

EDPS Formal comments on the draft Commission Implementing Decision amending the Annex to Commission Implementing Decision 2013/115/EU on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II)

1. Introduction and background

On November 2018, the Schengen Information System (SIS) legal framework underwent a reform with the adoption of three new Regulations: Regulation (EU) 2018/1860 providing for the storage of return decisions into SIS¹, Regulation (EU) 2018/1861 on the use of alerts on third country nationals for border checks², and Regulation (EU) 2018/1862 on the use of SIS within the field of police and judicial cooperation³. The new SIS Regulations operationally and technically updated and strengthened the system and extended its scope of application. They will become fully in force on the basis of an implementing decision of the Commission which must be adopted no later than 21 December 2021 and that will repeal and replace the current legal framework applicable to the SIS.⁴

One of the objectives of the new SIS Regulations is to improve and extend the use of the SIS in the field of police cooperation and judicial cooperation in criminal matters. To this end, it also enhances the role of Europol by, *inter alia*, enabling Europol to exchange supplementary information entered in the SIS when an alert is issued.

While waiting for the new SIS regulations to fully enter into force, the existing SIS legal instruments have been amended to extend Europol's access to data in SIS II and to provide the possibility for Europol to receive and process supplementary information.⁵ These amendments entered into application on 28 December 2019. However, Europol needs until March 2021 to technically prepare to join the supplementary information exchange.

The rules for the exchange of supplementary information related to SIS alerts are set out in a SIRENE Manual, the most recent version of which was adopted through Commission Implementing

¹ 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).

² 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).

³ 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).

⁴ See respectively Article 79 of Regulation 2018/1862, Article 20 of Regulation 2018/1860 and Article 66 (2) of Regulation 2018/1861.

⁵ Regulation (EU) 2018/1862 in its Article 77 amends Article 41 of Council Decision 2007/533/JHA and Regulation (EU) 2018/1861 in its Article 63 amends Regulation (EC) No 1987/2006.

Decision (EU) 2017/1528⁶ replacing the Annex to Commission Implementing Decision 2013/115/EU on the SIRENE Manual⁷.

Therefore, the Commission Implementing Decision 2013/115/EU, as amended by the Commission Implementing Decision (EU) 2017/152, needs to be amended to reflect Europol's access in the SIRENE procedures until the new SIS Regulations enter into full application by the end of 2021. Once the Regulations will enter into full application then, the SIRENE Manual will be repealed and replaced by a completely new SIRENE Manual, which will include all changes brought by the new SIS Regulations, including those on Europol.

The present formal comments are issued in response to the legislative consultation submitted by the European Commission on 14 October 2020 pursuant to Article 42(1) of Regulation (EU) 2018/1725.⁸ In this regard, the EDPS welcomes the reference to this consultation in Recital 12 of the draft Implementing Decision.

2. Comments

The draft Implementing Decision amending the Annex to Commission Implementing Decision 2013/115/EU on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) is generally of technical nature and does not introduce any new substantial rules related to processing of personal data. As a result, it does not raise significant concerns with regard to the right to the protection of personal data. Moreover, the EDPS is aware that one of the objectives of the proposed changes is to facilitate information exchange in the context of counter-terrorism activities within the Union.

Nevertheless, the EDPS has a specific recommendation on Article 1 (8) of the draft Implementing Decision, which amends point 10 'STATISTICS' of the SIRENE Manual. The EDPS notes that point 2.6A 'Use by Europol of information obtained from a search in SIS II or from the processing of supplementary information', encompasses two separate and rather different purposes:

- (i) comparison of information with Europol databases and operational analysis projects, for the purpose of identifying connections or other relevant links and for strategic, thematic or operational analyses; and
- (ii) sharing of the information obtained from a search in SIS II or from the processing of supplementary information, with third countries or third bodies.

The EDPS recalls that the possibility for Europol to communicate information stored in SIS to third countries or bodies⁹ represents an exception to the general rules provided in the SIS Regulations, which explicitly prohibit the sharing of SIS data with third countries.

⁶ 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) (OJ L 231, 7.9.2017, p. 6).

⁷ 2013/115/EU: Commission Implementing Decision of 26 February 2013 on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 71, 14.03.2013, p.1).

⁸ 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, OJ, 21.11.2018, L 295, p.39 (Regulation 2018/1725).

⁹ Article 41 (4) of 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. 63–84 as amended by Regulation 2018/1862.

In this context, taking also into account the reinforced role of Europol in the use of SIS data introduced by the new SIS Regulations, the EDPS recommends that **Europol provides separate statistics about the requests and replies (M forms) related to the sharing of SIS data with third countries or bodies.**

Finally, the EDPS takes note of the fact that once the new SIS Regulations will enter into full application, the SIRENE Manual will be repealed and replaced by a completely new SIRENE Manual and looks forward to being consulted in due time.

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(e-signed)