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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 2013 (1 January 2013 to 8 April 2013)
- 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

Under Article 102A(4) of the Convention implementing the Schengen Agreement (CISA) each year 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 on 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Pursuant to Article 2 of Regulation 1986/2006¹ Article 102A CISA was repealed on 9 April 2013.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 under Article 102A CISA until that date.

¹ OJ L 381, 28.12.2006, p. 1.

Delegations will find below the draft Report on the implementation of Article 102A CISA from 1 January 2013 to 8 April 2013.

Article 102A CISA entitles services in the Member States responsible for issuing registration certificates for vehicles to access 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, between 31 March 2006 and 8 April 2013 data on these certificates and number plates could 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, entitling the services in the Member States responsible for issuing registration certificates for vehicles to access 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 provides for 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.

Considering that the use of Article 100 CISA 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 to authorities responsible for border, police and customs checks, and the coordination of such checks; national judicial authorities; authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on aliens. Article 102A(1) states that the services responsible for issuing registration certificates for vehicles have the right to access the data entered in the SIS (under Article 100) for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost. In accordance with 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 of data 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 enables Member States to ensure control of the data used pursuant 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 have access only 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 from being retrieved by authorised personnel unless they are conducting an active investigation regarding the vehicle in question. The SIS can be accessed only from specific computers where a specific user has logged in. Every consultation has to be logged properly. The SIS has been made available only 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. **Austria** changed the way of counting the hits in January 2010. Since then only hits which occur during the registration process are counted.

2. The legal procedure established in **Belgium** requires systematic checks to be performed when a request for a vehicle registration is entered 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.

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. **Czech Republic** registered circa 30 % increase in the number of hits following the implementation of Article 102A. CZ considers also that harmonisation is needed concerning seizure and repatriation of vehicles and in the area of bona fide owners. Statistics are not available due to the change of the system.

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

6. In **Estonia** all vehicles brought for registration (including changes to already registered ones) are checked through Schengen Information System. The implementation of Article 102A is very effective at preventing the registration of stolen vehicles in the Estonian Vehicles Register. Judging from experience, the implementation of Article 102A has proved very successful at restricting smuggling of stolen vehicles. It has also helped in raising public awareness with regard to buying used vehicles (especially from foreign countries) and exhorts citizens to exercise caution.

7. In **Germany**, between 01 January 2013 and 08 April 2013 66% of the hits on foreign alerts concerning vehicle originated with checks on vehicles which had been registered in our country.

Due to the fact that it was possible to check every vehicle before registration, police could take measures to prevent legalisation of vehicles and start inquiries earlier. This has produced an improvement in the legal means available for protecting bona fide persons.

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

While for technical reasons it is currently impossible to have access to licence plates and vehicle registration documents, 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.

DE considers the implementation of this article a very useful measure in preventing and fighting against vehicle crime.

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 origin 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 the new registration certificate is issued remain 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 greater the possibility it gives either to law enforcement authorities to deploy 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 **Italy**, because of the particular structure of the national system, it is not possible to report to what extent searches pursuant to Article 102A contributed to increasing the number of hits.

11. 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 within the competence of national law, 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 meet 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.

12. In **Liechtenstein**, the *Motor Vehicle Agency* has the right to access the relevant SIS data, but it does not do it in a direct way. It sends a monthly list of newly imported vehicles to the **SIRENE** Bureau to conduct checks against the Schengen Information System. Besides this standardized process, the staff of the aforementioned agency call the **SIRENE** office directly when an immediate check against SIS is necessary.

13. **Malta** considers that, if implemented thoroughly and not frustrated by the application of the rule of the third party in bone fide possession, Article 102A may dissuade people from buying vehicles without properly verifying their provenance.

The implementation of this Article may work in favour of as well as against the bona fide possessors depending on whether they have already paid etc.

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.

14. In **Norway**, the Public Roads Administration still only has indirect access to SIS. However, whenever it is necessary it contacts the police authorities to request a search in 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.

Implementation of Article 102A has its added value, bearing in mind the fact that searching the SIS is an unavoidable requirement of each vehicle registration operation. It has a preventive function as well and it is not possible to register the vehicle if the alert is inserted in the SIS.

16. In **Sweden**, every single vehicle, including cars, trucks, lorries, motorcycles, buses, trailers and caravans that are registered or re-registered in Sweden, is checked through SIS prior to registration.

17. The Road Traffic Licensing Departments of the 26 cantons of **Switzerland** have direct access, according to the national legal bases (Article 7(1)(j) of the Ordinance on the national part of the Schengen Information System and the SIRENE Bureau and Article 355d(2)(g) of the Swiss Penal Code).

Searches in the SIS are not carried out automatically every time a request for a vehicle registration is inserted. The Road Traffic Departments have access to determine whether a licence plate has been misused. Access is given on a case- by-case basis and is not automatic.

In CH, 346 hits have been found on alerts issued by other Member States and 166 hits have been found abroad on alerts issued by CH.

The increase in the number of alerts following the implementation of this article cannot be estimated, since access to the SIS has been available to the Road Traffic Licensing Departments since the beginning of the accession of SIS to Schengen. For the same reason it is not possible to estimate the extent to which the implementation of this Article has led to an increase in the number of hits.

Due to the short time SIS has been operational in Switzerland, it is not possible to determine the contribution of the implementation of this article to the fight against organised crime or to the protection of bona fide persons who have acquired a stolen car or stolen documents.

As for the data protection issues in the Road Traffic Licensing Departments access is limited to data on vehicles and is granted with read-only rights.

In general, the implementation of Article 102A is useful for vehicle register authorities and facilitates their work by enabling them to check whether a vehicle is lost or stolen or searched for in criminal proceedings. This prevents stolen or wanted vehicles being registered and licensed.

CH has not had any problems with the implementation of this article.

IV. STATISTICS³

Implementation of Article 102A CISA during 2013

	AT	BE	BG	CH	CZ	DE	DK	EE	EL	FR	HU	IT	LI	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	YES	YES
Direct access	NO	YES	YES	YES	YES	YES	NO	NO	NO	YES	YES	NO	NO	YES	NO	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	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	X	X

³ 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.

Hits pursuant to Article 102A CISA

	HITS motor vehicles	HITS trailers and caravans	HITS certificates	HITS Number plates	TOTAL HITS
AT	3				3
BE	194				194
BG					93
CH					172
DE					386
EE	13				13
ES					132
HU	37	56	35	43	171
IT	432				432
LV	6		1	1	8
LT	243	4	59	5	311
NL	70				70
PL	31	16	4	14	65
RO	24	2			26
SE	4				4
SI					4

Searches pursuant to Article 102A CISA

	Searches motor vehicles	Searches trailers and caravans	Searches certificates	Searches on number plates	TOTAL SEARCHES
BE					515206
BG					1043480
EE	188458				188458
ES					7418
HU	20118	5860	33902	2268	62148
IT	94879				94879
LI	441				441
LT	222480	12953	290959	130133	656525
LV	817				16962
MT	2722			2722	5444
NL	175	52			227
PL	45276		3435		48711
RO	72202	3060			75262

V. CONCLUSIONS

- a) In 2013 Article 102A CISA was totally or partially implemented in the countries participating in the Schengen Information System.
- b) In most of the countries that applied Article 102A CISA, the authorities performing the checks were mostly police authorities.
- c) In most of the Member States, the implementation of Article 102A CISA is regarded as providing added value and as an important tool in combating organised vehicle crime and helping to protect the bona fide customers of imported stolen used cars.
- d) As far as reported, data protection rules were applied pursuant to the CISA provisions. The data used under Article 102A CISA concerned alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates.
- e) The services responsible for issuing registration certificates for vehicles were 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 had been stolen, misappropriated or lost.

VI. NEXT STEPS

After it has been examined by the Working Party for Schengen Matters (SIS/SIRENE) on 17 December 2013, the draft report will be submitted to COREPER and the Council to be forwarded to the European Parliament.
