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NOTE

from: Presidency
to: Working Party for Schengen Matters (SIS/SIRENE) /Mixed Committee
(EU-Iceland/Norway and Switzerland/Liechtenstein)

Subject: Implementation of Article 102A of the Convention Implementing the Schengen Agreement during the year 2012
- Draft report to be submitted to the European Parliament in accordance with Art. 102A(4) of the Convention Implementing the Schengen Agreement (CISA)

I. GENERAL

According to Article 102A(4) CISA, each year, after seeking the opinion of the Joint Supervisory Authority on the data protection rules, the Council must submit a report to the European Parliament on the implementation of Article 102A. The report is to include information and statistics on the use made of the provisions of this Article as well as the results obtained in their implementation, and should state how the data protection rules have been applied.

Pursuant to Article 2 of Regulation 1986/2006¹ Article 102A CISA was repealed on 9 April 2013. Nevertheless, the Council has to fulfil its obligations stemming from Article 102A CISA until that date.

¹ OJ L 381, 28.12.2006, p. 1.

Delegations will find herewith the draft Report on the implementation of Article 102A CISA during the year 2012.

Article 102A of the Schengen Convention entitles services in the Member States responsible for issuing registration certificates for vehicles to access to specific data in the Schengen Information System (SIS). This concerns data on motor vehicles, trailers and caravans which have been stolen, misappropriated or lost, and registration certificates for vehicles and number plates.

Pursuant to Decision 2006/228/JHA, since 31 March 2006 data on these certificates and number plates may be processed in the Schengen Information System.

II. DATA PROTECTION RULES

Pursuant to Article 101(1) CISA, access to data entered in the SIS and the right to search such data directly was reserved exclusively for the authorities responsible for border checks and other police and customs checks. Article 102(1) established the purpose limitation principle – the data provided for in Articles 95 to 100 may be used only for the purposes laid down for each category of alert referred to in those Articles. Furthermore, Article 102(4) CISA laid down a general ban on using the data for administrative purposes. Regulation (EC) No 1160/2005² added a new Article 102A to the CISA, thereby introducing the right for the services in the Member States responsible for issuing registration certificates for vehicles to have access to the specific data in the Schengen Information System (SIS).

This new provision was necessary in order to grant clearly identified services (other than police and customs) responsible for issuing registration certificates for vehicles a right of access to certain SIS data for the sole purpose of checking whether the vehicles presented to them for registration have been stolen, misappropriated or lost. The introduction of an exemption to Articles 92, 100, 101 and 102 has changed the purpose of the SIS, allowing access to the data not only for law enforcement purposes but also for administrative purposes.

² OJ L 191, 22.7.2005, p.18.

Article 102A contains certain conditions in order to ensure that fundamental data protection principles are respected. It specifically defines the services responsible for issuing registration certificates for vehicles, granting the access right for the sole purpose of checking whether the vehicles presented for registration have been stolen, misappropriated or lost.

The authorities performing the checks are the authorities which performed such checks in the past, mostly police authorities. Considering that the use of Article 100 data for the purpose laid down in Article 102A is the use of data for another purpose (checking vehicles before registration), such use of the data (Article 100, Article 102A) must be properly logged.

The difference between the purposes of Articles 101 in conjunction with 102 and Article 102A should be made clear. Article 101 limits the access to data in SIS for police and customs checks, law enforcement authorities within criminal procedure and immigration authorities. Article 102A(1) states that the services responsible for issuing registration certificates for vehicles have the right to access the data entered into the SIS (under Article 100) for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost. According to recital (6) of Regulation (EC) No 1160/2005 such use of the data referred to in Article 102A will be for administrative purposes. Therefore, the conditions laid down in Article 102A are to be interpreted strictly.

The only CISA article providing for an obligation to record every transmission is Article 103. The reference to Article 103 – the recording of every transmission for the purposes of checking whether the search is admissible or not – is interesting since these records may provide the statistical information on the use of the data referred to in Article 102A. Article 103 also provides Member States with the possibility to ensure control of the data used according to Article 102A. Also, Article 118(e) stipulates that one of the necessary measures to be adopted by the Member States in relation to the SIS is to ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control). That is why proper logging of the use by vehicle registration offices of certain data to establish whether a vehicle was stolen, misappropriated or lost is mandatory.

The recording of every transmission for the purpose of checking enables the appropriate authorities to check the lawfulness of the processing of the data in accordance with Article 102A and to comply with the obligation to ensure data access control (Article 118 (e)). Failure to ensure proper control of the use of data may have negative implications for data protection, i.e. implementation of the data quality standards , proportionality principles and data security. The obligation to record the transmission of Article 102A data is of great importance, not only to ensure proper use but also to have reliable statistics.

In accordance with Article 102A(1) *in fine*, the access to data referred to in this Article by the competent services is governed by the national law of each Member State.

The implementation and the use of Article 102A CISA is strictly subject to the same rules on data protection as those laid down in the appropriate CISA provisions, notably in Articles 101, 102, and 103 to 118, like any other data processed in the SIS. The national Data Protection Agencies act as the supervisory authorities under Articles 114 and 128 CISA.

Data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates.

National regulations in place prohibit information being retrieved by authorised personnel unless they are conducting an active investigation regarding the vehicle in question. The SIS can only be accessed from specific computers where a specific user has logged in. Every consultation has to be logged properly. The SIS has only been made available to a limited number of people and information retrieved is in the form hit/no-hit. A hit will always be reported to the police, who will investigate the matter.

III. CURRENT USE AND RESULTS

1. Since 1 January 2010 **Austria** has changed the way of counting hits. The only hits currently accounted for are those which arise during the registration process.
2. The legal procedure established in **Belgium** requires systematic checks to be performed when a request for a vehicle registration is entered into the system of the vehicle registration authority. In consequence, the number of hits is higher in comparison with the results obtained through checks in the SIS performed only by field officers.

In Belgium, a bona fide buyer has always been well protected, even before the implementation of Article 102A of CISA. If the conditions laid down by national law are met, the bona fide buyer can keep the vehicle.

3. In **Bulgaria**, the implementation of Article 102 A and the consequent access to the SIS by the Unit for Control of Automobile Transportation has led to an increase in the statistics of hits. Mostly, the implementation of the Article helped to prevent organised crimes related to the organised traffic of stolen vehicles, certificates and insurance fraud. The implementation of this Article, as a new procedure for searches, had very good results.

According to the national legislation, following the 30 day seizure terms and the end of all necessary checks connected with the investigation, in most cases the competent prosecutor's office decreed the object to be returned to bona fide owners.

The main problem related to the use of this Article concern the VIN number of trailers and semi-trailers, which often only has four or five figures.

The number of internal hits represents the total number of hits for each category (motor vehicles, trailers and caravans, certificates and number plates). These hits were established following their presentation before the Bulgarian vehicle registration authority for first registration and for re-registration.

4. In the **Czech Republic** the number of hits presented represents the number of positive technical matches in SIS following the certification process (e.g. the VIN is checked both in the certificates and in the license plates). It is observed that a considerable number of hits originated from checks performed by the car registration authorities.

As regards the impact of the implementation of this Article in the fight against organised crime in CZ, access to SIS has substantially complicated the legalisation of stolen vehicles and therefore restricted the "business" of organised crime connected to stolen vehicles. On the other hand, the implementation of Article 102A has also contributed to the protection of bona fide persons, who are immediately alerted to the illegal origin of vehicles/documents.

Overall implementation is positive, but further efforts are necessary to reinforce the impact of the use of this Article, namely physical qualified checks on vehicle identifiers (e.g. VIN) when registering the car, repeated checks during car registration to be able to react to delayed reports of car thefts, and harmonised rules in the EU for stolen car seizure and repatriation. Co-operation between the police and car registration authorities must also be improved.

CZ is working on improving internal communication with the car registration authorities in order to obtain better information about hits, as well as to get statistical data in a more structured way.

5. In **Denmark** Article 102A CISA is not yet fully implemented.

6. In **Germany**, in 2012, 59 % of the hits on foreign alerts concerning vehicles resulted in checks of national registered vehicles. Even though the percentage is lower than 2011, the clear number of hits rose 2 % in total due to the fact that the total number of hits in Germany rose generally.

Due to the fact that it is now possible to check every vehicle before registration, police can take measures to prevent legalisation of vehicles and start inquiries earlier. This has allowed an improvement in the protection of bona fide persons using judicial possibilities.

The use of this Article has also proven to be a very useful measure in preventing and fighting vehicle crime.

For technical reasons, it is currently not possible to have access to licence plates and vehicle registration documents, however this situation will be rectified in the future.

DE policy requires a systematic check on vehicles prior to registration, a procedure that will be maintained in the future, including on behalf of the 450 local authorities.

7. In **Estonia** all vehicles brought for registering (including changes with already registered ones) are checked through Schengen Information System. Therefore, almost half of the total number of vehicle hits (Licence Plates not included) in Estonia are based on checks done by the Estonian Road Administration (ERA). It is worth noting that 47.1 % (40 out of 85) of the vehicles were seized in conjunction with the ERA.

If there is a hit in the Schengen Information System during the registration procedure, the vehicle and its documentation will be seized. If the vehicle has been acquired in good faith and the issuing country does not claim the searched vehicle back with a rogatory letter within two months, it will be released in Estonia and given back to the bona fide purchaser. The person who had bought the stolen vehicle has the possibility of applying to civil court as a bona fide purchaser in order to examine the question of ownership.

The implementation of Article 102A very effectively prevents the registering of stolen vehicles in the Estonian Vehicles Register. According to the national experience the implementation of Article 102A is very successful in restricting the smuggling of stolen vehicles. It has also helped raise community awareness in the field of buying used vehicles (especially from foreign countries) and exhort citizens to caution.

Concerning bona fide purchases, the ownership issues remain unsolved, which creates a situation where the person who reported the vehicle stolen will not be able to get the vehicle back and the person who bought the vehicle in good faith will not be able to register it properly or do any other deeds with the vehicle. Regarding the deletion of alerts, the vehicles that are found and not claimed back within due time following the requirements provided to the issuing country remain active in the SIS even though the deletion of the alert has been requested, which creates a situation where the person who acquired the vehicle will not be able to make proper use of it.

8. In **Greece** the authorities which are responsible for vehicle registration (Ministry of Infrastructure, Transport and Networks) already had indirect access to this category of data. Direct access was established upon full implementation of SIS II.

The results of the implementation of this Article are encouraging. It has led to an increase in hits, and thereby enhanced the capability of the services in the fight against illicit trafficking of stolen vehicles and the protection of bona fide individuals.

9. **Hungary** performs real-time, systematic and automatic CISA Article 102A checks on the VIN, L/P and the last registration certificate of all vehicles presented for registration before issuing the new registration certificate. This is the only procedure that enables the verification of a vehicle's provenance before its fraudulent legalisation.

Since an originality check is no longer mandatory in every case of vehicle re-registration, and consulting ASF-SMV and EUCARIS is obligatory only in some specific types of re-registration, real-time, systematically and automatically performed CISA Article 102A checks on the VIN, L/P and the last registration certificate of all vehicles presented for registration before issuing the new registration certificate remains the only way to find out whether or not the vehicle has criminal provenance.

The sooner the wanted status of the vehicle is detected, the bigger the possibility it gives either to law enforcement authorities to apply appropriate investigative measures, or to bona fide owners to settle their claims in a satisfactory manner (e.g. directly with the seller who sold them a stolen vehicle).

10. In **Latvia** the investigation following a hit always provides useful information concerning the involvement of organised crime, allowing police to trace its routes and consequently combat it.

There is no added value in the implementation of the Article relating to bona fide persons, since any procedure falls under the competence of national law and mainly civil law. On the other hand, the objects under Article 102A are usually lost, misappropriated and stolen, and vehicles and vehicle registration documents are misappropriated or stolen. The main question will always be to execute the objective of Article 100, which almost always falls within the area of criminal law.

No essential difficulties have been faced so far in implementing Article 102A.

11. **Malta** does not consider that the partial implementation (available only for police authorities) of Article 102A has brought an increase in hits related to stolen vehicles locally. Hence the lack of significant results from the small number of hits.

If implemented thoroughly and not frustrated by the application of the rule of the third party in bona fide possession, Article may dissuade people from buying vehicles without properly verifying their provenance.

The main difficulties relate to the fact that Malta Police Force does not receive the lists of the vehicles before their registration and that this is a time-consuming process.

12. The application of Article 102A in **Poland**, along with other methods and police techniques, has contributed to the fight against organised crime by preventing the registration of vehicles that have been stolen, misappropriated or lost in any other way (allowing the discovery of 139 hits recorded in the category of vehicle and 8 hits in the category of certificate). It has also contributed to a reliable verification of vehicle and document registration in accordance with national legislation and a decrease in the registration of stolen, misappropriated or lost vehicles and documents. It also protects citizens against the harmful effects of the possession and use of such vehicles and documents.

In PL checks made by the competent local authorities on the registration of vehicles are currently carried out manually by the Central Technical Body of the National Technical Information System. Nevertheless, there is an urgent need to use an IT tool for the completion of checks on behalf of the local authorities.

13. **Romania** has recorded a clear increase in the number of hits due to the implementation of Article 102A. The application of this Article has also improved police investigations, with regard to both organised crime and police checks for clarification of the legal status of vehicles.

Article 102A is only partially implemented in RO, meaning that access to the SIS database is allowed only for the authorities involved in the process of vehicle registration. In order to fully implement the Article it would be necessary to amend the legislation and to develop a technical system that could offer hidden access to the SIS database to those entities that currently do not have access.

After implementing Article 102A of CISA the positive result of a query is very helpful in our police investigations into organised crime, allowing the identification and query of the person who presents the vehicle for registration.

According to the Romanian Civil Code, the bona fide persons buying a stolen car are always entitled to request their rights of property over a vehicle that was seized from their possession while the penal proceedings are ongoing and also after the end of criminal proceedings.

14. In **Slovenia** the number of alerts has not increased since implementation of Article 102A. All vehicles registered in Slovenia before the implementation of SIS were traced and alerts created, making it impossible to register any vehicle on which a valid alert exists.

Bona fide buyers can then use the vehicle on the territory of Slovenia and also prolong the registration, but when the bona fide buyer decides to sell the vehicle the new owner must be informed of the alert in the SIS.

15. The registration of vehicles in **Slovakia** requires a mandatory search in the SIS and the implementation of Article 102A has provided added value in terms of its preventive function. If there is a hit, it is not possible to register the vehicle.

16. In **Sweden** all vehicles (cars, trucks, lorries, motorcycles, buses, trailers and caravans) that are registered or re-registered are checked through SIS at least once prior to registration. This enables a systematic approach to checking vehicles and their identities prior to registration or re-registration. Nevertheless, in the case of the buyer of a stolen vehicle or a vehicle with stolen documents that person will not be able to recover the loss.

17. In **Switzerland**, in the event of a hit, the competent police force is directly contacted by the Road Traffic Licensing department. This situation does not allow the registration of detailed statistics.

18. In most of the countries currently applying Article 102A CISA, the authorities performing the checks are authorities which performed such checks in the past, mostly police authorities.

19. However, a few Member States were unable to provide any relevant figures for 2012 due to the fact that the provision has not been fully implemented (DK).

20. The first table shows the number of hits when registering vehicles (102A CISA).

21. The second and third tables show that some Member States may have fully implemented the requirement to collect statistics, thus allowing them to provide statistics for hits and searches of each category including the number for each category of hits.

In conclusion, in 2012 Article 102A CISA was totally or partially implemented in the following countries participating in the Schengen Information System: AT; BE; BG; CH; CZ; DE; DK; EE; EL; FR; HU; IT; LT; LV; MT; NL; PL; RO; SE; SI and SK.

IV. STATISTICS

Implementation of Article 102A CISA during 2011

	AT	BE	BG	CH	CZ	DE	DK	EE	EL	FR	HU	IT	LT	LV	MT	NL	PL	RO	SE	SI	SK
Government authority	NO	YES	YES	YES	YES	YES		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Direct access	NO	YES	YES	YES	YES	YES		NO	NO	YES	YES	NO	YES	YES	NO	NO	YES	YES	NO	YES	YES
A search is always automatically performed when registering vehicles	YES	YES	YES	NO	YES	NO	NO	YES	NO	YES	YES	NO	YES	YES	NO	YES	NO	NO	NO	YES	YES
Items of Article 102A implemented:																					
a) motor vehicles	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X
b) trailers and caravans	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X
c) (i) certificates	X		X		X			X			X		X	X			X				X
c) (ii) number plates	X		X	X	X					X	X		X				X		X	X	X

Hits pursuant to Article 102A CISA

	HITS motor vehicles	HITS trailers and caravans	HITS certificates	HITS Number plates	TOTAL HITS
AT	9				9
BE	954				954
BG					274
CZ³	8547		13257		21804
DE					1440
DK					2
EE	40			1	41
EL	3	3			6
HU	234	385	237	214	1070
IT	373				373
LT	1060	23	191	229	1503
LV	17	4	5	2	28
NL	241				241
PL	139	24	8	11	182
RO	69	1			70
SE	27				27
SI	10				10

Searches pursuant to Article 102A CISA

	Searches motor vehicles	Searches trailers and caravans	Searches certificates	Searches on number plates	TOTAL SEARCHES
BE	1247732				1247732
BG					36695911
EE	1186995		2		1186997
HU	72965	5942	117629	10647	207183
IT	97678				97678
LT	562380	29362	486014	178115	1255871
MT	83002			83002	166004
NL	651	194			854
PL	159300		9636		168936
RO	158117	77878			235995

³ Due to still not solved solution for exact statistic collection from car registration authorities, CZ stated that cca 35% of overall hits on searched vehicles are initiated by implementation of Article 102A means cca 200 hits.

V. CONCLUSIONS

- a) According to Annex I to Council Decision 2007/471/EC, the provisions of Article 64 and Articles 92 to 119 CISA, as well as Regulation (EC) No 1160/2005, are applicable to the new Schengen States as from 1 September 2007. As already stated in the report on the implementation of Article 102A of the Convention implementing the Schengen Agreement, in the course of 2009 almost all of the "new" Member States implemented Article 102A CISA either fully or partly, on time or with short delays.
- b) In 2012 Article 102A CISA was totally or partially implemented in the following countries participating in the Schengen Information System: AT; BE; BG; CH; CZ; DE; DK; EE; EL; FR; HU; IT; LT; LV; MT; NL; PL; RO; SE; SI and SK.
- c) In most of the countries currently applying Article 102A CISA, the authorities performing the checks are the authorities which performed such checks in the past, mostly police authorities.
- d) In most of the Member States, the implementation of Article 102A CISA is regarded as an added value and an important tool in combating organised vehicle crime and helping to protect the bona fide customers of imported stolen used cars.
- e) As far as reported, data protection rules have been applied according to the CISA provisions. The data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates.
- f) The services responsible for issuing registration certificates for vehicles are entitled to have access to the relevant SIS data, in accordance with Article 102A(1), for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost.

- g) The content of the searches (where the data were entered or could be entered in the system), which is made up of alerts on stolen, misappropriated or lost motor vehicles, trailers, caravans and vehicle licence plates, may contain the following data: make, vehicle identification number, registration number, colour, nationality and related remark. Alerts on stolen, misappropriated, lost or invalidated registration certificates for vehicles may contain the following data: document number(s) (a second document number may also be inserted, if available, when the alert concerns a document which has already been issued, and the minimum and maximum numbers when the alert concerns a blank document), category, nationality, surname, date of birth, date of loss. Both types of alert contain the Schengen reference number, the reason for request, the action to be taken, the insertion date and the expiry date.
- h) National data protection authorities generally regard registration certificates and number plates as constituting personal data, unless the circumstances of processing do not provide any possibility of identifying the holder, or require an unreasonable amount of effort to do so. Data are generally processed on a hit/no hit basis and via the VIN number.
- i) Article 102A(3) stipulates that the notification by the vehicle registration authority to the police or judicial authorities of information brought to light by a search of the SIS which gives rise to suspicion of a criminal offence is to be governed by national law, which is the case in the Member States.
- j) The hit in the SIS will be confirmed following the exchange of supplementary information between the SIRENE Bureau of the Member State that has registered the hit and the SIRENE Bureau that has issued the SIS alert. The action of seizure on the basis of the alert will be taken by police authorities. Hence an official employed by a service responsible for issuing vehicle registration certificates is not required to further process personal data retrieved from the SIS. Once the official has achieved a hit following a search in the SIS on the data categories which he or she is authorised to search, the national SIRENE Bureau will be contacted.

VI. NEXT STEPS

After it has been examined by the Working Party for Schengen Matters (SIS/SIRENE) on 15 July 2013, this report will be forwarded to the Joint Supervisory Authority (JSA) for an opinion. Once the JSA has delivered its observations, the report will be finalised by the Working Party for Schengen Matters (SIS/SIRENE). The draft report will then be submitted to COREPER and the Council to be forwarded to the European Parliament in accordance with Article 102A(4) of the Convention implementing the Schengen Agreement.
