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THE EUROPEAN UNION**

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LIMITE

**SIRIS 26
COMIX 228**

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NOTE

from: Polish delegation
to: Working Party for Schengen Matters (SIS/SIRENE) / Mixed Committee
(EU/Iceland/Norway and Switzerland/Liechtenstein)
Subject: Article 96

Introduction

It is believed that one of the most crucial issues for the European Union, as well as for the Members of the Schengen Area is to assure a high level of security in the border-free area of freedom, security and justice.

The European Council has invited Member States and the Commission to explore how the different types of checks carried out at the external borders can be better coordinated, integrated and rationalised with a view to meeting a dual objective - facilitating access and improving security. According to the European Council, "the potential of enhanced information exchange and closer cooperation between border guard authorities and other law enforcement authorities working inside the territory should be explored, in order to increase efficiency for all the parties involved and fight cross-border crime more effectively."

The Stockholm programme clearly states that “the development of action at Union level should involve Member States’ expertise and consider a range of measures, including non-legislative solutions such as agreed handbooks, sharing of best practice”. The programme devotes a lot of attention to ensuring the principle of the right to free movement for citizens and their family members within the European Union. The right of residence under European Union law for citizens of the European Union and their family members not only entails rights but also imposes obligations on those who benefit from it. Moreover, one of the tasks for law enforcement authorities and border guards is to tackle possible abuses and fraud regarding the right to free movement of persons.

Bearing in mind the abovementioned aims, the Working Party for Schengen Matters has already taken decisive action to ensure more effective use of the tools available such as the SIS and SIRENE Bureaus. Several times in 2008 and 2009 issues relating to Art. 96 of the CISA were addressed as a result of discussions in the Working Party for Schengen Matters – SIS/SIRENE. A Hungarian initiative on long-term visas was discussed, and it laid the foundation for further action. The Czech Presidency put a lot of effort into examining and solving problems concerning Art. 96 of the CISA.

The solutions recommended by the Working Party for Schengen Matters and contained in 12056/09 SIRIS 106 VISA 238 COMIX 580 were legitimised by the provisions of Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa.

In order to increase the effectiveness of alerts issued pursuant to Art. 96 of the CISA, the incoming Polish Presidency would like to draw attention to the data quality of those alerts, especially the quality and range of supplementary information and the availability of identification material on aliens. Only when all these factors are dealt with will due standards of security in the Schengen Area be assured and any abuses detected, thus providing effective border controls. Furthermore, any breach of the fundamentals of the EU principle of free movement will be avoided.

The priority issue of "Analysis of practical problems connected with alerts issued pursuant to Art. 96 of the CISA, i.e. reservations regarding aliens" focuses on gathering information regarding Member States' national solutions in the area of storage and processing of supplementary information and identification material concerning Article 96 alerts and its availability to the SIRENE Bureaus, as well as on analysing accessibility to the national databases – the source of such data. Our initiative concentrates on recognising existing national systems of disseminating information and methods of gathering identification material. We aim to improve data quality in SIS as well as to enhance communication with regard to exchanging such data between SIRENE Bureaus and requesting authorities.

Given the range of data that will be processed in SIS II by comparison with SIS 1 +, especially photographs and fingerprints, it is very important to scrutinize the tools available in national systems for collecting data concerning aliens. The abovementioned analysis in connection with the rule of data availability is intended to be a valuable contribution to the development of the measures introduced into SIS II by Member States' N.SIS.

The questionnaire we have prepared will allow us to examine what kind of data is gathered for each category of alerts issued pursuant to Art. 96 of the CISA, how SIRENE Bureaus get access to the data at national level, how effective these ways are, and whether they fulfil terms and procedures established in the SIRENE Manual and Council recommendations, etc. All of this will help us determine the state of cooperation so far and the prospects for cooperation with consular services under Art. 25 of the CISA. Exchange of experience will also help to establish optimal solutions that can become the practice for MS working in this field.

It is believed that conclusions drawn from the questionnaire give the MS the opportunity to enhance cooperation between national authorities which will result in SIRENE Bureau support for effective border controls at the external borders of the EU and will prevent abuses during the process of issuing residence documents or long-term visas.

In the light of the above, you are requested to kindly fill in the questionnaire, giving as much detail as possible, in order to help us to fulfil our aims.

Delegations are invited to submit the completed questionnaire to the e-mail address sis.sirene@consilium.europa.eu (with **DELETED** in copy) by 6 May 2011.

Questionnaire.....
(Country)

I. Information concerning the authority/authorities authorised to enter alerts pursuant to Art. 96 of the CISA and to hold consultations pursuant to Art. 25 of the CISA for its own alerts

1. Nature of the authority/authorities authorised to enter alerts pursuant to Art.96 of the CISA:

- police
- administrative/executive/migration
- judiciary
- other.....

Comments:

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2. At what level is/are the authority/authorities?

- local
- central

Comments

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3. Does the national SIRENE Bureau hold consultations pursuant to Art. 25 of the CISA (for its own alerts) directly with the national authority authorised to enter alerts?

- if yes, go to question 7
- if no, go to question 4

4. Please list the national authority/authorities with which consultations are held (for their own alerts)

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5. Nature of the authority/authorities with which consultations are held:

- | | |
|------------------------------------|---|
| <input type="checkbox"/> police | <input type="checkbox"/> administrative/executive/migration |
| <input type="checkbox"/> judiciary | <input type="checkbox"/> other |

Comments

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6. At what level is/are the authority/authorities ?

- local
 central

Comments

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7. With how many national authorities does the national SIRENE Bureau hold consultations pursuant to Art. 25 of the CISA (for its own alerts)?:

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8. What channels are used by the national SIRENE Bureau to hold consultations pursuant to Art. 25 of the CISA with the national authorities (for its own alerts)?

- | | |
|---|-------------------------------|
| <input type="checkbox"/> E-mail | <input type="checkbox"/> mail |
| <input type="checkbox"/> consultation application | <input type="checkbox"/> fax |
| <input type="checkbox"/> Other, please give details | |

Comments

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9. Does your SIRENE Bureau notify the relevant SIRENE Bureau (the owner of an alert) that the information provided was taken into consideration and that a decision was taken not to grant a residence document to the alien entered in SIS pursuant to Art. 96 of the CISA?

- Yes, always
- Yes, but only at the request of the relevant SIRENE Bureau
- No

Comments

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10. In your opinion, is there a justification for informing the relevant SIRENE Bureau of the State which is the owner of an alert of the refusal to grant a residence document to an alien who is entered in SIS pursuant to Art. 96 of the CISA (in the framework of consultations under Art. 25 of the CISA)?

- Yes
- No

Comments

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11. Is it permissible under your law for the competent national authority to grant a residence document or a national long-term visa after holding consultations pursuant to Art. 25(1) of the CISA with the owner of the alert:

- After an alert under Art. 96 has been deleted from SIS?
- Before an alert under Art.96 has been deleted from SIS?

Comments

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II. SIRENE Bureau access to supplementary information and identification material concerning alerts pursuant to Art. 96 of the CISA

1. Is there a central database in your country containing information that can be used as supplementary information for your own alerts pursuant to Art. 96 of the CISA?

- If yes, go to question 2
- If no, go to question 4

2. Does the national SIRENE Bureau have direct access to the national central database from which it can obtain supplementary information on alerts based on Art. 96 of the CISA?

- If yes, go to question 3
- If no, go to question 4

3. What is the scope of the information collected and processed in the abovementioned national database?

- Type of decision
- Justification for the decision
- Effect/scope of the decision
- Competent authority
- Photograph of the alien
- Fingerprint

Copy of the identity document on which an alert is entered

Comments

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4. National SIRENE Bureau access to specific data (for its own alerts):

Number	Category of data	Access to data YES/NO	Direct access YES/NO (database)	Indirect access YES/NO	Average time within which SIRENE Bureau receives data requested
1	Type of decision				
2	Justification for the decision				
3	Photograph of alien				
4	Fingerprints				
5	Copy of identity document on which alert is entered				
6	Effect/scope of the decision				
	Competent authority				

5. What form of indirect access to the categories of data mentioned in question 4 (section II) does the national SIRENE Bureau have?

- Type of decision (if applicable, please give a short description)

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- Justification for the decision (if applicable, please give a short description)

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- Photograph of the alien (if applicable, please give a short description)

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- Fingerprints (if applicable, please give a short description)

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- Copy of the identity document on which an alert is entered (if applicable, please give a short description)

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6. On what legal grounds are alerts entered in SIS? Please list all categories of unwanted persons.

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7. The source of identification material gathered by the national SIRENE Bureau (for its own alerts):

Legal grounds for alert/categories of unwanted persons (from question 6)	Identification material			
	Photographs		Fingerprints	
	Access from database YES/NO	Contact with competent authority YES/NO	Access from database YES/NO	Contact with a competent authority YES/NO

8. Which authority is responsible for supplying the SIRENE Bureau with identification material concerning alerts based on Art. 96 of the CISA and/or making contributions to relevant databases used by the national SIRENE Bureau? (for example: authority/authorities authorised to enter alerts pursuant to Art. 96 of the CISA or other authority)

Photographs.....

Fingerprints.....

Comments:

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9. For which categories of alert based on Art. 96 of the CISA is identification material missing?
Please give the percentage for each category.

On the basis of an alert referred to in question 7	Percentage of the overall number of alerts under Art. 96 of the CISA	
	Photographs	Fingerprints

Comments: If you have no information/data to put in the table, please give a reason (for example: legal constraints, lack of available analyses, etc.)

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10. Please indicate the percentage (in %) of alerts based on Art. 96 of the CISA for which there is no identification material:

Photographs	Fingerprints	Copies of identity documents

Comments: If you have no information/data to put in the table, please give a reason (for example: legal constraints, lack of available analyses, etc.)

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11. Does your SIRENE Bureau notify the relevant SIRENE Bureau of the outcome of identification material comparison?

- Yes, always
- Yes, but only at the request of the relevant SIRENE Bureau
- No

12. In your opinion, is it legitimate to notify a relevant SIRENE Bureau of the outcome of identification material comparison every single time?

- Yes
- No

Comments

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III. Consultations on national long-term visas pursuant to Art. 25 of the CISA

1. Please describe how the national SIRENE Bureau communicates with national consular services or other visa authorities in order to hold consultations under Art. 25(3) of the CISA in conjunction with Art. 25(1):

- e-mail
- consultation application
- mail
- fax
- Other (please give details)

Comments

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2. What is the deadline for issuing a long-term visa under existing legislation in your country?

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3. What is the minimum/maximum period within which the owner of an alert must reply to your request for consultation, pursuant to Art. 25(3) of the CISA in conjunction with Art. 25(1), in order to ensure that consultations comply with existing legislation in your country?

minimum period

maximum period

Comments:

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4. In your opinion, is there a need to introduce a deadline for replying to a request for consultation under Art. 25(3) of the CISA in conjunction with Art. 25(1)?

Yes

No

in compliance with the request made by the SIRENE Bureau concerned

in compliance with the SIRENE Manual

Comments:

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IV. Updating and verifying data in SIS, data quality in connection with Art. 106 of the CISA

1. Do the national services conducting checks of persons in SIS have the technical ability to scan identity documents which contain personal particulars different from the ones stored in SIS under Art. 96 of the CISA (verifying and updating of aliases)?

Yes

No

2. Does the national SIRENE Bureau forward scans of identity documents to the owner of an alert under Art. 106 of the CISA?

Yes

No

Comments: Please add any information about legal constraints, etc.

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3. In your opinion, is it justified and helpful for updating and verifying alerts pursuant to Art. 96 of the CISA to make good quality copies of the abovementioned documents available to the owner of the alert?

Yes

No

Thank you for filling in the questionnaire.
