



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 25 October 2013  
(OR. en)**

**14247/13**

**SIRIS 85  
SCHENGEN 34  
ENFOPOL 308  
COMIX 524**

**NOTE**

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From: Presidency

To: Working Party for Schengen Matters (SIS/SIRENE) /Mixed Committee (EU Iceland/Norway and Switzerland/Liechtenstein)

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Subject: Implementation of Article 102A of the Convention Implementing the Schengen Agreement during the year 2013 (1 January 2013 to 9 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)

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**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 1986/2006<sup>1</sup> Article 102A CISA was repealed on 9 April 2013.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.

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

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, 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 1160/2005<sup>2</sup> 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).

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<sup>1</sup> OJ L 381, 28.12.2006, p. 1.

<sup>2</sup> OJ L 191, 22.7.2005, p.18.

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.

Article 102A contained certain conditions in order to ensure that fundamental data protection principles are respected. It specifically defined 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 were 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 was 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. **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 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 **Denmark** Article 102A CISA was not fully implemented.
4. In **Germany**, between 01 January 2013 and 08 April 2013 66% of the hits on foreign alerts concerning vehicle are due to 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 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.

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

5. 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.

6. **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).

7. 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.

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

The implementation of this article may work in favour and 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.

**9.** 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 the art.102A has its added value, bearing in mind the fact that searching the SIS is necessary requirement of each vehicle registration operation. It has a preventive function as well and it is not possible to register the vehicle, when the alert is inserted in the SIS.

**10.** 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.

**11.** However, a few Member States were unable to provide any relevant figures for 2013 due to the fact that the provision has not been fully implemented (CY and DK).

**12.** 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 2013 Article 102A CISA was totally or partially implemented in the countries participating in the Schengen Information System.

#### IV. STATISTICS

##### Implementation of Article 102A CISA during 2013

	AT	BE	DK	EL	HU	IT	LI	LV	MT	PL	SK
Government authority	NO	YES		YES	YES	YES	YES	YES	YES	YES	YES
Direct access	NO	YES	NO	NO	YES	NO	NO	YES	NO	YES	YES
A search is always automatically performed when registering vehicles	YES	YES	NO	NO	YES	NO	NO	YES	NO	NO	YES
Items of Article 102A implemented:											
a) motor vehicles	X	X	X	X	X	X	X	X		X	X
b) trailers and caravans	X	X	X	X	X			X		X	X
c) (i) certificates	X				X			X		X	X
c) (ii) number plates	X				X					X	X

##### Hits pursuant to Article 102A CISA

	HITS motor vehicles	HITS trailers and caravans	HITS certificates	HITS Number plates	TOTAL HITS
EE					13
ES					132
HU	37	56	35	43	171
IT	432				432
LV					
PL	31	16	4	14	65
PT					99
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
ES					7418
HU	20118	5860	33902	2268	62148
IT	94879				94879
LI	441				441
LV	6		1	1	8
PL	45276		3435		48711



## **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 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.
- d) As far as reported, data protection rules were applied according 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 have been stolen, misappropriated or lost.

## **VI. NEXT STEPS**

After it has been examined by the Working Party for Schengen Matters (SIS/SIRENE) on 31 October 2013, the draft report will be submitted to COREPER and the Council to be forwarded to the European Parliament.

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