Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The carrying-out of checks at the external borders remains one of the main safeguards of the area without internal border control and significantly contributes to guaranteeing the long-term security of the Union and its citizens. Such checks are carried out in the interest of all Member States. One of the purposes of such checks is to prevent any threat to the internal security and public policy of the Member States, irrespective of the origin of such threat, including where such a threat derives from Union citizens.

(2) Minimum checks based on a rapid and straightforward verification of the validity of the travel document for crossing the border are currently the rule for persons enjoying the right of free movement under Union law. The phenomenon of foreign terrorist fighters, many of whom are Union citizens, demonstrates the need to reinforce checks at external borders with regard to persons enjoying the right of free movement under Union law.

(3) The travel documents of persons enjoying the right of free movement under Union law should therefore be checked systematically, on entry into and on exit from the territory of Member States, against relevant databases for stolen, misappropriated, lost and invalidated travel documents in order to ensure that such persons do not hide their real identity.

(4) Member States are obliged to check systematically third-country nationals against all relevant databases on entry. It should be ensured that such checks are also carried out systematically on exit.

(5) Border guards should also systematically check persons enjoying the right of free movement under Union law against the Schengen Information System (SIS) and other

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2017/458 of the European Parliament and of the Council. (See end of Document for details)*

relevant Union databases. This should be without prejudice to the consultation of national and Interpol databases.

(6) To that end, the Member States should ensure that their border guards have access at external border crossing points to the relevant national and Union databases, including the SIS and Interpol's Stolen and Lost Travel Documents ('SLTD') database in order to ensure full implementation of this Regulation.

(7) Such systematic checks should be carried out in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter'), in accordance with Article 4 of Regulation (EU) 2016/399 of the European Parliament and of the Council[(2)] and should fully respect human dignity, in accordance with Article 7 of that Regulation.

(8) In accordance with Article 15 of Regulation (EU) 2016/399, the Member States should deploy appropriate staff and resources in sufficient numbers to carry out systematic checks in order to prevent such checks from causing disproportionate waiting times and hindering the flow of traffic at external borders.

(9) The obligation to carry out systematic checks on entry and on exit applies to the external borders of the Member States. It also applies, both on entry and on exit, to the internal borders of the Member States for which the verification in accordance with the applicable Schengen evaluation procedures has already been successfully completed, but for which the decision on the lifting of controls on their internal borders pursuant to the relevant provisions of the relevant Acts of Accession has not yet been taken. In order to avoid subjecting persons enjoying the right of free movement under Union law to those checks twice when crossing the internal borders of those Member States by land, on exit it should be possible to subject them to those checks on a non-systematic basis, based on a risk assessment.

(10) Technological developments have made it possible, in principle, to consult relevant databases in such a way as to have a limited effect on the duration of border crossings, as the checks for both documents and persons can be carried out in parallel. Automatic border control gates could be relevant in that context. The use of passenger data received in accordance with Council Directive 2004/82/EC[(3)], or in accordance with other Union or national law, could also contribute to speeding up the process of carrying out the required checks during the border-crossing process. It is therefore possible to strengthen checks at external borders, without having a disproportionate negative effect on persons travelling in good faith, in order to better identify those persons who intend to hide their real identity or who are the subject of a relevant alert for security reasons or for arrest. Systematic checks should be carried out at all external borders.

(11) However, where the carrying-out of systematic checks against databases at the borders has a disproportionate impact on the flow of traffic at the border, Member States should be allowed not to carry out those systematic checks if, on the basis of a risk assessment, it is determined that such a relaxation would not lead to a security risk. Such a risk assessment should be transmitted to the European Border and Coast Guard Agency ('the Agency'), established by Regulation (EU) 2016/1624 of the European Parliament and the Council[(4)], and be the subject of regular reporting both to the Commission

and to the Agency. The possibility not to carry out those systematic checks should, however, only apply for a limited transitional period with regard to air borders. At the border crossing points where those systematic checks are not carried out, the identity of persons enjoying the right of free movement under Union law should be established on the basis of the production or presentation of an authentic travel document which is valid for crossing the border. For that purpose, those persons should be subject to a rapid and straightforward verification of the validity of the travel document for crossing the border, and of the presence of signs of falsification or counterfeiting, where appropriate by using technical devices, and, in cases where there are doubts about the travel document or where there are indications that such a person could represent a threat to the public policy, internal security, public health or international relations of the Member States, the border guard should consult all relevant databases in accordance with this Regulation.

(12) Where a Member State intends to carry out checks against relevant databases on a targeted basis regarding persons enjoying the right of free movement under Union law, it should notify the other Member States, the Agency and the Commission without delay. A procedure for such notification should be developed by the Commission, in cooperation with the Member States, in accordance with the Practical Handbook for Border Guards (Schengen Handbook).

(13) By means of Council Regulation (EC) No 2252/2004[(5)], the Union introduced the biometric identifiers of the facial image and fingerprints as a security feature in passports and travel documents issued by the Member States. Those security features were introduced in order to render passports and travel documents more secure and to establish a reliable link between the holder and the passport or travel document. Member States should therefore verify at least one of those biometric identifiers in cases of doubt as to the authenticity of the travel document for crossing the border or the identity of its holder. The same approach should apply to checks on third-country nationals, where possible.

(14) In order to facilitate systematic checks against databases, Member States should phase out travel documents without machine-readable zones.

(15) This Regulation is without prejudice to the application of Directive 2004/38/EC of the European Parliament and of the Council[(6)].

(16) Member States should, in their own interest and in the interests of other Member States, enter data into the Union databases. They should also ensure that the data are accurate and up-to-date and that they are obtained and entered lawfully.

(17) Since the objective of this Regulation, namely reinforcing the checks against databases at external borders in response, in particular, to the increased threat of terrorism, concerns one of the safeguards of the area without internal border control and, therefore, the proper functioning of the Schengen area, it cannot be sufficiently achieved by the Member States individually, but can rather be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of

proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(18) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(19) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC[(7)]; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(20) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[(8)]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(21) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*[(9)] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC[(10)].

(22) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[(11)] which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[(12)].

(23) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*[(13)] which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[(14)].

(24) As far as the use of the SIS is concerned, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession

and Article 4(2) of the 2011 Act of Accession. The results of queries in the SIS should be without prejudice to Article 1(4) of Council Decision 2010/365/EU[(15)].

(25) This Regulation respects the fundamental rights and observes the principles recognised, in particular, by the Charter.

(26) Regulation (EU) 2016/399 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Article 8 of Regulation (EU) 2016/399 is amended as follows:

(1) paragraph 2 is replaced by the following:

2. On entry and on exit, persons enjoying the right of free movement under Union law shall be subject to the following checks:

a verification of the identity and the nationality of the person and of the authenticity and validity of the travel document for crossing the border, including by consulting the relevant databases, in particular:

(1) the SIS;

(2) Interpol's Stolen and Lost Travel Documents (SLTD) database;

(3) national databases containing information on stolen, misappropriated, lost and invalidated travel documents.

For passports and travel documents containing a storage medium as referred to in Article 1(2) of Council Regulation (EC) No 2252/2004[(16)], the authenticity of the chip data shall be checked.

b verification that a person enjoying the right of free movement under Union law is not considered to be a threat to the public policy, internal security, public health or international relations of any of the Member States, including by consulting the SIS and other relevant Union databases. This is without prejudice to the consultation of national and Interpol databases.

Where there are doubts as to the authenticity of the travel document or the identity of its holder, at least one of the biometric identifiers integrated into the passports and travel documents issued in accordance with Regulation (EC) No 2252/2004 shall be verified. Where possible, such verification shall also be carried out in relation to travel documents not covered by that Regulation.

2a Where the checks against the databases referred to in points (a) and (b) of paragraph 2 would have a disproportionate impact on the flow of traffic, a Member State may decide to carry out those checks on a targeted basis at specified border crossing points, following an assessment of the risks related to the public policy, internal security, public health or international relations of any of the Member States.

The scope and duration of the temporary reduction to targeted checks against the databases shall not exceed what is strictly necessary and shall be defined in accordance with a risk assessment carried out by the Member State concerned. The risk assessment shall state the reasons for the temporary reduction to targeted checks against the databases, take into account, inter alia, the disproportionate impact on the flow of