

OPINION

Pursuant to Article 75b para. 1, subpara. 1 of the Rules and Regulations of the Senate (Monitor Polski of 2010, No 39, item 542 and No 57, item 771, of 2011, No 6, item 62) the European Union Affairs Committee submits the following opinion on a draft legislative act of the European Union, adopted at the sitting on January 11, 2012:

1. The European Union Affairs Committee (EUAC) does not support **the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances (COM(2011)560)**. The proposed Regulation considerably increases the mandate of the European Commission whilst curbing the existing rights of Member States.

2. In the opinion of the European Union Affairs Committee, the proposed Regulation fails to comply with Article 4 paragraph 2 and Article 72 of the Treaty on the functioning of the European Union, according to which it is Member States that are responsible for maintaining law and order and safeguarding internal security, and the EU respects these functions of the Member States. Depriving Member States of the power to temporarily reintroduce control at borders may hamper the exercise of these responsibilities of Member States. Moreover, the rules on the freedoms of the internal market, including the free movement of persons, explicitly provide that Member States may introduce restrictions resulting from the necessity to protect public order. This is a consequence of the fact that Member States are most capable of assessing whether these values are compromised or threatened. Furthermore, until now the EU has followed the rule that Member States autonomously assess what constitutes and what does not constitute a threat to public order, as the standards of such a threat may differ from country to country.

3. The aim of the proposal is to ensure an adequate level of internal security and public order with simultaneous maintenance of the free movement of persons. Undoubtedly, Member States are best prepared to perform such a task, as they have relevant instruments and services. The European Commission did not present sufficient evidence to prove that these aims have not been attained satisfactorily to date. Moreover, in its Communication

COM(2011)561* the European Commission states that the right to reintroduce control on the borders has not been abused by Member States, therefore there is no reason to deprive them of this power. In the light of this fact, in the opinion of EUAC, the above proposal is in breach of the subsidiarity principle provided for in Article 5 paragraph 3 of the Treaty of the European Union.

4. Moreover, the aim of the proposed amendment is to ensure an appropriate level of security in the case of persistent failure to comply with the Schengen acquis standards by any of the Member States. The European Commission has not sufficiently proved that only the reintroduction of border control on the internal frontiers at the EU level may ensure such a level of security. The Commission has not put forward any less restrictive measures. At the same time, the suggested solution exceeds the measures necessary for the completion of this goal. For this reason, in the opinion of EUAC, the proposed Resolution is in breach of the proportionality principle laid out in Article 5 paragraph 4 of the Treaty of the European Union.

5. Moreover, the presented proposal exceeds the mandate given to the European Commission during the European Council in June 2011. Firstly, decision-making by the European Commission is, as presented in the draft Regulation, a norm rather than an exceptional measure. Secondly, there are no objective criteria basing on which the European Commission should make a decision, as the criteria set out in Article 23a are vague and leave much to the discretion of the European Commission. Thirdly, the condition of limited time and scope of decision-making by the European Commission has not been satisfied in full, as the Commission may prolong the border control reintroduction period (to a maximum of even two years).

* Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions „Schengen governance - strengthening the area without internal border control”