

Use of the Schengen Information System (SIS) for the return of illegally staying third country nationals

2016/0407(COD) - 28/11/2018 - Final act

PURPOSE: to improve the use of the Schengen Information System (SIS) for the return of illegally staying third-country nationals.

LEGISLATIVE ACT: Regulation (EU) 2018/1860 of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals.

CONTENT: the Regulation lays down the conditions and procedures for the entry and processing of alerts in respect of third-country nationals subject to return decisions issued by the Member States in the Schengen Information System (SIS) established by Regulation (EU) 2018/1861, as well as for exchanging supplementary information on such alerts.

The Regulation is accompanied by two other Regulations on the use of the SIS in the field of [border checks](#) and [police and judicial cooperation in criminal matters](#).

Entry of alerts on return into SIS

Member States shall enter into SIS alerts on third-country nationals subject to a return decision for the purpose of verifying that the obligation to return has been complied with and of supporting the enforcement of the return decisions. An alert on return shall be entered into SIS without delay following issue of a return decision.

Member States may refrain from entering alerts on return when the return decision is issued at the external border of a Member State and is executed immediately.

The alert shall indicate whether a period for voluntary departure has been granted to the third-country national concerned, including whether such period has been extended and whether the decision has been suspended or removal has been postponed.

Categories of data

The Regulation determines the categories of data to be entered into SIS in respect of a third-country national who is the subject of a return decision. Alerts on return should contain only those data that are necessary to identify the data subjects, to allow the competent authorities to take informed decisions without losing time and to ensure, where necessary, the protection of those authorities from persons who are, for example, armed, violent, have escaped or are involved in a terrorist activity.

Given the reliability of identifying persons using fingerprints and photographs or facial images, they shall always be inserted in alerts on return. As they may not be available, for example, when a return decision is taken in absentia, it should exceptionally be possible to derogate from this requirement in such cases.

The exchange of supplementary information provided by the national competent authorities on third-country nationals subject to alerts on return, shall always be carried out through the network of national offices called SIRENE Bureaux serving as point of contact.

Confirmation of return

In the event of a hit on an alert on return concerning a third-country national who is exiting the territory of the Member States through the external border of a Member State, the executing Member State shall communicate the following information to the issuing Member State through the exchange of supplementary information - that the third-country national has been subject to removal, if this is the case.

The Regulation also describes the procedures that shall apply in the event of a hit at the external borders to entry into the territory of the Member States through the external borders.

Consultations between Member States

The Regulation lays down mandatory rules for consultation between Member States in order to avoid or reconcile conflicting instructions.

Consultations should be carried out where third-country nationals who hold, or are being granted, a valid residence permit or a long-stay visa by a Member State are subject to an alert on return issued by another Member State, in particular if the return decision is accompanied by an entry ban, or where conflicting situations may arise at entry in the territories of the Member States.

Deletion of alerts

Alerts on return shall be deleted when the decision on the basis of which the alert was entered has been withdrawn or annulled by the competent authority. Alerts on return shall also be deleted when the third-country national concerned can demonstrate that he or she has left the territory of the Member States in compliance with the respective return decision.

Transfer of personal data to third countries

Personal data obtained by a Member State pursuant to this Regulation shall not be transferred or made available to any third country. As a derogation to that rule, it shall be possible to transfer such personal data to a third country where the transfer is subject to strict conditions and is necessary in individual cases in order to assist with the identification of a third-country national for the purposes of his or her return.

Access to data

Europol shall have access to all categories of data in the SIS and shall exchange supplementary information with the SIRENE offices of the Member States. The European Border and Coast Guard Agency shall also have access to the different categories of alerts in the SIS.

ENTRY INTO FORCE: 27.12.2018.