

Bruxelles, le 25 mai 2022
(OR. fr, en)

9300/22

IXIM 127
JAI 684
COMIX 245

NOTE POINT "I/A"

Origine:	Secrétariat général du Conseil
Destinataire:	Comité des représentants permanents (2 ^e partie)/Conseil
Objet:	Projet de conclusions du Conseil sur certains aspects de la mise en œuvre au niveau national des systèmes d'information européens et de leur interopérabilité – approbation

1. Les règlements relatifs aux systèmes d'information européens dans le domaine de la justice et des affaires intérieures contiennent des dispositions prévoyant des dispositifs optionnels qui ne peuvent être appliqués que si les États membres adoptent des mesures législatives nationales. Par ailleurs, ils laissent parfois une certaine marge d'interprétation aux États membres qui les oblige à faire intervenir leur législation nationale pour préciser ces points, sans quoi ils ne pourraient être appliqués.
2. C'est dans ce contexte que la France a présenté un questionnaire¹ portant sur la mise en œuvre de l'interopérabilité dans le domaine de la justice et des affaires intérieures en droit national lors de la vidéoconférence informelle des membres du groupe de travail « Échange d'information dans le domaine de la JAI » (IXIM) du 2 décembre 2021.

¹ Doc. 14211/21.

3. Le questionnaire portait essentiellement sur le système d'information Schengen (SIS), le système d'entrée/de sortie (EES) et un des modules de l'interopérabilité (CIR – Common Identity Repository). Son objectif était d'identifier les orientations juridiques retenues par les États membres concernant plusieurs dispositions optionnelles des règlements régissant le SIS, l'EES et l'interopérabilité². En effet, les dispositions visées peuvent permettre de renforcer la coopération opérationnelle entre États membres dans le domaine de la prévention et de la détection des infractions terroristes et des crimes graves mais aussi de la lutte contre l'immigration illégale. Ces dispositions peuvent aussi favoriser l'identification et la confirmation d'identité des personnes par l'usage de données autres que déclaratives (photographie et empreintes digitales) et sans délai.
4. Une très large majorité d'États membres³ ayant répondu au questionnaire, la présidence a pu préparer une synthèse⁴ des réponses reçues. Les principaux résultats et analyses tirés du questionnaire ont été présentés aux délégations lors de la réunion du groupe de travail IXIM du 4 avril 2022.
5. L'objectif de la présentation visait à indiquer, pour chaque thématique traitée dans le questionnaire, la part d'États membres pouvant actuellement réaliser les opérations concernées et celle ayant prévu de modifier son droit national pour le permettre, afin d'identifier le nombre d'États membres qui, à terme, disposeraient de législations nationales rendant possible le recours à ces dispositions dont l'intention est de renforcer la sécurité de l'espace Schengen. Les thématiques traitées dans le questionnaire concernaient:
- les contrôles d'investigation et contrôles spécifiques suite à des signalements dans le SIS ;
 - l'accès au CIR à des fins d'identification ;
 - l'alimentation du SIS en données issues des fichiers nationaux ;
 - la consultation du SIS et de l'EES en mobilité à des fins de confirmation d'identité et d'identification dans le cadre de missions de sécurité publique et de lutte contre l'immigration illégale.

² Règlements (UE) 2018/1861 et 2018/1862 (SIS) ; règlement (UE) 2017/2226 (EES) et règlements (UE) 2019/817 et 2019/818 (interopérabilité).

³ 28 répondants, États membres de l'UE et États associés confondus.

⁴ Doc. 7641/22.

Les réponses au questionnaire ont démontré un grand intérêt des États membres à utiliser les mécanismes optionnels prévus dans les règlements concernés et à opter pour une mise en œuvre ambitieuse des mécanismes obligatoires.

6. Au regard de l'intérêt opérationnel majeur de renforcer la coopération entre les États membres en matière de sécurité et de gestion des frontières et considérant également le calendrier de mise en service du SIS, de l'EES et de l'interopérabilité, il est apparu utile et opportun à la présidence de transposer les grandes tendances et principaux enseignements du questionnaire dans des conclusions du Conseil.
7. Un premier projet⁵ de conclusions du Conseil a été transmis aux délégations le 20 avril 2022. Une version révisée⁶ prenant en compte leurs commentaires a été présentée lors de la vidéoconférence informelle des membres du groupe de travail IXIM du 5 mai 2022. À la suite des amendements présentés par les délégations lors de cette vidéoconférence, la présidence leur a transmis une version révisée⁷ des textes dès le lendemain. Quelques modifications supplémentaires ayant été demandées par les États membres, la présidence a présenté un texte de compromis⁸ lors de la vidéoconférence informelle des membres du groupe de travail IXIM du 23 mai 2022, révisé pour prendre en compte quelques ultimes commentaires des États membres⁹. Aucune délégation n'a souhaité apporter d'amendement supplémentaire au texte.
8. Compte tenu de ce qui précède, le Coreper est invité à approuver le projet de conclusions du Conseil figurant en annexe de la présente note et à recommander que le Conseil les approuve lors du Conseil justice et affaires intérieures des 9 et 10 juin 2022.

⁵ Doc. 7812/22.

⁶ Doc. 8509/22.

⁷ Doc. 8880/22.

⁸ Doc. 8925/22.

⁹ Doc. 8925/1/22 REV 1.

Draft Council Conclusions on certain aspects of the implementation at national level of the
EU information systems and their interoperability

THE COUNCIL OF THE EUROPEAN UNION,

1. Recalling that one of the major objectives of the European Union is to ensure a high level of security for its citizens in the area of freedom, security and justice by promoting police and judicial cooperation and the management of the Union's external borders in accordance with the provisions of Title V of the Treaty on the Functioning of the European Union;
2. Stressing that measures taken to strengthen police cooperation, judicial cooperation and the management of the Union's external borders must be in accordance with the principle of proportionality and in conformity with the principle of subsidiarity;
3. Recalling that measures to strengthen the security of citizens in the area of freedom, security and justice must be taken in accordance with Union law and national law, and must respect the fundamental rights recognised, in particular, by the Charter of Fundamental Rights of the European Union, such as respect for private life and the protection of personal data;
4. Considering that the implementation of EU information systems and their interoperability contribute to the internal security objectives of the Union insofar as they facilitate police and judicial cooperation between Member States, the prevention, detection, investigation and prosecution of terrorist and other serious criminal offences, and contribute to the management of external borders by improving the effectiveness and efficiency of checks at the external borders, the fight against illegal immigration and the control of migration flows;

5. Stressing that the Schengen Information System (SIS) contributes to maintaining a high level of security in the Union's area of freedom, security and justice by supporting operational cooperation between Member State's authorities responsible of the prevention, detection, investigation and prosecution of criminal offences or execution of criminal penalties, border and migration management;
6. Recalling that the Entry/Exit System (EES), which has the objectives of preventing illegal immigration, facilitating the management of migration flows and contributing to the identification of any person who does not fulfil or no longer fulfils the conditions of duration of the authorised stay on the territory of the Member States, prevention, detection and investigation of terrorist or other serious criminal offences, will contribute to the effective management of the Union's external borders by ensuring a high level of protection;
7. Stressing that a European Search Portal, a shared Biometric Matching Service, a Common Identity Repository (CIR) and a Multiple-Identity Detector are established as interoperability components to contribute to the fight against identity fraud and to rationalise access to those systems for the purposes of preventing and detecting terrorist offences or other serious criminal offences and for the management of the Union's external borders and the fight against illegal immigration;
8. Recalling that the CIR is to be established in particular for the purpose of facilitating the correct identification of persons, including persons who are unknown and unable to identify themselves or unidentified human remains;

9. Stressing that the European legal framework establishing EU information systems and their interoperability
- offers the possibility to execute alerts on persons and objects for inquiry checks or specific checks,
 - offers the possibility of consulting the CIR with biometric data, and in exceptional cases, alphanumeric data,
 - makes it compulsory to enter at least the regulated minimum set of data in the SIS, and that other stipulated data shall also be entered into SIS, if available,
 - empowers Member States to use dactyloscopic data and, under certain conditions, also photographs stored in the SIS to identify a person that is the subject of an alert in the SIS and,
 - offers, as provided for in the EES Regulation, the possibility to border and immigration authorities to carry out searches using fingerprint data in combination with the facial image for identification of any third-country national,

Recalling that all of these mechanisms for consulting personal data, including querying the EU information systems using mobile solutions, remains at the discretion of Member States;

10. Noting therefore that the Member States express a determination to implement the European legal framework establishing EU information systems and their interoperability and show a willingness to strive for an ambitious implementation of the possibilities and arrangements referred to in paragraph 9, in the longer term;

THE COUNCIL OF THE EUROPEAN UNION,

11. UNDERLINES the importance of an ambitious implementation by the Member States of the functionalities of the EU information systems in order to allow for efficient operational cooperation between Member States' authorities responsible for the prevention, detection, investigation and prosecution of criminal offences or execution of criminal penalties, border management and immigration, as far as they are made available;
12. INVITES Member States to consider whether their national laws allow the use of the implementation possibilities and arrangements referred to in paragraph 9, in order to facilitate the most efficient operational cooperation between Member States' authorities responsible for the prevention, detection, investigation and prosecution of criminal offences, border management and immigration;

CONCERNING THE POSSIBILITY OF CONSULTING THE CIR,

13. EMPHASISES that the consultation of the CIR is a tool for identification where a Member State authority is unable to identify a person due to the lack of a travel document or another credible document proving that person's identity, or where there are doubts about the identity data provided by that person or as the authenticity of the travel documents or the identity of its holder, or in case of a natural disaster, accident or terrorist attack where the person is unable or refuses to cooperate or to identify unidentified human remains;
14. INVITES Member States to consider whether their national law allow their police authorities to query the CIR with the biometric data of a person taken live during an identity check initiated in their presence for the purpose of identifying that person, when applicable, as well as to consider whether the querying of the CIR with biometric data could be performed in the six cases where the Interoperability Regulation provides for this possibility;

CONCERNING THE CARRYING OUT OF INQUIRY CHECKS AND SPECIFIC CHECKS FOLLOWING ALERTS IN THE SIS,

15. RECALLS that inquiry checks include a questioning of the person, in particular on the basis of specific information or questions added to the alert by the issuing Member State, and that the questioning is conducted in accordance with the national law of the executing Member State; that during specific checks persons, vehicles, boats, aircraft, containers and objects carried may be searched and that searches are conducted in accordance with the national law of the executing Member State;
16. CONSIDERS that it should be possible to carry out inquiry and specific checks even when the person concerned is not the subject of a national procedure in the executing Member State where such checks are authorised by national law;
17. RECALLS that if specific checks are not allowed under the national law of the executing Member State, they are replaced by inquiry checks in that Member State, and that if inquiry checks are not allowed under the national law of the executing Member State, they are replaced by discreet checks;
18. EMPHASISES that the possibility to resort to discreet check instead of inquiry or specific checks should be implemented without prejudice to the obligation for Member States to make available to end-users the additionally sought information by issuing authorities related to the inquiry check or the specific check as appropriate;
19. NOTES that the use of inquiry and specific checks might extends the added value provided by the SIS in the operational cooperation between Member States' authorities responsible for the prevention, detection, investigation and prosecution of criminal offences or execution of criminal penalties, border management and immigration;
20. INVITES therefore Member States to make full use of discreet checks, inquiry checks and specific checks in line with their national legislation and procedures, even when the person concerned is not the subject of a national procedure;

CONCERNING THE ENTRY OF DATA FROM NATIONAL FILES INTO THE SIS,

21. RECALLS that the Regulations provide that certain alphanumeric data must be entered in an alert and also biometric data, when they are available;
22. EMPHASISES that such available data may come from relevant national databases, according to national legislation;
23. CONSIDERS that the effective introduction of all available data is a prerequisite for efficient operational cooperation between Member States' authorities responsible for the prevention, detection, investigation and prosecution of criminal offences, border management and migration;
24. INVITES Member States to consider whether their national law allows the integration into the SIS of any data contained in the national databases which are used by authorities using the SIS have access and relevant to police, judicial, border or migration matters;

CONCERNING THE BIOMETRIC QUERIES OF THE SIS ON THE GROUND IN THE CONTEXT OF PUBLIC SECURITY MISSIONS OR THE FIGHT AGAINST ILLEGAL IMMIGRATION,

25. RECALLS that the SIS Regulations empower Member States on the one hand, to use dactyloscopic data, facial images and photographs stored in the SIS to confirm a hit, and on the other hand, to carry out, dactyloscopic queries in the SIS to establish whether the person is subject to an alert in SIS under a different identity, whilst obliging to carry out dactyloscopic queries in case the identity of a person cannot be established by other means;
26. CONSIDERS that it is desirable that such biometric queries should take place as soon as possible in order to ensure effective performance of the tasks of the end-user, whilst safeguarding a satisfactory balance between the objectives of the Regulation and the protection of fundamental rights and freedoms;

27. RECALLS that officials of the Member States responsible for public security and combating illegal immigration are encouraged to carry out a biometric query of the SIS for the purposes mentioned above;
28. CONSIDERS that in such cases it is desirable that this biometric search be carried out on the spot and without delay by using relevant mobile devices, if available;
29. INVITES Member States to consider whether their national law allow biometric searches of the SIS to be carried out on the move for the purpose of confirming identity or for identification purposes in the context of public security missions and fighting illegal immigration, where the identity of a person cannot be established by others means;

CONCERNING THE BIOMETRIC QUERIES OF THE EES IN MOBILITY ON THE GROUND
IN THE CONTEXT OF THE FIGHT AGAINST ILLEGAL IMMIGRATION,

30. RECALLS that the EES Regulation authorises border and immigration authorities to carry out searches using, as applicable, either fingerprint data or the facial image or both in combination, for the sole purpose of identifying any third-country national who may have been previously registered in the EES under a different identity or who does not or no longer fulfils the conditions for entry into or residence on the territory of the Member States;
31. CONSIDERS it desirable that such searches be carried out as soon as possible in order to ensure effective performance of the tasks of the end-user whilst safeguarding a satisfactory balance between the objectives of the Regulation and the protection of fundamental rights and freedoms;
32. RECALLS that Member States' officials responsible for fighting illegal immigration are likely to have to identify third-country nationals in the course of their duties on the ground;

33. CONSIDERS that, in such cases, it is desirable that the search of the EES using fingerprint data, the facial image or fingerprint data in combination with the facial image should be carried out on the spot and without delay by using relevant mobile devices, if available;
34. INVITES Member States to consider whether their national laws allow border and immigration authorities to carry out mobile searches using fingerprint, facial image or fingerprint data in the combination with the facial image, for the sole purpose of identifying any third-country national who may have been previously registered in the EES under a different identity or who does not or no longer fulfils the conditions for entry or residence on the territory of the Member States on the ground and without delay.
-