



**2016/0407(COD)**

26.7.2017

# **OPINION**

of the Committee on Foreign Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on 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)0881 – C8-0532/2016 – 2016/0407(COD))

Rapporteur: Hilde Vautmans

PA\_Legam

## AMENDMENTS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a regulation

##### Recital 1

###### *Text proposed by the Commission*

(1) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in full respect of fundamental rights and *in particular the principle of non-refoulement*, and in accordance with Directive 2008/115/EC of the European Parliament and of the Council, is an essential part of the comprehensive efforts to tackle irregular migration and *increase the rate of return of irregular migrants*.

###### *Amendment*

(1) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in full respect of fundamental rights and *the principle of non-refoulement, codified by the Charter of Fundamental Rights of the European Union (Charter) and the 1951 Geneva Convention*, and in accordance with Directive 2008/115/EC of the European Parliament and of the Council, is an essential part of the comprehensive efforts to tackle irregular migration and *manage migration in close cooperation with third countries of origin or transit*.

### Amendment 2

#### Proposal for a regulation

##### Recital 3

###### *Text proposed by the Commission*

(3) Member States should take all necessary measures to return illegally staying third-country nationals in an effective and proportionate manner, in accordance with the provisions of Directive 2008/115/EC.

###### *Amendment*

(3) Member States should take all necessary measures to return illegally staying third-country nationals in an effective and proportionate manner *while fully respecting fundamental rights, in particular the principle of non-refoulement and the protection of migrants' human rights*, in accordance with the provisions of Directive 2008/115/EC.

### Amendment 3

#### Proposal for a regulation

##### Recital 12

###### *Text proposed by the Commission*

(12) Alerts on return should be deleted as soon as the Member State or competent authority that issued the return decision in accordance with provisions respecting Directive 2008/115/EC has been informed that the return has taken place. Where a return decision is accompanied by an entry ban, the latter should be entered in SIS in accordance with Article 24(3) of Regulation (EU) 2018/xxx [border checks]. In such cases Member States should take all necessary measures to ensure that no time-gap exist between the moment in which the third-country national leaves the **Schengen area** and the activation of the alert on the entry ban in SIS.

###### *Amendment*

(12) Alerts on return should be deleted as soon as the Member State or competent authority that issued the return decision in accordance with provisions respecting Directive 2008/115/EC has been informed that the return has taken place. Where a return decision is accompanied by an entry ban, the latter should be entered in SIS in accordance with Article 24(3) of Regulation (EU) 2018/xxx [border checks]. In such cases Member States should take all necessary measures to ensure that no time-gap exist between the moment in which the third-country national leaves the **external borders of a Member State** and the activation of the alert on the entry ban in SIS.

###### *Justification*

*The term Schengen area is inconsistent with the term used in Article 6.: "Where a third-country national, who is the subject of an alert on return, exits through the external border of the issuing Member State, the confirmation of return shall be communicated to the competent authority in accordance with national law"*

### Amendment 4

#### Proposal for a regulation

##### Recital 16

###### *Text proposed by the Commission*

(16) Data processed in SIS or transferred through the exchange of supplementary information may provide to the enforcing Member State information that is useful for the rapid identification and re-documentation of illegally staying third-country nationals, in view of their return to

###### *Amendment*

(16) Data processed in SIS or transferred through the exchange of supplementary information may provide to the enforcing Member State information that is useful for the rapid identification and re-documentation of illegally staying third-country nationals, in view of their return to

a third country. In individual cases, it should be possible to share such data and information with a third country for this purpose. Sharing of any personal data should be subject to clear conditions, should be carried out in accordance with the provisions of Regulation (EU) 2016/679 and be conducted with the agreement of the Member State that issued the alert.

a third country. In individual cases, it should be possible to share such data and information with a third country for this purpose. ***However, this should only occur after a final decision on return has been taken.*** Sharing of any personal data should be subject to clear conditions, should be carried out in accordance with the provisions of Regulation (EU) 2016/679, ***in particular Articles 6(1)(f), 8, 12(1) and 40(2)(g) in cases related to children,*** and be conducted with the agreement of the Member State that issued the alert.

#### *Justification*

*No personal data should be transferred to a third country before the decision on a return, adopted pursuant to Directive 2008/115(EC), has become final and, therefore, not before possible remedy or appeal procedures have been exhausted or a related request from the applicant has been declared as being inadmissible.*

#### **Amendment 5**

##### **Proposal for a regulation**

##### **Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) In cases related to children, the best interests of the child should be a primary consideration when applying this Regulation. When data pertaining to a child are inserted in SIS, they should be used only for purposes relating to the prevention, detection and investigation of missing children cases and for the protection of the child's best interest, in accordance with the UN Convention on the Rights of the Child.***

#### **Amendment 6**

##### **Proposal for a regulation**

##### **Recital 16 b (new)**

***(16b) All measures taken in relation to the SIS should comply with the Charter. Member States should apply guidelines, to be established and monitored jointly by the European Union Agency for Asylum and the European Union Agency for Fundamental Rights, for a common practice with regard to taking fingerprints and facial images of irregular third-country nationals that builds upon the checklist prepared by the European Union Agency for Fundamental Rights. At all times Member States should respect the dignity and physical integrity of the minor during the fingerprinting procedure and when capturing a facial image. Member States should not use coercion to compel the taking of fingerprints of minors.***

*Justification*

*In accordance with the UN Convention on the rights of the Child, children shall be treated with humanity and respect, in a manner which takes into account the needs of their age. Therefore, particular attention shall be paid to the specific situation of minors. The best interest of the child shall always be a primary consideration.*

**Amendment 7**

**Proposal for a regulation**

**Recital 17**

*Text proposed by the Commission*

*Amendment*

(17) National authorities responsible for return may differ significantly among Member States, and such authorities may also vary within a Member State depending on the reasons for illegal stay. Judicial authorities may also issue return decisions in accordance with provisions respecting Directive 2008/115/EC, for instance as result of appeals against a refusal of granting an authorisation or right to stay, or as a criminal sanction. All national authorities in charge of issuing and

(17) National authorities responsible for return may differ significantly among Member States, and such authorities may also vary within a Member State depending on the reasons for illegal stay. ***Furthermore, different national lists of "safe third countries" exist.*** Judicial authorities may also issue return decisions in accordance with provisions respecting Directive 2008/115/EC, for instance as result of appeals against a refusal of granting an authorisation or right to stay, or

enforcing return decisions in accordance with Directive 2008/115/EC should be entitled to access SIS in order to enter, update, delete and search alerts on return.

as a criminal sanction. All national authorities in charge of issuing and enforcing return decisions in accordance with Directive 2008/115/EC should be entitled to access SIS in order to enter, update, delete and search alerts on return.

## **Amendment 8**

### **Proposal for a regulation Recital 28 a (new)**

*Text proposed by the Commission*

*Amendment*

***(28a) No amendment or new provision in this Regulation should create unnecessary obstacles for Member States who will join or are in process of joining the Schengen area.***

## **Amendment 9**

### **Proposal for a regulation Article 3 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Data on third-country nationals subject to a return decision issued in accordance with provisions respecting Directive 2008/115/EC shall be entered in SIS for the purpose of verifying that the obligation to return has been complied with and for supporting the enforcement of the decision. An alert shall be entered in SIS without delay when the return decision is issued in accordance with provisions respecting Directive 2008/115/EC.

1. Data on third-country nationals subject to a return decision issued in accordance with provisions respecting Directive 2008/115/EC shall be entered in ***SIS immediately after the decision becomes effective under the national legislation of the respective Member State*** for the purpose of verifying that the obligation to return has been complied with and for supporting the enforcement of the decision. An alert shall be entered in SIS without delay when the return decision is issued in accordance with provisions respecting Directive 2008/115/EC.

## **Amendment 10**

### **Proposal for a regulation Article 4 – paragraph 1 – point p**

*Text proposed by the Commission*

*Amendment*

(p) the category of the person's identification *document*;

(p) the category of the person's *current or past* identification *documents, or other documents used so far under his or her aliases*;

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 4 – paragraph 1 – point r**

*Text proposed by the Commission*

*Amendment*

(r) the number(s) of the person's identification *document*;

(r) the number(s) of the person's *current or past* identification *documents*;

## **Amendment 12**

### **Proposal for a regulation**

#### **Article 9 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Without prejudice to Articles 6 and 8, alerts on return shall be deleted when the decision upon which the alert was based has been withdrawn or annulled by the competent authority. Alerts on return shall also be deleted when the third-country national concerned can demonstrate that they have left the territory of the Member States in compliance with a return decision issued in accordance with provisions respecting Directive 2008/115/EC.

1. Without prejudice to Articles 6 and 8, alerts on return shall be *immediately* deleted when the decision upon which the alert was based has been withdrawn or annulled by the competent authority. Alerts on return shall also be deleted when the third-country national concerned can demonstrate that they have left the territory of the Member States in compliance with a return decision issued in accordance with provisions respecting Directive 2008/115/EC.

## **Amendment 13**

### **Proposal for a regulation**

#### **Article 10 – paragraph 1**



*Text proposed by the Commission*

Data processed in SIS and the related supplementary information pursuant to this Regulation may be transferred or made available to a third-country in accordance with Chapter V of Regulation (EU) 2016/679 with the authorisation of the issuing Member State, only for the purpose of identification of and issuance of an identification or travel document to an illegally staying-third country national in view of return.

*Amendment*

Data processed in SIS and the related supplementary information pursuant to this Regulation may be transferred or made available to a third-country in accordance with Chapter V of Regulation (EU) 2016/679 with the authorisation of the issuing Member State, only for the purpose of identification of and issuance of an identification or travel document to an illegally staying-third country national in view of return. ***However, this shall concern individual cases and only occur after a final decision on return has been taken in full compliance with the principle of non-refoulement. In particular, it must be confirmed that the country in question ensures an adequate level of protection, taking into account its respect for the rule of law and human rights, the existence and effective functioning of independent supervisory authorities and the country's international commitments. Prior to any transfer of information to a third country, the competent authorities must confirm that the life and freedom of a returnee will not be threatened on account of his or her race, religion, nationality, affiliation to a particular social group or political opinion. The data and the related supplementary information shall not be transferred if such a transfer could put the person to whom they relate in danger.***

**Amendment 14**

**Proposal for a regulation  
Article 10 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Data related to any previous asylum application made by or immigration status granted to a returnee within a Member State shall not be transferred to a third***

*country for the purposes of this  
Regulation.*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Use of the Schengen Information System for the return of illegally staying third-country nationals
<b>References</b>	COM(2016)0881 – C8-0532/2016 – 2016/0407(COD)
<b>Committee responsible</b> Date announced in plenary	LIBE 6.4.2017
<b>Opinion by</b> Date announced in plenary	AFET 6.4.2017
<b>Rapporteur</b> Date appointed	Hilde Vautmans 15.5.2017
<b>Date adopted</b>	11.7.2017
<b>Result of final vote</b>	+: 26 –: 13 0: 21
<b>Members present for the final vote</b>	Lars Adaktusson, Michèle Alliot-Marie, Francisco Assis, Petras Auštrevičius, Bas Belder, Mario Borghezio, Victor Boștinaru, Elmar Brok, Klaus Buchner, James Carver, Fabio Massimo Castaldo, Lorenzo Cesa, Aymeric Chauprade, Javier Couso Permuy, Andi Cristea, Arnaud Danjean, Knut Fleckenstein, Eugen Freund, Michael Gahler, Iveta Grigule, Sandra Kalniete, Tunne Kelam, Janusz Korwin-Mikke, Andrey Kovatchev, Eduard Kukan, Ryszard Antoni Legutko, Arne Lietz, Barbara Lochbihler, Sabine Lösing, Andrejs Mamikins, Alex Mayer, David McAllister, Tamás Meszerics, Francisco José Millán Mon, Javier Nart, Demetris Papadakis, Ioan Mircea Pașcu, Alojz Peterle, Tonino Picula, Cristian Dan Preda, Jozo Radoš, Sofia Sakorafa, Jordi Solé, Jaromír Štětina, Charles Tannock, László Tőkés, Miguel Urbán Crespo, Ivo Vajgl, Elena Valenciano, Hilde Vautmans, Boris Zala
<b>Substitutes present for the final vote</b>	Brando Benifei, Luis de Grandes Pascual, Eleni Theocharous, Ernest Urtsun, Bodil Valero, Paavo Väyrynen, Marie-Christine Vergiat, Željana Zovko
<b>Substitutes under Rule 200(2) present for the final vote</b>	Frank Engel

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

26	+
ALDE	Petras Auštrevičius, Iveta Grigule, Javier Nart, Jozo Radoš, Ivo Vajgl, Hilde Vautmans, Paavo Väyrynen
ECR	Bas Belder, Ryszard Antoni Legutko, Charles Tannock, Eleni Theocharous
EFDD	Fabio Massimo Castaldo
S&D	Francisco Assis, Brando Benifei, Victor Boştinaru, Andi Cristea, Knut Fleckenstein, Eugen Freund, Arne Lietz, Andrejs Mamikins, Alex Mayer, Demetris Papadakis, Ioan Mircea Paşcu, Tonino Picula, Elena Valenciano, Boris Zala

13	-
EFDD	James Carver
GUE/NGL	Javier Couso Permuy, Sabine Lösing, Sofia Sakorafa, Miguel Urbán Crespo, Marie-Christine Vergiat
NI	Janusz Korwin-Mikke
Verts/ALE	Barbara Lochbihler, Tamás Meszerics, Jordi Solé, Ernest Urtasun, Bodil Valero

21	0
NI	Aymeric Chauprade
PPE	Lars Adaktusson, Michèle Alliot-Marie, Elmar Brok, Lorenzo Cesa, Arnaud Danjean, Frank Engel, Michael Gahler, Sandra Kalniete, Tunne Kelam, Andrey Kovatchev, Eduard Kukan, David McAllister, Francisco José Millán Mon, Alojz Peterle, Cristian Dan Preda, Jaromír Štětina, László Tőkés, Željana Zovko, Luis de Grandes Pascual
Verts/ALE	Klaus Buchner

Key to symbols:

+ : in favour

- : against

0 : abstention