Overview of access to the Schengen Information System II

SIS II Supervision Coordination Group

1. Introduction

Access to data entered in the Schengen Information System II (hereinafter, "SIS II") and the right to search such data directly or in a copy of SIS II data is reserved exclusively to authorities responsible for border control and other police and custom checks within the Member States, as well as for national judicial authorities, according to Article 40(1) and (2) of the Council Decision 2007/533/JHA on the establishment of SIS II[1] (hereinafter, the "SIS II Decision") and Article 27(1) and (2) of Regulation (EC) No 1987/2006 on the establishment of SIS II[2] (hereinafter, "the SIS II Regulation"). Access to SIS II is also granted to SIRENE Bureaux, according to Article 7(2) of both the SIS II Decision and the SIS II Regulation. In addition, the SIS II Regulation provides that the right to access and search data may also be exercised by the authorities responsible for issuing visa applications and residence permits, as well as for the administration of legislation relating to third-country nationals in the context of the application of EU law relating to the movement of persons[3].

The management authority shall publish annually in the Official Journal of the European Union a list of the competent authorities which are authorised to search directly the data contained in the SIS II, as well as changes to the list, based on information supplied by the Member States. The list has to specify, for each authority, which data it may search and for what purposes[4]. This Report is independent of the obligations under Article 31(8) of the SIS II Regulation and Article 46(8) of the SIS II Decision.

The Supervision Coordination Group of SIS II (hereinafter, "SIS II SCG") considers that an overview of how access to the SIS II is being performed in practice at national level is necessary, with a view to identify and implement new actions of the Group and its Members, having into account that the new legal framework brought the possibility of making direct queries in the SIS II, and that the use of national copies may have relevant impact in the system security.

[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 205/53.
[2] Regulation (EC) no 1987/2006 of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 381/4.
[3] Article 27(3) of the SIS II Regulation.
[4] List of competent authorities which are authorised to search directly the data contained in the second generation Schengen Information System pursuant to Article 31(8) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council and Article 46(8) of Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System, OJ 2017/C 228/1, Vol 60, 14 July 2017.

The Report is based on the 26 replies to the questionnaire filled in by relevant national competent authorities and submitted by the members of the SIS II SCG to the Secretariat of the Group in the first half of 2015.

2. Conclusions and further actions

2.1. Generalised use of national (full and partial) copies of SIS II

Member States have the obligation to ensure that the data in the national copies are identical to the data in the SIS II database and to ensure the security of the data within SIS II, including against unauthorised reading and copying. The number of national copies, where they are stored, who has access to them and how they are used are some of the most sensitive issues that can trigger security risks. While there are valid reasons for creating national copies, it has to be kept in mind that multiplying copies also multiplies possible points for attacks or leaks.

Recommended Action 1. In this context, the Group should further investigate the use of national copies of SIS II by Member States. This could include questions such as the following:

- Are the national copies used in the context of the operation of other national databases or programs? If that is the case, which are those databases or programs?

- How are the national copies hosted (stand-alone servers or servers shared with other national databases)?

- How frequently are they synced with the CS-SIS database?

- In the case of multiple copies, is it necessary to have them?

- Is there an impact of having multiple copies on the security of the whole system and on the data quality?

2.2. The use of Article 24 SIS II Regulation alerts for consular purposes potentially triggers the creation of numerous partial copies

Article 24 SIS II Regulation alerts concern the refusal of entry or stay of third country nationals in the Schengen area.

"Partial copies" of the SIS II are not defined in the legal bases, so there is a possibility that the competent authorities of the Member States did not consider files consisting only of Article 24 (SIS II Regulation) alerts a "partial copy" for the purposes of the current exercise. However, Article 31(2) of the SIS II Regulation specifies that "data may only be copied for technical purposes, provided that such copying is necessary in order for the authorities referred to in Article 27 to carry out a direct search". In addition, the same article prohibits copying of alerts issued by one Member State from its N-SIS II into other national data files.

Further, Article 31(3) provides that "technical copies, as referred in paragraph 2, which lead to offline databases may be retained for a period not exceeding 48 hours" and this period can only be extended "in an emergency until the emergency comes to an end".

Using data relating to Article 24 alerts for consular activities relating to visa issuance is in line with the purpose of this type of alert. In order to propose best practices, the Group needs an overview of how other Member States organise the access of their visa issuing authorities to Article 24 SIS II Regulation alerts.

Recommended Action 2. The Group should acquire an overview on how the access of consular services of the Member States under Article 24 SIS II Regulation is organised in order to propose best practices, focusing inter alia on the definition of the partial national copies and the impact of existence of many partial copies on performance of the whole system.

2.3. SIRENE Bureaux, Border control authorities and Police are the authorities that are authorised by most Member States to directly input data into SIS II concerning all types of alerts

Recommended Action 3. Each member of the Group should, at national level, cross-check the list of individual authorities that have access to SIS II for certain type of alerts, published every year in the Official Journal of the European Union, with the types of authorities allowed by the SIS II Decision and respectively the SIS II Regulation to have access to SIS II to check and detect any potential discrepancies between the list and the practice at national level

2.4. Some authorities that are only granted access rights pursuant to Article 24 SIS II Regulation alerts seem to have access also to alerts based on the provisions of the SIS II Decision

The SIS II Decision specifies that the only authorities who have the right to access SIS II are authorities responsible for border control and other police and custom checks within the Member States, national judicial authorities and the SIRENE Bureaux. The SIS II Decision provides the legal basis for creating alerts on objects for seizure or use as evidence (Article 38), persons and objects for discreet or specific checks (Article 36), persons sought to assist with judicial procedures (Article 34), missing persons (Article 32), and persons wanted for arrest (Article 26).

The SIS II Regulation adds to the list of authorities provided for in the SIS II Decision the authorities responsible for issuing visa applications and residence permits, as well as the administration of legislation relating to third-country nationals in the context of the application of EU law relating to the movement of persons. The SIS II Regulation provides the legal basis only for creating alerts on the refusal of entry or stay in the Schengen area of third country nationals (Article 24).

Recommended Action 4. The members of the Group should, on the basis of the results of this report, further clarify at national level whether authorities that should only have access to Article 24 SIS II Regulation alerts are in fact having access as well to alerts created on the basis of the SIS II Decision. If so, they should also clarify whether this is due to certain types of authorities having roles under both legal texts (e.g. the authority issuing residence permits may in fact be [part of] the Police).