















Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) 2016/0407(COD) Regulation</p>	Procedure completed
<p>Use of the Schengen Information System (SIS) for the return of illegally staying third country nationals</p> <p>See also Directive 2008/115/EC 2005/0167(COD) See also 2016/0408(COD)</p> <p>Subject 7.10.04 External borders crossing and controls, visas 7.10.08 Migration policy</p> <p>Legislative priorities Joint Declaration 2018-19</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 LENAERS Jeroen	09/03/2017
		Shadow rapporteur	
		 DALLI Miriam	
		 HALLA-AHO Jussi	
		 DEPREZ Gérard	
		 JOLY Eva	
	 MEUTHEN Jörg		
	 FONTANA Lorenzo		
	Committee for opinion	Rapporteur for opinion	Appointed
	 Development	The committee decided not to give an opinion.	
	 Budgets	The committee decided not to give an opinion.	
	 Foreign Affairs		15/05/2017
		 VAUTMANS Hilde	
Council of the European Union	Council configuration	Meeting	Date
	Agriculture and Fisheries	3651	19/11/2018
European Commission	Commission DG	Commissioner	
	Migration and Home Affairs	AVRAMOPOULOS Dimitris	

Key events			
21/12/2016	Legislative proposal published	COM(2016)0881	Summary
06/04/2017	Committee referral announced in Parliament, 1st reading		
06/11/2017	Vote in committee, 1st reading		
06/11/2017	Committee decision to open interinstitutional negotiations with report adopted in committee		
10/11/2017	Committee report tabled for plenary, 1st reading	A8-0348/2017	Summary
13/11/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
15/11/2017	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
23/10/2018	Debate in Parliament		
24/10/2018	Results of vote in Parliament		
24/10/2018	Decision by Parliament, 1st reading	T8-0414/2018	Summary
19/11/2018	Act adopted by Council after Parliament's 1st reading		
28/11/2018	Final act signed		
28/11/2018	End of procedure in Parliament		
07/12/2018	Final act published in Official Journal		

Technical information	
Procedure reference	2016/0407(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	See also Directive 2008/115/EC 2005/0167(COD) See also 2016/0408(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 079-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/08852

Documentation gateway					
Legislative proposal		COM(2016)0881	21/12/2016	EC	Summary
Document attached to the procedure		N8-0046/2017 OJ C 200 23.06.2017, p. 0014	03/05/2017	EDPS	
Committee draft report		PE606.233	30/06/2017	EP	

Committee opinion	AFET	PE605.921	26/07/2017	EP	
Amendments tabled in committee		PE609.652	06/09/2017	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0348/2017	10/11/2017	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0414/2018	24/10/2018	EP	Summary
Commission response to text adopted in plenary		SP(2018)755	21/11/2018	EC	
Draft final act		00034/2018/LEX	28/11/2018	CSL	

Additional information

Research document

[Briefing](#)

Final act

[Regulation 2018/1860](#)

[OJ L 312 07.12.2018, p. 0001](#) Summary

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

PURPOSE: to reform the Schengen Information System (SIS) in order to provide for the integration of alerts in the SIS concerning the return of illegally staying third-country nationals to the territory of the Member States.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: in 2016, the Commission carried out a [comprehensive evaluation of SIS](#), three years after the entry into operation of its second generation. This evaluation showed that SIS has been a genuine operational success.

Nonetheless, the effectiveness and efficiency of the system should be further strengthened. To this end, the Commission is presenting a first set of three proposals to improve and extend the use of SIS as result of the evaluation while continuing its work to make existing and future law enforcement and border management systems more interoperable.

These proposals cover the use of the system for:

- [border management](#),
- [police cooperation and judicial cooperation in criminal matters](#), and
- the return of illegally staying third country nationals.

CONTENT: this proposal lays down the conditions and procedures for the entry and processing in the Schengen Information System (SIS) of alerts in respect of third-country nationals subject to return decisions issued by the Member States in accordance with procedures respecting [Directive 2008/115/EC](#), as well as for exchanging supplementary information on such alerts.

Purpose: the purpose of the present proposal is to improve and extend the use of SIS by making it obligatory for Member States' authorities to enter in SIS all return decisions issued, to allow their EU-wide visibility and thus enhance their enforcement.

The use of SIS for return is aimed at assisting immigration authorities in following up and enforcing the return of third-country nationals who have no right to stay in the Member States. It also helps to prevent and deter irregular migration and to enhance information sharing and cooperation between immigration authorities.

Entering alerts on return: in order to facilitate the exchange of information between competent authorities, the proposal lays down the purpose and rules for entering alerts on return in SIS to allow the competent authorities to verify that the obligation to return has been complied with. The alert should be without delay entered as soon as the decision has been issued to the illegally staying third-country national concerned, in order to allow the verification referred to above. The alert should indicate if a period for voluntary departure is still running or if a decision has been suspended or removal has been postponed.

Where there are no reasons to believe that it would undermine the purpose of return procedures, voluntary return should be preferred over forced return and a period for voluntary departure should be granted to the returnee.

The duration of the period for voluntary departure, and any prolongation thereof, should be indicated in the alert to allow public authorities to decide whether it is appropriate to take action in the individual case.

Exchange of information between the competent authorities: the proposal lays down categories of data that can be contained in a return alert.

Effective and timely cooperation and exchange of supplementary information between Member States requires the set-up of single point of contact.

To improve the efficiency of the EU's return policy, Member States shall be obliged to confirm the departure of the third-country national subject to an alert on return to the Member State (or authority) that entered the alert. This provision shall allow the authorities issuing and enforcing return decisions to verify that the obligation to return has been complied with.

Non-compliance with an obligation to return: the proposal sets out the provisions in cases of non-compliance with the obligation to return. A series of procedures are provided to deal with situations where a third-country national subject to an alert on return is identified and apprehended in another Member State (passing back the third-country national to the issuing Member State).

Access and management of data: provisions are provided regarding:

- alerts on return need to be deleted following the return of the third-country national concerned;
- the opportunity to keep trace in SIS of return decisions after the return was enforced will be explored. This information could be useful if a third country national re-entered the territory of the Member States and is found as illegally staying in a different Member State than the one who issued the first return decision;
- enabling the authorities responsible for issuing return decisions to be able to access SIS in order to enter, update, delete and search data (the authorities concerned are listed in the proposal).

BUDGETARY IMPLICATIONS: the cost-estimate of EUR 3.6 million from 2018 to 2020 includes costs for the technical upgrade of SIS for the purpose of return.

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

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Jeroen LENAERS (EPP, NL) on the proposal for a regulation of the European Parliament and of the Council on the use of the Schengen Information System (SIS) for the return of illegally staying third-country nationals.

The committee recommended that the European Parliaments position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Introduction of data into the SIS: data on third-country nationals subject to a return decision shall be entered in SIS immediately after the decision becomes effective under the national legislation of the respective Member State for the purpose of verifying that the obligation to return has been complied with and for supporting the enforcement of the decision.

Member States may elect not to enter data on third-country nationals subject to a return decision when it concerns third-country nationals who are placed in detention until removal.

The period for voluntary departure granted to third-country nationals subject to a return decision issued shall be immediately recorded in the alert. Where this period is extended, the alert shall be immediately updated accordingly.

Suspension or postponement of execution of the return decision: Members proposed that Member States should make an existing alert related to return in SIS temporarily unavailable upon the suspension or postponement of the enforcement of the return decision or where an appeal has been lodged against a return decision which may lead to the suspension of its enforcement. If the return decision is overturned the alert shall be deleted immediately.

Data categories: the data entered in the SIS shall also include information on whether the return decision can be appealed and whether an appeal is pending against the return decision. Fingerprint data shall always be preferred over photographs and facial images.

Authority responsible for the exchange of supplementary information: Members suggested that each Member State shall designate a national authority that is fully operational 24 hours a day, 7 days a week, to ensure the exchange and availability of all supplementary information on third-country nationals who are the subject of a return decision. Member States may designate their SIRENE Bureau as their national authority.

Members stated that where a third-country national who is the subject of an alert on return is identified when entering through the external borders, the Member State that identified the third-country national concerned shall inform the issuing Member State as soon as possible and in any event within 12 hours through the exchange of supplementary information in order to delete the alert.

Transfer of personal data to third countries: the data may only be exchanged if the third country explicitly undertakes to use the data only for the purpose for which it they were provided and if the third-country national concerned has been informed that his or her personal data and supplementary information will be shared with the authorities of a third country.

Non-refoulement, best interests of the child, family life and state of health: when implementing this Regulation, Member States shall take due account of the best interests of the child, family life, the state of health of the third-country national concerned and whether the third-country national is a vulnerable persons.

In any event, any measures to return third-country nationals shall fully respect the Charter of Fundamental Rights of the European Union and the principle of non-refoulement.

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

The European Parliament adopted by 500 votes to 103, with 41 abstentions, a legislative resolution on the proposal for a regulation 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.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Purpose: the proposed Regulation shall 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), as well as for exchanging supplementary information on such alerts.

Member States shall implement this Regulation in full respect of the Charter of Fundamental Rights, including the respect of the principle of non-refoulement, and shall always take into consideration the best interests of the child, family life, and the state of health or condition of vulnerability of the individuals concerned.

Introduction of data into the SIS: in order to ensure the effectiveness of returns, Member States shall enter alerts into SIS in relation to return decisions they issue in respect of illegally staying third-country nationals. In certain circumstances, Member States may refrain from entering alerts on return into SIS where the risk of the return decision not being complied with is low, namely during any period of detention or when the return decision is issued at the external border and is executed immediately, in order to reduce their administrative burden.

Alerts on return shall be automatically deleted as soon as they expire.

Categories of data: the amended text provides for the introduction of new categories of data in the SIS. 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 shall exceptionally be possible to derogate from this requirement in such cases.

Competent authorities: 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 amended text 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: this Regulation shall establish mandatory rules for consultation between Member States to avoid or reconcile conflicting instructions. Provisions have been introduced with regard to this:

- prior consultation before granting or extending a residence permit or long-stay visa;
- prior consultation before entering an alert on return;
- posteriori consultation after entering an alert on return;
- consultation in the case of a hit concerning a third-country national holding a valid residence permit or long-stay visa.

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.

Lastly, Member States shall provide statistics to eu-LISA on an annual basis on the exchanges of information carried out in accordance with Articles 8 to 12 and on the instances in which the deadlines provided for in those Articles were not met.

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

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.