



SIS II SCG

SIS II Supervision Coordination Group

Activity Report

2020-2022

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Foreword

This is the last activity report of the SIS II Supervision Coordinated Committee (SIS II SCG), as the date for the full applicability of the new legal framework brought by the SIS recast is imminent. The SIS II SCG was set up almost 10 years ago, after the entering into operation of the second generation of the Schengen Information System in April 2013.

In a couple of months from now, the coordinated supervision of the SIS will be ensured by the same Data Protection Authorities (DPAs) though in a different setting – the Coordinated Supervision Committee (CSC), that functions within the framework of the European Data Protection Board (EDPB), pursuant to Article 62 of Regulation (EU) 2018/1725.

Under the purview of the CSC, the SIS will be joining other EU information systems, enabling a supervisory horizontal approach that follows the increasing interactions among EU systems, and therefore, would allow a better monitoring of the personal data flows. This is especially important in view of the new functionalities and enlarged purposes envisaged in the SIS recast.

The reporting period of the activities carried out by the SIS II SCG was dominated by the exceptional circumstances of a pandemic, what had a significant impact in the supervisory actions of data protection authorities. Within this context, DPAs faced new legal challenges while audit activities were highly reduced and only taken up again in 2022. This situation disrupted severely the execution of our working programme, in particular in what concerns the activities that required on-site inspections.

On the other hand, the constant delay of the full applicability of the SIS new legal framework, expected for the end of 2021, affected as well the planning and organisation of our work. Nevertheless, the SIS SCG closely followed the developments in this regard and provided advice as requested, such as in relation to the information campaign prepared by the Commission and the (draft) implementing act on the collection of relevant statistics at Member State level about the exercise of data subjects' rights.

It should be highlighted the focus given by the SIS II SCG to the rights of individuals vis-à-vis the SIS, which are well reflected in this report, including the preparation of an updated Guide for the exercise of data subjects' rights to be made publicly available when the SIS recast gets into operation.

Another factor of significance during this period was the exit of the United Kingdom from the EU on 31 January 2020, requiring about 5.7 Million UK alerts to be removed from the SIS after a one-year transition period in the first quarter of 2021.

The SIS II SCG was also successfully involved in the review of the Schengen evaluation mechanism, having provided valuable contribution to the discussions and ensuring that data protection plays a key-role in the Schengen evaluations, including in what regards the participation of data protection experts.

Finally, a special reference to the coordinated on-site verifications of the alerts introduced in the SIS under Article 36 of the SIS II Decision for discreet or specific checks. This is a very important activity notably affected by the pandemics, and for that reason still ongoing; however, it will be passed to the Coordinated Supervision Committee for conclusion.

This activity report closes the second stage of the SIS data protection supervision, after the pioneer work done by the Schengen Joint Supervisory Authority that put together, for the first time, data protection authorities supervising, jointly, a European large information system. In 2023, a third phase is about to start where the coordinated supervision moves to the framework of a EU body - the EDPB and its CSC, entrusted with the monitoring of other EU information systems in a coordinated manner.

Data protection authorities will build on the long experience and expertise achieved over all these years supervising the SIS, at national and central level, to overcome the huge challenges ahead in guaranteeing the freedoms and fundamental rights of individuals, in particular in the context of unprecedented sharing of personal data among EU information systems.

15 December 2022

Clara Guerra

(Vice-chair acting as Chair)

Introduction

The second generation Schengen Information System (SIS II) is a large-scale information database that supports external border control and law enforcement cooperation in the Schengen States. It assists national authorities in sharing information by enabling competent authorities, such as police and border guards, to enter and consult alerts on certain categories of wanted or missing persons and lost or stolen property.

The Schengen Information System II Supervision Coordination Group (“SIS II SCG”) is the body set up by the SIS II Regulation¹ and the SIS II Decision² to ensure a coordinated supervision in the area of personal data protection of the SIS II large-scale information system. The SIS II SCG consists of representatives of the National Supervisory Authorities of the Member States responsible for data protection and the European Data Protection Supervisor.

To this end, representatives of the National Supervisory Authorities and the EDPS meet on a regular basis to exchange experiences, discuss problems regarding the interpretation or the application of the SIS legal framework, analyse difficulties regarding the supervision or the exercise of the rights of data in order to share best practices and, where possible, find common solutions.

On 28 November 2018, three new Regulations were adopted concerning the Schengen Information System (SIS)³, which entered into force on 27 December 2018. However, they will only be fully applicable from the date set by the Commission in accordance with Article 66(2) of Regulation (EU) 2018/1861, Article 79(2) of Regulation (EU)

¹ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 381, 28.12.2006, p. 4.

² 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 - Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, OJ L 312, 7.12.2018, p. 1;

- Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, p. 14;

Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, OJ L 312, 7.12.2018, p. 56.

2018/1862 respectively. Once they will enter into full application, they will repeal and replace the legal framework applicable to the SIS at present.

As a result, the coordinated supervision of the SIS II will be aligned with Article 62 of Regulation (EU) 2018/1725⁴ (EUDPR), that provides for an harmonised model of coordinated supervision, applicable where the relevant act of Union law refers to this Article. Pursuant to Article 62, the EDPS and the National Supervisory Authorities, each acting within their respective competences, must cooperate actively within the framework of their responsibilities to ensure effective supervision of large-scale IT systems and of Union bodies, offices and agencies. They must meet for these purposes within the framework of the European Data Protection Board (EDPB).

This is executed in practice by the Coordinated Supervision Committee (CSC)⁵, that operates within the framework of the EDPB. Consequently, the coordinated supervision of the SIS will be handed over to the EDPB and its CSC. The target date for such hand over is now set on 7 March 2023. From this date the EDPB Secretariat will provide the support necessary for the CSC to carry out its activities. .

Therefore, the present document represents the last activity report of the SIS II SCG and provides an overview of the activities carried out by the SIS II SCG for the period 2020 - 2022. From November 2020 until November 2021 Mr Gert Vermeulen and Ms Clara Guerra were respectively Chair and Vice Chair. For the remaining period, i.e. from November 2021 - March 2022 Ms Clara Guerra, acted as Chair, since Mr. Vermeulen ceased his duty in the DPA.

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.), OJ L 295, 21.11.2018, p. 39.

⁵ See Article 19 of Regulation (EU) 2018/1860 read in conjunction with Article 57 of Regulation (EU) 2018/1861), Article 57 of Regulation (EU) 2018/1861 and Article 71 of Regulation (EU) 2018/1862.

The Supervision Coordination Activity

A. Working methods

The meetings of the representatives of the National Supervisory Authorities of the Member States responsible for data protection and the European Data Protection Supervisor were a key forum for organising cooperation, for exchanging information and deciding on coordinated activities. The European Commission and eu-LISA were always invited to present any relevant developments concerning the legal framework and the functioning of the SIS II.

According to Article 46(3) of the SIS II Regulation and Article 5 of the Rules of Procedures, these meetings should take place at least twice a year. Consequently, the SIS II SCG met twice in 2020, 2021 as well as 2022. More specifically, the SIS II SCG met on the following dates:

- 17 June 2020
- 25 November 2020
- 16 June 2021
- 25 November 2021
- 1 June 2022
- 21 November 2022

The first four meetings took place remotely, due to the COVID-19 pandemic while the last two meetings took place in a hybrid mode, both remotely and in person. The meetings were organised back to back with the VIS and EURODAC SCGs, to take advantage of the common membership in these groups.

In the same vein, and due to the interaction between the large information systems in the borders' context, the SIS II SCG used synergies with the VIS and EURODAC SCGs, to avoid the duplication of work and to improve the consistency of data protection supervision.

To promote the cooperation and enhance the communication within the SIS II SCG, the CIRCABC network is used as the basic tool to share information, prepare the meetings, archive documents, organise the work of the subgroups and communicate in a secure, fast and costless way.

B. Main activities

The SIS II SCG carried out a number of activities, though due to the pandemic crisis, the activities that were initially planned until 2021 were heavily disrupted, in particular in what regards inspections in the field. On the other hand, the Group addressed new issues, which emerged in the course of the reporting period.

The reminder of this section provides an overview of such activities.

1) Report on Article 36 alerts

In light of the increase of alerts entered in the SIS II based on Article 36 of the SIS II Decision (i.e. data on persons or vehicles, boats, aircraft and containers entered for the purposes of discreet checks or specific checks), the Group decided to carry out a joint exercise on this matter.

The Group developed a questionnaire, which served as a guide for Data Protection Authorities (DPAs) when conducting national investigations on the use of these alerts. The purpose of these inspections is to enable DPAs to conduct an overall assessment of the level of compliance with the legal basis and to report such results with possible recommendations.

Due to the pandemic, DPAs encountered important delays in conducting such investigation and, therefore, the deadline to reply to the Article 36 questionnaire was postponed until end of November 2022.

Given the importance of this matter, the Group agreed to continue this activity under the auspices of the Coordinated Supervision Committee, which will assess the replies and prepare the report.

2) Exercise of the data subjects' rights

a) Reaction to the extraordinary high number of access requests to SIS from nationals of a third country

Following a huge increase in the number of access requests to the national competent authorities since 2019, especially coming from nationals of one third country, the Group sent a letter, in July 2020, to the country's data protection authority on the basis of international cooperation, trying to understand what could be the reasons for such escalation. There were concerns that the requests could be being used for other purposes than those prescribed in the SIS II Regulation. Another issue was related to who exactly was submitting the

requests. The dramatic increase of access requests may suggest an abuse of the individuals' right of access, since it appears that the requests are not triggered by data subjects' desire to exercise their rights but by interested third parties, or as a consequence of certain legal requirements to travel. Given that the situation was not clarified and the problem persisted, the Group sent a second letter in August 2022, this time addressed to the European Commission with the Council in copy. The Group asked to take stock of this matter, to make the relevant diligences to find out the reasons for this important issue, and to take the necessary steps to ensure that the right of access is not being misused and that information related to the existence of alerts in the SIS II is not being processed in a large scale by a third State.

b) Update of the Guide for exercising data subjects' rights

The Group updated the guide for the data subjects exercise their rights vis-a-vis the Schengen Information System in terms of legal references as well as national procedures and contact details in view of the new legal provisions related to the individuals' rights provided by the SIS recast regulations.

The work will be taken over by the CSC, which intends to have a consolidated presentation of the data subjects' rights for all EU information systems.

3) Data protection experts in the Schengen evaluation teams

After the Commission presented a Proposal for a new mechanism for the evaluation of the application of the Schengen acquis, repealing Council Regulation (EU) 1053/2013⁶, the SIS II SCG proactively engaged with the Commission to contribute to this new legal framework. The Group held internal discussions on the format of the evaluation and on the participation of data protection experts in the evaluation teams, and discussed the proposal with the Commission in its meetings. This interaction paved the way for data protection authorities to participate in two meetings with Council representatives and provide written comments on how data protection evaluation should be organised.

Consequently, the SIS II SCG together with the VIS SCG sent to the European Commission, the Council and the European Parliament, in December 2021, joint comments on the Commission Proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No

⁶ [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 Schengen](#)

1053/2013. The SIS II SCG and VIS SCG reaffirmed the importance of the data protection evaluations to be carried out by staff from independent data protection authorities instead of staff from other institutions. However, they noted that many data protection authorities are understaffed, and therefore suggested to amend the Proposal by adding a provision obliging Member States to ensure the necessary conditions, in particular financial, for the DPAs to actively participate in the evaluation missions in the field of data protection are met. As concerns the workload on evaluation missions, the groups recalled that incentives like compensation or additional training should be provided to match the working hours per day often associated with such missions. In addition, the groups raised issues of specific training and mission planning.

4) Collection of statistics by Member States on the exercise of rights

The SIS II SCG gave its contribution to the European Commission on the Common template for the annual report to the European Data Protection Board under Article 54(3) of Regulation (EU) 2018/1861 and Article 68(3) of Regulation (EU) 2018/1862. Those legal provisions foresee that Member States shall provide the EDPB with yearly statistics on the exercise of the right of access, rectification and erasure by data subjects and the respective outcome, as well as on court decisions concerning the exercise of the rights.

Following a consultation by the Commission in 2021, the Group discussed the proposed template and made some suggestions to improve the information collected in order to get a better overview of how the requests are handled and the extent of the derogations applied.

5) Raising awareness of data protection rights

According to Article 19 of SIS Regulations 2018/1861 and 2018/1862 *“the Commission, in cooperation with the supervisory authorities and the European Data Protection Supervisor, shall carry out a campaign informing the public about the objectives of SIS, the data stored in SIS, the authorities having access to SIS and the rights of data subjects. The Commission shall repeat such campaigns regularly, in cooperation with the supervisory authorities and the European Data Protection Supervisor. The Commission shall maintain a website available to the public providing all relevant information concerning SIS. Member States shall, in cooperation with their supervisory authorities, devise and implement the necessary policies to inform their citizens and residents about SIS generally.”*

In view of the preparation of the data protection authorities for the launch of the information campaign when the new SIS legal framework was fully applicable, the

Commission presented to the representatives of the SIS II SCG the outline of the information campaign, the available materials and the envisaged timeline.

6) Interpretation of Article 44(2) of SIS II Regulation and Article 60 (2) of the SIS II Decision

Following a request presented this year by a national data protection authority to discuss how the audit cycle imposed on DPAs should be calculated, there was a first exchange of views on how to apply such legal provision.

The Group decided to carry out an extended analysis on the interpretation of Article 44(2) of the SIS II Regulation and its equivalent Article 60(2) of the SIS II Decision. Given the importance of this matter, the Group agreed to take this task to the auspices of the Coordinated Supervision Committee, where the SIS coordinated supervision will be ensured.

C. Institutional cooperation

The first level of institutional cooperation of the SIS II SCG is with the EDPS, not in the quality of member of the Group, but within the legal task and responsibility of providing the Secretariat to the Group and in bearing the costs of the meetings.

The SIS II SCG also keeps upholding a valuable cooperation with the European Commission, by means of regular participation of its representatives (from DG HOME and DG JUST) in parts of the meetings to address any relevant matters while being available for Q&A with delegations.

As a privileged network to reach all national DPAs, the European Commission kept channelling through the Group the call for designation of experts for the Schengen data protection evaluations, in order to easily reach out to experts in that area.

The SIS II SCG keeps a good working relation with the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), as the Management Authority for SIS II. The DPO of eu-LISA is invited regularly to present recent developments of the SIS II and answer Q&A with delegations.

Annexes

Annex A: List of documents adopted

1. Letter to a third country data protection authority concerning the increased number of access requests, July 2020
2. Joint comments on the Commission Proposal for a Council Regulation on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing Regulation (EU) No 1053/2013, December 2021
3. Letter to the European Commission (in cc to Council) concerning the increased number of access requests by nationals of a third country, August 2022

Annex B: List of members and observers

Members:

1. AUSTRIA

Matthias Wildpanner-Gugatschka
Clemens Trauner

2. BELGIUM

Frédéric Claeys
Koen Gorissen
Frank Schuermans
Laurine Vierendeels

3. BULGARIA

Hristo Alaminov
Veselin Tselkov
Kristina Radkova
Dima Hristova

4. CROATIA

Igor Vulje
Maja Peran
Sanja Silaj-Zema

5. CZECH REPUBLIC

Jiri Kodym

Helena Zemlickova

6. DENMARK

Anders Aagaard

Anne- Sofie Secher

Delaram Lam

Makar Juhl Holst

7. EDPS

Dina Kamporaki

Jeroen Wauman

Vitor Bernardo

8. ESTONIA

Kirsika Berit Reino

Marli-Liis Uprus

9. FINLAND

Juhani Kuparinen

10. FRANCE

Marie-Laure Denis

François Pellegrini

Marion De Gasquet

Délia Rahal-Löfskog

Ahlem Tamouza

11. GERMANY

Ines Walburg

Carla Schmode

12. GREECE

Eleni Maragkou

Ioannis Lykotrafitis

13. HUNGARY

Horváth Eszter

Berei Szonja

Siklosi-Somogyi Katalin

14. ICELAND

Páll Heiðar Halldórsson

Pórður Sveinsson

15. IRELAND

Eunice T. Delaney

Audrey G. FLYNN

Niall J. Cavanagh

16. ITALY

Alfredo Marino

17. LATVIA

Lāsma Dilba

Lauris Linabergs

18. LIECHTENSTEIN

Peter Bär

19. LITHUANIA

Jurgita Makunaite

Raimondas Andrijauskas

20. LUXEMBOURG

Thierry Lallemand

Nina Burmeister

Tine Larsen

21. MALTA

Pierre Minuti

Saviour V Cachia

22. NETHERLANDS

Renée ter Hart

Evelyne Schuurmans

Evelien van Beek

23. NORWAY

Henny Hallingskog-Hultin

Jorgen Skorstad

Sindre Dyrhovden

24. POLAND

Piotr Piwowarczyk

Błażej Cierieszko

Maria Jeda

25. PORTUGAL

Clara Guerra

Isabel Cruz

26. ROMANIA

Luisa Dumitru

George Balaiti

27. SLOVAKIA

Andrej Horsky

Petra Petrek Lasova

Jana Sisakova

28. SLOVENIA

Matej Sironic

Eva Kalan

Tanja Slak

29. SPAIN

Pablo Manuel Mateos Gasguena

Enrique Factor Santoveña

30. SWEDEN

Elisabeth Wallin Jideryd

31. SWITZERLAND

Caroline Gloor Scheidegger

Tobias Naef

Dominika Blonski

Marcel Vogel

Observers:

1. CYPRUS

Constantinos Georgiades

Andreas Hadjigeorgiou