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NOTE

From: Presidency
To: Permanent Representatives Committee (Part 2) / Council
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Subject: Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) **for the return of illegally staying third-country nationals** (First reading)

Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) **in the field of border checks**, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 (First reading)

Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) **in the field of police cooperation and judicial cooperation in criminal matters**, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU (First reading)

- Policy debate / Progress report

I. INTRODUCTION

1. On 22 December 2017 the Commission submitted to the Council a legislative package on SIS (Schengen Information System). This package is composed of three separate proposals, in order to respond to the different degrees of participation in the SIS of several groups of States (the so-called 'variable geometry'):

- Proposal for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals (15812/16) – hereinafter ‘the proposal on returns’;
 - Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 (15813/16) – hereinafter ‘the proposal on border checks’;
 - Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU (15814/16) – hereinafter ‘the proposal on police cooperation’.
2. These proposals contain a series of measures aimed at maximising the effectiveness and efficiency of the system – which is the most used of the IT systems in the area of freedom, justice and security in the EU – by technical enhancements, focusing on end-users and giving access to more national authorities and EU agencies. In particular, more categories of data, including biometrics, would be inserted, including for search purposes, and new types of alerts, including alerts on return decisions, would be inserted.
 3. The Working Party for Schengen Matters (Acquis) examined these proposals at its meetings on 16 January, 8 February, 6 and 7 March and 3, 15 and 16 May 2017, with experts from the respective policy areas invited to participate in the discussions. The Working Party has concluded the first examination of the three proposals and has started the second round of discussions.

4. Discussions have taken place in a constructive atmosphere and considerable progress has been achieved at the Working Party level. Nevertheless, general scrutiny reservations from AT, BG, CZ, DE, FI, HU, IT, LT, NL, PL, PT, SE, SI and UK¹ are pending on this package. BE, EL and SK have a general scrutiny reservation on the proposal on returns (15812/16). Parliamentary reservations have been entered by DE², PL³, SE³ and UK⁴.
5. Although a considerable set of articles can at this stage be deemed to be agreed upon as a compromise basis for a future general approach, the discussions in the Working Party revealed that certain issues require further negotiations. This is the case in particular of:
- the obligation for the Member States to have a national copy;
 - the obligation to create alerts on unknown wanted persons for search with biometric data;
 - preventive alerts on missing persons;
 - the obligation to create alerts on subjects regarding terrorism-related activities;
 - the new alert for inquiry check.

Furthermore, the proposal on returns (15812/16) is under examination by the Council Legal Service vis-à-vis the possibility to address the return-related alerts in other legal instruments, in particular the proposal on border checks (15813/16), and thus doing away with the need for a third legal instrument on the use of SIS.

¹ UK is not participating in the proposal on border checks (15813/16).

² On the three proposals (15812/16, 15813/16 and 15814/16).

³ On the proposal on returns (15812/16).

⁴ On the proposals on returns and on police cooperation (15812/16 and 15814/16, respectively).

II. ISSUES FOR DISCUSSION

6.1. Preventive alerts for children at risk of abduction

Chapter VII of the proposal on police cooperation provides for preventive alerts to be created in cases where children are at risk of parental abduction. Parental abductions often take place in highly planned circumstances, with the intention of rapidly leaving the Member State where the custody arrangements were agreed. These changes could address a potential gap in the current legislation whereby alerts for children can only be issued once they are missing. They would allow authorities in Member States to indicate children at particular risk. These changes would mean that, where there is a high risk of imminent parental abduction, border guards and law enforcement officials are made aware of the risk and will be able to examine more closely the circumstances in which an at-risk child is travelling, taking the child into protective custody if required. This alert would require an appropriate decision by Member States' authorities competent to decide on matters of parental authority, such as custody and taking minors abroad. A further condition would be that there is an imminent risk of abduction.

The implementation of these provisions may require action in areas of law that falls outside the direct application of police/judicial cooperation or immigration measures, but which is still needed for Member States to maximise the benefits of SIS. It should also be noted that the link between the creation of alerts in the SIS relating to children at risk of abduction, and instruments related to judicial cooperation on abducted children (such as Brussels IIa⁵), has been examined over the past months and it is considered that these discussions should continue so as to ensure synergies between the two.

In addition, some delegations have suggested including the possibility to create preventive alerts for other purposes too, beyond the case of children at risk of parental abduction, such as preventive alerts regarding children joining terrorist groups.

⁵ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23/12/2003, p.1). See also 10767/16 + ADD 1 + ADD 2.

Do you agree that the possibility of entering preventive alerts in the SIS on children at risk of abduction, would be beneficial and should therefore be envisaged? Do you agree that such preventive alerts should also be envisaged for other cases where children are at risk of disappearance?

In this context, do you agree that work should continue to ensure the necessary synergies between the proposal on police cooperation and the relevant instruments on judicial cooperation in civil matters?

6.2. Alerts on persons and objects for inquiry checks

Chapter IX of the proposal on police cooperation (15814/16) introduces a new form of check, the 'inquiry check', besides the existing 'discreet check' and 'specific check'. This is, in particular, intended to support measures to counter terrorism and serious crime, with an alert to authorities to stop and question the person concerned. This alert is not a discreet check, nor does it involve searching the person or arresting him or her. It could, however, lead to sufficient information being collected to decide on further action to be taken.

The relevant provisions would also be amended to provide for action to be taken on the basis of these alerts, the objective being an investigative one, related ultimately to countering terrorism and serious crime.

With regard to action to be taken on such inquiry alerts created in the SIS, it should also be noted that these alerts can only work efficiently if they are mutually recognised by all the Member States and if there is a commitment to act on them. The same applies to current alerts on specific checks.

Do you agree that it should be possible to create alerts for inquiry checks in the SIS, subject to further refinement at technical level?

Do you agree that the competent authorities of all Member States should be able to efficiently act upon alerts for inquiry checks and specific checks, thereby maximising the benefits of such alerts in SIS?

6.3. Enhancing the use of SIS in the area of judicial cooperation

The SIS has already proved to be extremely successful in the execution of European Arrest Warrants. The possibility of using the SIS to facilitate the dissemination and execution of other instruments in the area of judicial cooperation in criminal law, and to facilitate mutual legal assistance in criminal matters, could be further explored, such as in relation to the European Investigation Order, the mutual recognition of criminal judgments⁶, or financial penalties⁷.

Do you agree that the use of SIS in relation to other instruments in the area of judicial cooperation in criminal matters should be further explored?

III. CONCLUSION

7. Coreper/Council is invited to consider the questions in point 6 above, with a view to providing guidance for the purpose of further work at technical level.

⁶ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009

⁷ Council Framework Decision 2005/214/JHA of the 24th February, 2005 on the application of the principle of mutual recognition to financial penalties as amended by Council Framework Decision 2009/299/JHA of 26 February 2009