending the scope of Framework Decision 2009/315/JHA with a view to obliging the convicting Member State to store information on the criminal records of TCNs, including fingerprints for identification purposes;

moreover, considering that, as regards costs, each Member State must pay the cost of implementing, administering, using and maintaining its own criminal record database and must also pay the cost of implementing, administering, using and maintaining the technical alterations needed to be able to use ECRIS;

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

whereas, moreover, this proposal for a Directive is related to Government Acts Nos 261, 262 and 263, currently being examined in Parliament, implementing the provisions of Articles 1, 19, 20 and 21 of Law No 114 of 2015 (European Delegation Law of 2014),

hereby comments favourably on the proposal, as regards matters falling within its area of responsibility, while presenting the following remarks:

- we consider that the legal base is appropriate, namely Article 82(1)(d) of the Treaty on the Functioning of the European Union (TFEU), which states that the ordinary legislative procedure is to be used to adopt measures to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions;
- the principle of subsidiarity is complied with since sharing information on the convictions of TCNs requires a European legislative instrument;
- the proposal also complies with the principle of proportionality since it concerns a decentralised system for identifying the Member State or States holding criminal record information on TCNs, based on an index-filter containing anonymised identity data of convicted third country nationals, extracted from national criminal records registers, and on a hit/no hit search mechanism. A 'hit' indicates that criminal record information on the TCN is available and shows which Member State(s) can provide the information. The identified Member State(s) can then be requested to provide complete information through ECRIS. This should avoid the costly and inefficient system of 'blanket' requests.

The obligation for the convicting Member State to store certain information, including the fingerprints of the convicted persons, set out in the new Article 4a of Framework Decision 2009/315/JHA, is necessary to identify TCNs with certainty;

- consequently, we fully support the Commission's proposal and trust that it will be adopted rapidly.