

**Proposal for a Regulation of the European Parliament and of the Council
on the establishment, operation and use of the Schengen Information System (SIS)
in the field of police cooperation and judicial cooperation in criminal matters,
amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006,
Council Decision 2007/533/JHA and Commission Decision 2010/261/EU COM(2016) 883 final**

FINAL DOCUMENT APPROVED

The Committee on Constitutional Affairs, the Presidency of the Council of Ministers and Internal Affairs of Italy's Chamber of Deputies,

Having examined, pursuant to the Chamber of Deputies Rule 127, the Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU COM(2016) 883 final

Recalling the favourable opinion issued by the European Union Policies Committee sitting on 2 August 2017;

Noting that:

The proposal governs the conditions and the procedures applying to entering and processing alerts on persons and objects in SIS, and exchanging supplementary information and extra data in the field of police cooperation and judicial cooperation in criminal matters;

The main novelties introduced by the proposal refer to extending the scope of the SIS system by introducing new elements to existing alert categories, new elements of biometric identifiers and making more effective use of the information currently stored in the SIS;

One appropriate provision in particular is the obligation to use dactylographic data to consult the SIS whenever the identity of a person cannot be ascertained in any other way;

Also welcome is the right to enter dactylographic data in SIS, not related to persons who are subject of the alerts, which may be sets of fingerprints or palm prints discovered at the scenes of crimes under investigation, of serious crime and terrorist offence and where it can be established to a high degree of probability that they belong to the perpetrator of the offence, stored as "unknown suspect or wanted person" provided that the competent authorities cannot establish the identity of the person by using any other national, European or international database;

Another highly topical provision of general interest is the inclusion in SIS of preventive alerts when parental abduction is deemed a high risk when an appropriate decision has been issued by the judicial authorities granting custody only to one of the parents;

Noting the need for this final document to be forwarded promptly to the European Commission, as part of the political dialogue, and to the European Parliament and the Council,

expresses

A POSITIVE OPINION,

with the following qualifications:

It would be appropriate to confirm the fact that the so-called 'inquiry check' introduced by articles 36 and 37 of the Proposal must be viewed as enhanced discretionary checks which does not impinge on the constitutionally guaranteed individual rights, and that any information acquired by such checks must be considered to be police information and not as sources of evidence, as was made clear by the Presidency of the European Union Council on the Schengen Acquis working group.

THE CHAIR
OF THE COMMITTEE

Rome, 2 August 2017

Opinion on the Proposals for a regulation of the European Parliament and of the Council , “On the use of the Schengen Information System for the return of illegally staying third-country nationals {COM(2016) 881 final}”; “On the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 {COM(2016) 882 final}”; “On the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU {COM(2016) 883 final}”.

The EU Policies Committee of Italy’s Chamber of Deputies ,

Having examined, pursuant to the Chamber of Deputies Rule 127, the Proposals for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals {COM(2016) 881 final}, on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks {COM(2016) 882 final}, and on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters 2010/261/EU {COM(2016) 883 final};

Endorsing the purposes of this legislative measures, namely, to reform and update the current rules governing the Schengen Information System (SIS) which, despite the positive results obtained so far, need to be updated in the opinion of the European Commission, also with regard to addressing the increasingly more complex management of the huge migration flows and terrorism;

Noting that the overall reform of the SIS proposed by the Commission meets the growing demand for security among Europe’s citizens, but does not impair the indefeasible values of the European Union regarding the safeguarding of fundamental rights, democracy and the rule of law;

Having regard to the government report on these measures drawn up pursuant to article 6 (4) and (5) of Law 234 of 24 December 2012;

Having regard, with reference to the Proposal for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals {COM(2016) 881 final} introducing the obligation to enter all return decisions in the Schengen Information System (SIS) in order to facilitate the return of third-country nationals staying illegally in the European Union;

Endorsing the entry and processing of alerts on third-country nationals who have been served with a return decision in the SIS, as well as the exchange of supplementary information on these alerts to make these decisions visible throughout the whole of the European Union and improve their enforcement;

Having regard, moreover, to the Proposal for a Regulation on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks {COM(2016) 882 final} making it obligatory for Member States, and no longer merely optional as before, to enter in the SIS all decisions to refuse entry to illegally staying third-country nationals;

Recalling that the proposal also aims at harmonising the consultation procedures in order to ensure that no person who has been refused entry into the European Union may obtain a stay permit in another Member State, and also introduces changes to improve SIS use;

Recalling in this connection the intention of the European Commission to resolve possible conflicts between contradictory decisions by different Member States by providing an *ad hoc* procedure (the so-called consultation procedure) through which the countries concerned may come to an agreement;

Considering it appropriate in this regard to re-assess the provision that, in the case of contradictory opinions between different Member States, prevalence is to be given to the decision authorising a third-state national to stay in a Member State over the alert refusing entry or stay;

Having regard to the contents of the Proposal for a Regulation on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters {COM(2016) 883 final}, to strengthen the use of this tool as a means of combating terrorism, foreign fighters and cross-border crime;

Noting that the specific provisions of the Regulation are designed to better harmonise the usual SIS procedures by extending its scope by introducing new elements to existing alert categories, new elements of biometric identifiers and making more effective use of the information currently stored in the SIS; these refer in particular to crimes linked to terrorism and the risks of parental abduction of children;

Recalling that articles 36 and 37 in the Proposal for a Regulation on checks, introduces the ‘inquiry check’ which enables the authorities to conduct a more in-depth questioning of the person;

Considering it appropriate to qualify this provision more precisely with respect to restricting personal freedom, which in Italy is only permitted with a court order, and in the cases and the manner provided by the law;

Deeming, furthermore, that the legal basis of the proposal has been properly identified:

- in article 77(2)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU) which provides that the ordinary legislative procedure shall be used to adopt measures necessary for the establishment of an integrated management and control system for external borders;

- in article 79 of the Treaty on the Functioning of the European Union (TFEU) - which provides that the ordinary legislative procedure shall be used to adopt a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings - while 79(2)(c) specifically refers to “illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation”;

- in article 82(1)(2)(d), article 85(1), article 87(2)(a) of the Treaty on the Functioning of the European Union (TFEU) governing judicial cooperation in criminal matters, the competencies vested in Eurojust, police cooperation and the competencies of Europol, respectively;

Considering that the subsidiarity principle has been respected, insofar as the objectives – to extend the obligatory use of the SIS information system by all the Member States to support the monitoring and execution of return decisions; to strengthen the system of data exchanges between Member States regarding the external borders, in order to ensure more effective control over the presence of third-country nationals within the territory of the European Union; to strengthen the information exchange system between the Member States in criminal matters through SIS, in order to ensure more effective judicial and police cooperation between the Member States – cannot be achieved by the Member States acting alone;

Considering, moreover, that the proportionality principle has been respected, since the proposals are limited to providing the necessary measures to achieve the declared purposes, leaving the Member States free to adopt any decisions or measures against people who have failed to return to their countries of origin, on a case-by-case basis, and by mutual consultation;

Lastly, recalling the need to take account of Commission Recommendation (EU) 2017/432 of 7 March 2017 “on making returns more effective when implementing the Directive 2008/115/EC”, and Commission Communication COM(2017)200 on “A more effective return policy in the European Union - a Renewed Action Plan”, in order to try and narrow the widening gap between the number of irregular-stay third country nationals and the number of those who are actually returned;

Noting, finally, that in light of the specific situation facing Italy, attention must be drawn to the need for adequate commitment and involvement on the part of the other Member States of the European Union, in addition to complying with the duty of solidarity towards countries of first entry, in compliance with their obligations in the matter of relocation

Noting the need for this opinion, together with the final document adopted by the Constitutional Affairs Committee, to be forwarded promptly to the European Commission, as part of the political dialogue, and to the European Parliament and the Council,

expresses

A POSITIVE OPINION