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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 2011 - 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 shall include information and statistics on the use made of the provisions of this Article; the results obtained in their implementation and shall state how the data protection rules have been applied. This is the fifth report since the Regulation No 1160/2005 on the new Article 102A entered into application in January 2006.

Article 102A of the Schengen Convention introduces, for services in the Member States responsible for issuing registration certificates for vehicles, a right to have access to specific data in the Schengen Information System. 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, data on these certificates and number plates may be processed in the Schengen Information System since 31 March 2006.

II. DATA PROTECTION RULES

Pursuant to Article 101(1) of the CISA, access to data entered in the SIS and the right to search such data directly was reserved exclusively to the authorities responsible for border checks and other police and customs checks. Article 102(1) established the purpose limitation principle – the data provided may only be used for in Articles 95 to 100 only for the purposes laid down for each category of alert referred to in those Articles. Furthermore, Article 102(4) of the CISA laid down a general prohibition to use the data for administrative purposes. Regulation (EC) No 1160/2005¹ added a new Article 102A to the CISA by introducing a right to 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 that clearly identified services (other than police and customs) responsible for issuing registration certificates for vehicles would be granted 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.

Article 102A contains certain conditions in order to ensure that the fundamental data protection principles would be 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 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.

¹ OJ L 191, 22.07.2005, p.18.

The difference between the purpose of Articles 100 and 102A should be clearly distinguished. Article 100 (1) provides that data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in the SIS. Article 102A(1) states that the services responsible for issuing registration certificates for vehicles shall 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 foreseen in Article 102A will be for administrative purposes. Therefore, the conditions laid down in Article 102A shall be interpreted strictly.

The only article in the CISA providing for an obligation to record every transmission is Article 103. The reference to Article 103 – the recording of every transmission for purposes of checking whether the search is admissible or not – is interesting since these records may provide for 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). Hence a proper logging of the use by vehicle registration offices of certain data to establish whether a vehicle was stolen, misappropriated or lost is obligatory.

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 the proper control of the use of data may have negative implications for data protection, i.e. implementation of the data quality, 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 was strictly subject to the same rules on data protection as those laid down in the appropriate CISA provisions, notably in Arts. 101, 102, and 103 to 118, like any other data processed in the SIS. The national Data Protection Agencies are 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 to be retrieved by the authorized personnel unless they have 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. In **DE**, in 2011, 68% of the hits on foreign alerts concerning vehicle resulted of checks of vehicle registered, however, it is not possible to ascertain if the registered increase is due to the implementation of this article. Nonetheless, now it's possible to check every vehicle before registration, allowing police to prevent the legalization of vehicles, and the early start of legal measures deemed necessary. It also ensures better protection for bona fide individuals and is also a measure for prevention and fight against vehicle related crime.

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

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

2. The legal procedure established in **BE** requires systematical checks performed whenever a request for a vehicle registration is inserted in 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.

The statistic of hits shows that there are still a high number of attempts to register stolen vehicles in BE. The fact that this isn't possible anymore reduces the value of a stolen vehicle on the BE illegal market.

On the other hand, BE considers that it would greatly benefit itself and the other Member States if all vehicle registration services within the Schengen area could also check the number of the registration certificate, since large quantities of those documents are used to create cloned vehicles (8000 stolen vehicles per annum, including not only clones of BE vehicles, but certainly also many foreign vehicles (usually those of the country of registration)). In BE a bona fide buyer can keep his or her vehicle.

3. In **GR** the authorities which are responsible for the cars registration (Ministry of Infrastructure, Transport and Networks) have, for the time being, indirect access to this category of data. Direct access will be established with the full implementation of SIS II.

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

4. According to **EE** legislation, all vehicle related data, namely registration and alterations to the registration should be checked through SIS by the Estonian Road Administration (ERA). Therefore, almost 50% of all hits discovered are based on checks done by ERA. 30% (15 vehicles) of the vehicles were captured in conjunction with ERA (in case of a hit in the SIS the vehicle and its documentation will be seized).

A person who has bought a stolen vehicle can apply to the civil courts for compensation for damages from the person who sold the vehicle. If the person who has sold the vehicle remains unidentified, the person who bought the stolen vehicle stays has no legal protection. The implementation of Article 102A does not extend to the protection of bona fide persons who have acquired a stolen vehicle. The total number of hits relates to vehicles, caravans, trailers and licence plates as the statistical tool does not permit division into different categories, although it is possible to specify the number of searches for each category (see the second table under the heading "Statistics").

The implementation of article 102A has had great success on restricting the field of smuggling of stolen vehicles.

5. The registration of vehicles in **SK** requires a mandatory search to the SIS and for that matter the implementation of the art.102A has had an added value due to its preventive function. In fact, in case of a hit, it is not possible to register vehicle.
6. The application of article 102A in **PL**, together with other methods and police techniques, has contributed to the fight against organized crime by preventing the registration of stolen, misappropriated or lost in other way vehicles (it has allowed the discovery of 129 hits recorded in the category of vehicle, and 4 hits in the contributes to a reliable verification of registration of vehicles and documents in accordance with national legislation and the reducing of the registration of stolen, misappropriated or lost in any other way vehicles and documents. It also protects citizens against the harmful effects of the possession and use of above mentioned goods. In PL, currently, checks made by the competent local authorities in matters of registration of vehicles are carried out manually by the Central Technical Body of the National Technical Information System. A total of 106301 requests for data were received from the 256 local authorities competent in matters of registration of vehicles from all over PL, including questions related to 99108 vehicles and 7 193 vehicle registration documents.
7. Since 1 January 2010 **AT** has changed the way of counting hits. The only hits currently accounted for are those which arise during the registration process.
8. In **BG** the Unit for Control of Automobile Transportation (CAT) within the Chief Directorate for Public Order and Security in the Ministry of the Interior obtained access to the SIS, as from 7 December 2010. Since then and in result of the implementation of Article 102 A there has been an increase in the number of hits. The application of this provision has helped to prevent organized crimes related to traffic of stolen vehicles, certificates and insurance fraud.
9. In **CH**, in case of a hit, the competent police force is directly contacted by the Road Traffic Licensing department. This situation doesn't allow the register of a detailed statistic.
10. Like in 2010, in **CZ** 35 % of all hits resulted from car registration. The number of hits in the table represents just some of the hits linked to the vehicle registration checks. Due to continuing difficulties with data collection by the car registration authorities, the statistics provided are incomplete.

Implementation of this provision is positive, however further efforts are necessary to reinforce the impact of the 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 on delayed reports of car thefts, harmonized rules in the EU for stolen car seizure and repatriation. Also the co-operation between the police and car registration authorities must be improved.

CZ authorities are still working on finding the best way how to communicate with the car registration authorities about hits and also to get statistical data in structure necessary for this report from them.

11. **HU** performs real-time, systematic and automatic CISA Art 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 the vehicle provenance before its fraudulent legalization.

12. In **LV** the implementation of Article 102A is a very important issue, because the Road Traffic Safety Directorate in Latvia is able to query the SIS and to ascertain stolen, lost and misappropriated vehicles as well other objects under Article 100 of CISA. The matching of the hit provides useful information for the following investigation, in some cases concerning organized crime.

13. **RO** registers a clear increase in the number of hits discovered due to the implementation of Article 102A. The application of this Article also as improved police investigations, whether in what concerns organized crime and in regards to police checks for clarification of the legal status of the vehicle.

Article 102A is only partially implemented in RO, meaning that the access to sis data base is allowed only to the authorities involved in the process of vehicle registration. In order to fully implement the Article it would be necessary a modification of the legislation, as well as the development of a technical system that could offers a hidden access to sis data base to those entities that currently don't have access.

14. In **SE** 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.

15. In **DK** Article 102A of CISA is not yet fully implemented.
16. **MT** does not consider that the partial implementation (available only for police authorities) of article 102A brought an increase in hits related to stolen vehicles locally. Thus, the lack of significant results, mainly, of the small amount of hits.
17. 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. So far, these services have been other than government services in only one Member State (AT). As provided for in the second paragraph of Article 102A, these services have no direct access to the SIS.
18. However, a few Member States were unable to provide any relevant figures for 2011 due to the fact that the provision is not fully implemented (DK).
19. Some Member States may be having difficulty providing statistics as there are no resources to finance technical functionalities to collect statistics at the car registration authorities.
20. The first table shows the number of hits when registering vehicles (102A CISA).
21. The second table shows that some Member States may have fully implemented the requirement to collect statistics, thus allowing them to provide statistics mostly for searches of each category including the number for each category of hits. The statistical tool in EE allows only the total number of hits to be shown, divided into the number of searches for each category. Several Member States (BE, BG, CZ, EE, ES, HU, IT, LT, MT, NL, RO) are able to provide statistics besides the hits on the total number of searches, as shown by table 3.
22. In BE, BG, CZ, DE, EE, ES, HU, LT, LV, PL, RO, SE, SK, SI, searches carried out by car registration authorities are recorded separately in the N.SIS in order to comply with the relevant Schengen Convention data protection rules regarding Art. 103 CISA.

In conclusion, in 2011 Article 102A CISA was totally or partially implemented in the following countries participating in the Schengen Information System: AT, BE, CZ, DE, DK, EE, EL, ES, FR, HU, IT, LT, LV, MT, NL, SE, SI, SK, PL, RO and CH.

IV. STATISTICS

Implementation of Article 102A CISA during 2011.

	AT	BE	BG	CZ	DE	EE	EL	FR	HU	IT	LT	LV	MT	NL	PL	RO	SE	SK	CH
Government authority	NO	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	NO	NO	YES	YES	NO	YES	YES	NO	NO	YES	YES	NO	YES	YES
Indirect access																			
A search is always automatically performed when registering vehicles	YES	YES	YES	YES	NO	YES	NO	YES	YES	NO	YES	YES	NO	YES	NO	NO	NO	YES	NO
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
b) trailers and caravans	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
Hits occurred when registering vehicles	7	951	735	2834		521			939	531	473	28	15	211			24		

	HITS motor vehicles	Searches motor vehicles	HITS trailers and caravans	Searches trailers and caravans	HITS certificates	Searches certificates	HITS Number plates	Searches on number plates	TOTAL HITS	TOTAL SEARCHES
AT	6						1		7	
BE	951	1199550							951	1199550
CZ	596	932538			258	183789	1980	183391	2834	1299718
EE	15	723524				506			15	724030
HU	204	49831	434	5860	136	73547	165	7231	939	136469
IT	531	223814							531	223814
LT	920	565623	19	27074	183	460908	271	94060	1393	1147665
LV	18		1		9				28	
MT	12	11052					3	11052	15	22104
NL	211	628		187					211	815
PL	113		12		4		4		133	
RO		131423		10823						142246
SE	24								24	

	TOTAL HITS		TOTAL SEARCHES
AT	7		
BE	951		1199550
BG	735		3334555
CZ	2834		1299718
EE	521		723524
ES	62		5198
HU	939		136469
IT	531		223814
LT	473		1147665
LV	28		
MT	15		22104
NL	211		815
RO			142246
SE	24		

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 reported 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 have implemented Article 102A CISA either fully or partly on time or with short delays.
- b) Hence in 2011 Article 102A CISA had been totally or partially implemented in the following Member States: AT, BE, CZ, DE, DK, EE, EL, ES, FR, HU, IT, LT, LV, MT, NL, SE, SI, SK, PL, RO and CH.
- c) 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.
- d) In the majority of the countries, the checks foreseen in Art. 102A were already performed before the implementation of this Article, by means of cooperation between the vehicle registration authorities and the law enforcement authorities, which had access to the SIS. This may explain why the results obtained in the initial years of implementation are not as visible as might have been expected in some Member States.
- e) Nevertheless most of the Member States have already realised an added value in the implementation of Article 102A CISA as described above. Member States in which Art. 102A has recently been implemented have already stated a remarkable increase in registering hit results (e.g. BG, GR, MT, RO).
- f) Article 102A is regarded as an important tool in combating organised vehicle crime and helps to protect the bona fide customers of imported stolen used cars.
- g) It was also observed that Article 102A may be having an influence on the changed modus operandi of organised crime, which could require further measures.

- h) Even though that the implementation of Article 102 A CISA is assessed as positive, some Member States analysed that further efforts are necessary to reinforce the impact of that Article, namely physical qualified checks on vehicle identifiers (e.g. VIN) when registering the car, repeated checks during car registration in order to be able to react to delayed reports of car thefts, harmonised rules in the EU for stolen car seizure and repatriation procedures.
- i) As far as reported, data protection rules have been applied according to the CISA provisions. Data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates.
- j) The services responsible for issuing registration certificates for vehicles are entitled to have access to the relevant SIS data, in accordance with Art. 102A (1), for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost.
- k) 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.
- l) National data protection authorities generally consider registration certificates and number plates to constitute 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.

- m) Article 102A(3) stipulates that the communication 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 shall be governed by national law, which is the case in the Member States.
- n) 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.
- o) Several Member States do not compile records in relation to Article 102 A CISA and some are still developing an effective tool for the relevant statistics despite the fact that proper log-keeping is ensured. In some Member States budgetary problems make it difficult to implement related technical functionalities to collect statistics from the car registration authorities.
- p) Member States have to provide full and up-to-date statistics for the 2011 review of the implementation of Article 102A.

VI. NEXT STEPS

After having been examined by the Working Party for Schengen Matters (SIS/SIRENE) on 14 September 2011 this report will be forwarded to the Joint Supervisory Authority (JSA) for an opinion. After the JSA has delivered its observations, the report will be finalised by the Working Party for Schengen Matters (SIS/SIRENE). Then the draft report will be submitted to COREPER and Council to be forwarded to the European Parliament in accordance with Art. 102 A (4) of the Convention Implementing the Schengen Agreement.