



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 May 2014

8911/14

**INF 121
API 49**

NOTE

Subject: Public access to documents
 - Confirmatory application No 12/c/01/14

Delegations will find attached:

- request for access to documents sent to the General Secretariat of the Council on 24 March 2014, registered the same day ([Annex 1](#)).
- reply from the General Secretariat of the Council dated 8 April 2014 ([Annex 2](#))
- confirmatory application dated 9 April 2014, registered on the same day ([Annex 3](#)).

[E-mail message sent on 24 March 2014 - 10:39]

From: **DELETED**

Sent: Monday, 24 March 2014 10:39

To: SECRETARIAT DGF Access

Subject: SIS/SIS II Statistics

Sir,

As a doctoral student in European Union law, I am working on mutual trust between the Member States in migration matters.

I would like to obtain annual statistics on the functioning of the Schengen Information System (I and II) and, if possible, on information requests exchanged between the **SIRENE** Bureaux. I have just received a reply from eu-LISA stating that it does not yet have the 2013 statistics for SIS II, but that I should contact the Council for the SIS I figures (e-mail address below).

Thank you in advance for your assistance.

Yours faithfully,

DELETED



ANNEX 2

COUNCIL OF EUROPEAN UNION

GENERAL SECRETARIAT

Directorate-General F
Communications
Transparency

Document Access/
Legislative Transparency

RUE DE LA LOI/WETSTRAAT 175
B -1048 BRUSSELS
Tel.: (32 2) 281 67 10
FAX No: (32 2) 281 63 61
e-mail:
access@consilium.europa.eu

Brussels, 8 April 2014

DELETED

e-mail:

DELETED

ref.: 14/0539-mi/ns

DELETED

We have registered your request of 24 March 2014 regarding "*access to the annual statistics on the functioning of the Schengen Information System (SIS I) and, if possible, on information requests exchanged between the SIRENE Bureaux*". Thank you for your interest.

The General Secretariat of the Council has examined your request on the basis of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission¹ documents (hereinafter referred to as "the Regulation") and the specific provisions concerning public access to Council² documents and has reached the following conclusion:

All documents containing annual statistics on the functioning of the Schengen Information System (SIS I) are public and can be downloaded from the public register of Council documents (<http://register.consilium.europa.eu/>). You will find these documents in the register under the following numbers:

- 8621/05
- 5239/06
- 6178/07
- 5441/08
- 5764/09
- 6162/10
- 6434/2/11 REV 2
- 8281/12
- 7389/13

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, Official Journal L 325, 11.12.2009, p. 35)

Please note that these documents are available only in English.

Documents with tables on requests for information exchanged between the SIRENE Bureaux are also public up to 2009. You will find these documents in the register under the following numbers:

- 8346/1/01 REV 1
- 12150/02
- 7915/04
- 6335/05
- 5913/06
- 6072/07
- 7549/08
- 5086/09
- 7422/10

Please note that these documents are available only in English.

Documents with tables on requests for information exchanged between the SIRENE Bureaux from 2010 onwards (8979/11, 9075/12, 11914/13 et 14242/1/13 REV 1) are not public.

In fact, before 2010, Schengen States had been collecting and gathering statistics on the use of the Schengen Information System (SIS) without a uniform method, resulting to statistical data which was not comparable from one Schengen State to another and lacked reliability. Furthermore, commentary on the fields of the collected data was not extensive enough, causing unnecessary misinterpretations. It had also been concluded during the years that further statistics should be collected to cover all the activities of SIS and SIRENE, thus providing a full picture. Therefore, in 2010, new guidelines for the collection of SIS and SIRENE statistical data were put in place in order to collect data in a uniform, consistent and reliable manner.

The SIRENE network is essential in maintaining a high level of security within the area of justice, freedom and security. The tables of hits in the requested documents contain sensitive information concerning the operational work carried out by law enforcement authorities in each Schengen State and transmitted by the national SIRENE Bureau. Disclosure of such information risks to undermine the protection of the public interest as regards public security. It would enable persons involved in various forms of organised crime to compare the data relating to each Schengen State and to pinpoint weaknesses in the infrastructures of the law enforcement systems in certain Schengen States, thereby causing prejudice to the effectiveness of the work of and the co-operation between police, border guards, customs officers, and visa and law enforcement authorities in the Schengen area. This in its turn would undermine the functioning of the whole SIRENE network.

Disclosure of this information would therefore undermine the protection of the public interest as regards public security. Accordingly, pursuant to Article 4(1)(a), first indent of the Regulation (protection of the public interest with regard to public security), the General Secretariat is unable to accede to your request regarding documents 8979/11, 9075/12, 11914/13 et 14242/1/13 REV 1.

Moreover, as the exception to the principle of transparency applies to the content of the entire document, the General Secretariat is unable to grant you partial access as provided for in Article 4(6) of the Regulation.

Appeal

According to Article 7(2) of the Regulation, you may submit a confirmatory application asking the Council to reconsider this position, within 15 working days of receiving this reply³.

Yours sincerely,

For the General Secretariat,

Jakob Thomsen

³ Confirmatory applications are published in the register of Council documents. If you submit a confirmatory application, your personal data will be published in the documents related to your confirmatory application only if you have given your explicit consent for this. Your reply relating to the publication of your personal data will in no way prejudice your rights under Regulation (EC) No 1049/2001.

[Confirmatory application - sent by e-mail on 9 April 2014 - 3:52 PM]

From: **DELETED**
Sent: Wednesday, April 09, 2014 3:52 PM
To: SECRETARIAT DGF Access
Subject: Ref. 14/0539-mi/ns

Please find attached my confirmatory application following the General Secretariat of the Council's refusal to disclose information.

Yours faithfully,

DELETED

Confirmatory application following the General Secretariat of the Council's refusal to disclose the SIRENE statistics for 2009-2013 No/ref. 14/0539-mi/ns

Sir,

I am surprised at the General Secretariat of the Council's refusal of my request to be provided with the SIRENE statistics after 2009.

As a doctoral student of European law specialising in the area of freedom, security and justice, I am particularly aware of what is at stake in terms of security and protection of the public interest. Nevertheless, the explanation given does not in my opinion constitute sufficient justification for an outright refusal of access, including any possibility of partial access, to any SIRENE statistics for 2010, 2011, 2012, 2013.

The Court of Justice of the European Union, which has on several occasions ruled on the extent of the exceptions to the principle of access to documents, has stated in a recent judgment¹:

"30 Nevertheless, as such exceptions derogate from the principle of the widest possible public access to documents, they must be interpreted and applied strictly

31. Thus, if the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and effectively undermine the interest protected by the exception – among those provided for in Article 4 of Regulation No 1049/2001 – upon which it is relying. Moreover, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (...)

32. Moreover, if the institution applies one of the exceptions provided for in Article 4 of Regulation 1049/2001, it is for that institution to weigh the particular interest to be protected through non-disclosure of the document concerned against, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 to Regulation No 1049/2001, in that it enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (Sweden and Turco v Council, paragraph 45). "

¹ Judgment of the Court (First Chamber) of 17 October 2013, Council of the European Union v. Access Info Europe. Case C-280/11.

Given also the fact that the entry into force of the Treaty of Lisbon has strengthened the obligations of the Union in the matter of transparency and enshrined access to documents as a fundamental right, and that the process of recasting Regulation (EC) No 1049/2001 is currently ongoing, with the European Parliament intending to promote easier public access to Union documents, the Council's refusal of my request strikes me as particularly disproportionate.

While public security is an overriding interest that deserves protection in any case, public access, in particular for purposes of university research, to statistical data on the SIS and the SIRENE Bureaux must also be considered a legitimate interest, to be weighed against the public security requirement. The enormous and exponential costs of implementing SIS II and the implications of its use in terms of security and fundamental rights call into question the proportionality of an absolute refusal to provide the public and researchers with access to any kind of information on the functioning of the system between 2009 and 2014.

Besides, you have explained to me "that before 2010 the Schengen States followed no uniform method for gathering data and compiling statistics on the use of the Schengen Information System (SIS). The statistics were therefore not comparable between Schengen States and were unreliable. Furthermore, the comments regarding the data gathered were not sufficiently explicit, which gave rise to serious errors of interpretation. "

It therefore seems particularly detrimental to have no reliable information on the functioning of a system of such magnitude, given that the SIS is the world's largest database containing information on people. It is also, of course, very detrimental to my research.

I would therefore ask you to re-examine my request, which I am redrafting to take account of the arguments relating to the protection of public security and, in particular, to preclude any possibility of allowing "persons involved in different forms of organised crime to compare data relating to each Schengen State and detect weaknesses in the infrastructure of the law enforcement systems of certain States".

As my work focuses particularly on cooperation between national courts in the area of asylum and immigration, I am interested mainly in statistics relating to Article 96 of the Schengen Convention, which deals with alerts issued for the purpose of refusing entry. Hence from now on I am requesting access solely to SIRENE statistics for Article 96, which I believe is possible under the case-law of the Court since I need to be provided with only one of the columns of the SIRENE statistics table (8979/11, 9075/12, 11914/13 and 14242/1/13 REV 1). Thus the administrative burden created by the withholding of information that cannot be released is not particularly heavy and does not exceed the limits of what may reasonably be required ².

² TPI, Aldo Kuijer v. Council of the European Union, Case T-211/00, 7 February 2002, paragraph 57

Should the Council consider that the risks involved in disclosing such information would still be too great, I should also be able to use for my research Article 96 statistics from only a limited number of Member States (I would primarily like to have the French, German, Dutch, Polish and Swiss statistics). Moreover, I would very willingly undertake to respect the confidentiality of the information disclosed and not to reproduce it in my thesis.

I trust that my request will meet with the Council's approval. Yours sincerely,

DELETED
