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COVER NOTE

From:	Ms Clara Guerra, Chair of the SIS II Supervision Coordination Group
date of receipt:	2 August 2017
To:	President of the Council of the European Union
Subject:	SIS II legislative proposals

Delegations will find attached a copy of a letter from the SIS II Supervision Coordination Group concerning the SIS II legislative package.



SIS II SCG

SIS II SUPERVISION COORDINATION GROUP

President of the Council of the
European Union
General Secretariat
Council of the European Union
Rue de la Loi 175
B-1048 Brussels

Brussels, 2 August 2017

AZN/CG/C2013-0428

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Dear Mr President,

As representatives of national data protection authorities (hereinafter “DPAs”) supervising the Schengen Information System of the second generation (“SIS II”), we have noted that on 21 December 2016 the Commission published a legislative package on Schengen Information System, which is composed of three regulations proposals:

- Proposal for a regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 (hereinafter “SIS proposal on border checks”)¹;
- Proposal for a regulation of the European Parliament and of the Council 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 Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU (hereinafter “SIS proposal on police and judicial cooperation”)²;

¹ COM(2016) 882 final

² COM(2016) 883 final



- 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 (hereinafter “SIS proposal on return”)³.

Subsequently, legislative work has been conducted within the European Parliament and the Council of the European Union.

The proposals raise some data protection concerns which were already voiced by the European Data Protection Supervisor in his Opinion 7/2017 on the new legal basis of the Schengen Information System⁴. The SIS Supervision Coordination Group⁵ (hereinafter “SIS SCG”) supports the EDPS’ arguments and would like to underline the following, most crucial issues, which should be taken into account during upcoming trilogues on the SIS legislative package.

The SIS SCG would like to recall that each legislative proposal should be accompanied by a detailed impact assessment on the fundamental rights, including the right to data protection. The lack of the data protection impact assessment in the SIS legislative package impedes the proper assessments of the proportionality and necessity of the proposed changes to the Schengen Information System.

The SIS SCG would like as well to draw the attention of the legislators on the need to:

- prepare a prior analysis of the necessity of the introduction of the new biometric identifiers (facial images, palmprints and DNA profiles), which should clearly explain that the purpose of the system cannot be achieved in a less intrusive way. Additionally the palmprints have been introduced for the first time ever in an EU large scale IT system and they are still not commonly used at national level, therefore the need of a data

³ COM(2016) 881 final

⁴ https://edps.europa.eu/data-protection/our-work/publications/opinions/schengen-information-system-new-legal-basis_en

⁵ Data protection supervision of the SIS is carried out at national level by the national data protection authorities (“DPAs”), while for the central (EU) level the European Data Protection Supervisor is competent. The coordination between these two levels is ensured by the SIS Supervision Coordination Group, which is composed by the representatives of the DPAs and the EDPS. More information on the SIS SCG is available here:

https://edps.europa.eu/data-protection/european-it-systems/schengen-information-system_en



protection impact assessment with the detailed explanation of the necessity and proportionality of the use of such data is even more urgent;

- better define the access rights and rules for European Border and Coast Guard Agency teams involved in return-related tasks and migration management support teams to properly reflect the accountability principle;
- justify the necessity of the extension of the data retention period of alerts on person from three years to five years;
- introduce the possibility for the SIRENE Bureau to delete alerts on objects after achievement of its purpose⁶;
- learn from the past experience and conduct on a regular basis effective information campaigns to raise awareness among data subjects.

The SIS SCG would like to recall as well its letter⁷ on the lack of financial and human resources given out to the DPAs to adequately perform their tasks in accordance with the legal framework⁸. We urgently call once more upon EU institutions to ensure, to the best of their ability, that Union Law is fully and successfully complied with and DPAs are granted the necessary financial and human resources to allow a consistent, effective and independent supervision of the SIS.

At the same time the SIS SCG appreciates the attention paid to data protection in the provisions on data quality, statistics, data security and data protection training and precise rules on the Europol access to SIS which were postulated through the years by the SIS SCG.

The SIS SCG would like to take this opportunity to declare its readiness to cooperate and to contribute with its knowledge and expertise in the further work.

⁶ See: Common position of the SIS SCG on the deletion of alerts on vehicles sought for seizure or use as evidence in criminal proceedings and the interpretation of Article 38 of the Council Decision 2007/533/JHA https://edps.europa.eu/sites/edp/files/publication/16-05-24_sis_ii_scg_common_position_on_deletion_of_alerts_on_stolen_vehicles_en.pdf

⁷ SCG letter of 30 June 2017 https://edps.europa.eu/sites/edp/files/publication/17-06-13_ep-draft_letter_on_budget_en_1.pdf

⁸ Article 50 of the SIS proposal on border checks and Article 67 on police and judicial cooperation



SIS II SCG

I have sent this letter to the President of the Council of the European Union and the President of the European Commission as well.

Yours sincerely,

On behalf of the SIS II Supervision Coordination Group

A handwritten signature in dark ink, appearing to read 'Clara Guerra', is positioned below the typed name.

Clara Guerra
Chair

Cc: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General
Ms Kaja TÄEL, Permanent Representative of Estonia
Mr Ralph KAESSNER, Secretariat General of the Council