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From: General Secretariat of the Council

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To: Delegations

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Subject: Council Implementing Decision setting out a recommendation on addressing the serious deficiencies identified in the 2017 evaluation of the **United Kingdom** on the application of the Schengen acquis in the field of the **Schengen Information System**

Delegations will find in the annex the Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2017 evaluation of the United Kingdom on the application of the Schengen acquis in the field of the Schengen Information System, adopted by the Council at its meeting held on 5 March 2020.

In line with Article 15(3) of Council Regulation (EU) No 1053/2013 of 7 October 2013, this Recommendation will be forwarded to the European Parliament and national Parliaments.

Council Implementing Decision setting out a

RECOMMENDATION

on addressing the serious deficiencies identified in the 2017 evaluation of the United Kingdom on the application of the Schengen acquis in the field of the Schengen Information System

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen¹, and in particular Articles 1(1)(a) and 15 (3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of this Decision is to recommend to the UK remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the Schengen Information System (SIS) carried out in 2017. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies identified during the evaluation, was adopted by Commission Implementing Decision C(2018) 2250 final.

¹ OJ L 295, 6.11.2013, p. 27.

- (2) Statistical reporting tools and the availability of detailed statistical reports on SIS data, as well as the peer review programme initiated by the Home Office consisting of visits (evaluations) to review how each force uses the SIS, are considered as best practice.
- (3) In light of the importance of complying with the Schengen acquis, priority should be given to implementing recommendations 1-25 below. It is important to remedy these very serious deficiencies immediately.
- (4) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the ‘United Kingdom’) submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on the European Union (TEU). In accordance with Article 50(3) TEU, the Treaties cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. After agreeing a first extension on 22 March 2019, and a second extension on 11 April 2019, the European Council adopted Decision (EU) 2019/1810¹ on 29 October 2019, in which it agreed, following a further request by the United Kingdom, to extend the period provided for in Article 50(3) TEU until 31 January 2020.
- (5) In accordance with Article 50 TEU, the European Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union (‘Withdrawal Agreement’). On 11 January 2019, the Council adopted Decision (EU) 2019/274 on the signing of the Withdrawal Agreement. Following further negotiations between the negotiators of the Union and of the United Kingdom during the months of September and October 2019, an agreement was reached on a revised text of the Withdrawal Agreement, which was endorsed by the European Council on 17 October 2019.

¹ European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom of 29 October 2019 extending the period under Article 50(3) TEU (OJ L 278I, 30.10.2019, p. 1).

On 21 October 2019, the Council adopted Decision (EU) 2019/1750 on the signing of the revised Withdrawal Agreement. Part Four of the Withdrawal Agreement provides for a transition period starting on the date of entry into force of the Withdrawal Agreement and ending on 31 December 2020. During the transition period, and unless the Withdrawal Agreement provides otherwise, Union law shall continue to apply to and in the United Kingdom.

- (6) This Decision shall apply only as long as Union law applies to and in the United Kingdom.
- (7) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within one month of its adoption, the UK should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council,

RECOMMENDS:

that the United Kingdom should:

1. ensure that the provisions on equivalence of results and security of data are fully applied in respect of all its full and partial technical copies in accordance with Articles 9(2), 10(1) and Article 46(2)-(4) of Council Decision 2007/533/JHA¹;
2. cease the unlawful copying of SIS data into the Warning Index (a database used by the UK Border Force at first- and second-line border checks) and ensure that the management of SIS data in this database complies with the provisions of Articles 10(1)(c) and 46 (2)-(4) of Council Decision 2007/533/JHA;

¹ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

3. cease the unlawful copying of SIS data in the copy of the Warning Index stored onto back-up laptops;
4. ensure that the Warning Index in relation to SIS alerts displays the complete action to be taken, the type of offence, photographs, the existence of European Arrest Warrants and fingerprints, type of identity and aliases, links, misused identity extension, and all the warning markers;
5. fully synchronise all its full and partial technical copies and the Warning Index with the central SIS database (CS-SIS) in accordance with the provisions of Article 9(2), to be read in conjunction with Article 46(2), of Council Decision 2007/533/JHA, so that no alerts deleted by the issuing Member State would remain therein;
6. perform full data consistency checks on all its full and partial technical copies in accordance with the requirements of Article 9(2), to be read in conjunction with Article 46(2), of Council Decision 2007/533/JHA;
7. cease changing alerts issued under Article 36 of Council Decision 2007/533/JHA, with the ‘contact SIRENE immediately’ action, into discreet or specific check alerts without the action ‘contact SIRENE immediately’ in the Warning Index;
8. ensure that the Semaphore technical copy of SIS (application used to process advanced passenger data) contains all categories of SIS alerts, not only the non-flagged Article 26 alerts for arrest, in accordance with Article 9(2), to be read in conjunction with Article 46(2) and Article 40, of Council Decision 2007/533/JHA;
9. change national policies on systematic flagging of alerts for arrest (extradition requests) issued by the Schengen associated countries;
10. cease changing, in the Police National Computer (police information system) technical copy of SIS, all flagged alerts for arrest into alerts on persons sought to assist with a judicial procedure;

11. correctly apply the provisions of Article 24 of Council Decision 2007/533/JHA on flagging of alerts for arrest by waiting until the flag has been added by the SIRENE Bureau of the Member State that entered the alert;
12. introduce a procedure for its SIRENE Bureau to follow up and verify if the requested flag has been added to the alert by the issuing Member State in line with Article 24(1) of Council Decision 2007/533/JHA;
13. establish technical tools, mandatory procedures or guidelines for end-users to be able to attach photographs and fingerprints to SIS alerts when they are available, in accordance with the provisions of Article 20(3)(f) and Article 23(2) of Council Decision 2007/533/JHA;
14. make alerts for arrest immediately available to end-users without waiting for their validation by the SIRENE Bureau;
15. make alerts for discreet or specific checks with action ‘contact SIRENE immediately’, issued pursuant to Articles 36(2) and 36(3) of Council Decision 2007/533/JHA, immediately available to end-users without waiting for their validation by the SIRENE Bureau;
16. further develop the Police National Computer application to enable it to display binary data such as photographs as well as provide reference to the existence of European Arrest Warrants (EAW) and fingerprints;
17. further develop the Police National Computer application to enable it to display the misused identity extension;
18. fully synchronise the Police National Computer technical copy of SIS with the CS-SIS so that no alerts deleted by the issuing Member State would remain therein;
19. change the display of the alias data in the Police National Computer application so that the identity status does not remain as ‘confirmed by photograph, fingerprints or DNA’;
20. further develop the SIRENE case management system (CIMS) to enable it to display the photograph of the victim and the perpetrator of misused identity in all cases;

21. ensure that a back-up is available for the SIRENE SIS technical copy, since it is the only source of SIS biometric data for end-users;
22. take all the necessary measures to ensure that the objects subject to an Article 38 alert are systematically seized by UK officers, in accordance with Article 39 of Decision 2007/533/JHA and Appendix 2 of the SIRENE Manual¹;
23. apply measures so that the information displayed on computer screens in first-line border controls at UK ports cannot be read by unauthorised parties, in accordance with Article 10 and Article 40 of Council Decision 2007/533/JHA;
24. introduce complex password requirements in the National Border Targeting Centre in line with the security measures set down in Article 10 of Council Decision 2007/533/JHA;
25. ensure that all categories of SIS alerts, in particular the alerts on lost/stolen/invalidated travel documents, and all alerts within any alert category are available at UK border crossing points, in accordance with Article 9(2), to be read in conjunction with Article 46(2) and Article 40, of Council Decision 2007/533/JHA;
26. improve the quality of information provided by the SIRENE Bureau to end-users, especially in cases of misused identity;
27. enhance the involvement of the SIRENE Bureau in SIS processes, such as by providing clear information to end-users and giving training to end-users on SIS-related matters;
28. enhance the involvement of the SIRENE Bureau in the peer review programme;

¹ Commission Implementing Decision (EU) 2017/1528 of 31 August 2017 replacing the Annex to Implementing Decision 2013/115/EU on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (notified under document C(2017) 5893) (OJ L 231, 07.09.2017, p6).

29. further develop the CIMS application to enable it to provide a sufficient level of automation in the management of the daily workflow, to search and retrieve cases with case names containing special characters, and to add and highlight the misused identity marker automatically;
30. provide all SIRENE operators with a special shortcut to enable them to perform searches for industrial equipment in the CIMS application;
31. further develop the Police National Computer application to enable it to provide for differentiation between Article 36(2) and 36(3) when displaying an alert, to make the action ‘contact SIRENE immediately’ more prominently visible, to open the linked alert directly, and to highlight the links to person alerts;
32. further develop the Police National Computer application and change the mapping of the identity status ‘confirmed by photograph, fingerprints or DNA’ and align it with the concept of ‘confirmed identity’ in the SIS;
33. further improve the SIS hit-reporting procedure and avoid delays caused by the additional layer of information flow via the 24/7 intelligence units; in particular, it should be ensured that end-users can contact the SIRENE Bureau directly for alerts where action to be taken is ‘contact SIRENE immediately’;
34. provide more training to end-users on misused identity, linking functionality, possibility to retrieve pictures and other binary data from the SIRENE Bureau, new actions in the SIS such as ‘contact SIRENE immediately’ and invalidated documents.

Done at Brussels,

For the Council
The President