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To:	Working Party for Schengen Matters (Acquis) / Mixed Committee (EU/Iceland, Norway and Switzerland, Liechtenstein)
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Subject:	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 - Draft compromise text

At its meetings on 7 March 2017, 15 and 16 May 2017, the Working Party for Schengen Matters (Acquis) examined 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.

Delegations will find in the Annex a revised compromise text of abovementioned proposal, taking into account the outcome of the debates during those meetings and the written comments received from the delegations.

General scrutiny reservations on this instrument are pending from AT, BE, BG, CZ, DE, DK, EL, FI, HU, IT, LT, NL, PL, PT, SE, SI, SK and UK. Parliamentary reservations are pending from DE, PL, SE and UK. Reservations on specific provisions are indicated in footnotes.

Changes to the original Commission proposal are marked as follows: new or modified text is in **bold underlined**. Deletions are in ~~striketrough~~.

*Article 1**Subject matter and scope*

This Regulation lays down the conditions and procedures for the entry and processing in the Schengen Information System (SIS), as established by Regulation (EU) 2018/xxx [border checks], 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.

*Article 2**Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘return’ means return as defined in Article 3(3) of Directive 2008/115/EC;
- (b) ‘third-country national’ means third-country nationals as defined in Article 3(1) of Directive 2008/115/EC;
- (c) ~~‘return decision’ means a return decision as defined in Article 3(4) of Directive 2008/115/EC;~~
- (d) ~~‘return decision issued in accordance with provisions respecting Directive 2008/115/EC’ means a return decision within the meaning of point (c) and an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return, issued under the conditions of Article 2(2) of~~ **that respects** Directive 2008/115/EC;¹

¹ In line with the definition as in Article 2(12) of the Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, p. 11.

(da) ‘alert’ means a set of data entered in SIS allowing the competent authorities to identify a person with a view to taking specific action;²

(db) ‘supplementary information’ means information not forming part of the alert data stored in SIS, but connected to SIS alerts, which is to be exchanged via the SIRENE Bureaux:

(i) in order to allow Member States to consult or inform each other when entering an alert;

(ii) following a hit in order to allow the appropriate action to be taken;

(iii) when the required action cannot be taken;

(iv) when dealing with the quality of SIS data;

(v) when dealing with the compatibility and priority of alerts;

(vi) when dealing with rights of access;³

(e) ‘voluntary departure’ means voluntary departure as defined in Article 43(8) of Directive 2008/115/EC;

² Definition similar to that in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(a) both in 9593/17 and 9594/17).

³ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(b) both in 9593/17 and 9594/17).

(ea) ‘issuing Member State’ means the Member State which entered the alert in SIS⁴;

(eb) "granting Member State" means the Member State which considers granting or extending or has granted or extended a residency permit or long stay visa and is involved in the consultation procedure;

(ec) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’)⁵;

(f) ‘CS-SIS’ means the technical support function of the Central SIS as referred to in Article 4(1)(a) of Regulation (EU) 2018/xxx [border checks];⁶

(g) ‘residence permit’ means:

(a) all residence permits issued by the Member States according to the uniform format laid down by Council Regulation (EC) No 1030/2002⁷ and residence cards issued in accordance with Directive 2004/38/EC;

(b) all other documents issued by a Member State to third-country nationals authorising a stay on its territory that have been the subject of a notification and subsequent publication in accordance with Article 39 of the Regulation (EU) 2016/399⁸, with the exception of:

⁴ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(i) both in 9593/17 and 9594/17).

⁵ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(e) and Art. 3(1)(d) in 9593/17 and 9594/17, respectively).

⁶ See 9593/17.

⁷ **Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).**

⁸ **Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).**

- (i) temporary permits issued pending examination of a first application for a residence permit as referred to in point (a) or an application for asylum; and
- (ii) visas issued by the Member States in the uniform format laid down by Council Regulation (EC) No 1683/95^{9,10}
- (h) 'long-stay visa' means a national visa for stays exceeding 90 days issued by one of the Member States in accordance with its national law or Union law, as referred to in Article 1(1) of the Regulation (EU) No 265/2010^{11,12}.
- (i) a 'hit' in SIS means:
 - (1) a search is conducted by an end-user;
 - (2) the search reveals an alert entered by a Member State in SIS;
 - (3) data concerning the alert in SIS match the search data;
 - (4) the match is confirmed by the end-user; and
 - (5) further actions are requested;¹³
- (j) 'end-users' mean competent authorities directly searching CS-SIS, N.SIS or a technical copy thereof.¹⁴

⁹ Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

¹⁰ Same definition as in the proposal on Border Checks (see Art. 3(1)(q) in 9593/17).

¹¹ 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 (OJ L 85, 31.3.2010, p. 1).

¹² Same definition as in the proposal on Border Checks (see Art. 3(1)(r) in 9593/17).

¹³ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(h) and Art. 3(1)(g) in 9593/17 and 9594/17, respectively).

¹⁴ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(k) in both 9593/17 and 9594/17).

Article 3¹⁵

Entry of data in SIS

1. Data on third-country nationals subject to a return decision ~~issued in accordance with provisions respecting Directive 2008/115/EC~~ shall be entered in SIS for the purpose of verifying that the obligation to return has been complied with and for supporting the enforcement of the decision. An alert shall be entered in SIS without delay when the return decision is ~~issued in accordance with provisions respecting Directive 2008/115/EC~~. **Member States may refrain from entering data on third-country nationals subject to a return decision in SIS when it concerns third-country nationals who are kept in detention until removal.**
2. The period for voluntary departure¹⁶ ~~granted to third-country nationals subject to a return decision issued in accordance with provisions respecting Directive 2008/115/EC~~ **in accordance with Article 7 of Directive 2008/115/EC** shall be immediately recorded in the alert.
3. **Any** ~~The suspension and/or the postponement of the enforcement of the return decision issued in accordance with provisions respecting Directive 2008/115/EC~~ shall be immediately recorded in the alert.

Article 4¹⁷

~~Data e~~ **Categories of data**

Data entered in SIS in accordance with Article 3 of this Regulation shall contain only the following:

- (a) surname(s);
- (b) forename(s);

¹⁵ NL entered a scrutiny reservation on this Article.

¹⁶ The indication of a period for voluntary departure might be problematic for end users, as it might be understood as the day on which the subject should not be any longer in the Schengen territory. For this reason, Article 4 has been redrafted (new points (va) and (wa) were added and point (w) was reworded) for the sake of clarity.

¹⁷ AT and FR entered a reservation on this Article.

- (c) name(s) at birth;
- (d) previously used names and aliases;
- (e) any specific, objective, physical characteristics not subject to change;
- (f) place of birth;
- (g) date of birth;
- (h) ~~sex~~**gender**;
- (i) nationality / nationalities;
- (j) whether the person concerned
 - i. is armed;
 - ii. **is** violent;
 - iii. has **absconded or** escaped;
 - iv. **poses a risk of suicide**;
 - v. **poses a threat to public health**; or
 - vi. is involved in an **terrorism-related** activity ~~as referred to in Articles 1, 2, 3 and 4 of Council Framework Decision 2002/475/JHA on combating terrorism~~;
- (k) reason for the alert;
- (l) authority issuing the alert;
- (m) a reference to the decision giving rise to the alert;
- (n) action to be taken;

- (o) link(s) to other alerts issued in SIS;
- (p) the category of the person's identification document(s);
- (q) the country of issue of the person's identification document(s);
- (r) the number(s) of the person's identification document(s);
- (s) the date of issue of the person's identification document(s);
- (t) photographs and facial images;
- (u) dactylographicscopic data;
- (v) a colour copy of the identity document;

(va) date of issuing of the return decision;

- (w) **last date of the** period for voluntary departure, **if granted**;

(wa) date of enforceability of the return decision;

- (x) whether the return decision issued in accordance with provisions respecting Directive 2008/115/EC has been suspended or the enforcement of the decision has been postponed.

All data listed above shall be entered, where available. An alert may not be entered without the data referred to in (a), (g), **(h)**, (k), (m), (n) and (w**a**). ~~When available, all other data listed above shall also be entered.~~

Article 5¹⁸

Authority responsible for the exchange of supplementary information

Each Member State shall designate an authority responsible for the exchange of supplementary information on third-country nationals subject to return in accordance with the provisions of the SIRENE Manual laid down in Article 8 of Regulation (EU) 2018/xxx [Border checks].

Article 6¹⁹

Confirmation of return

1. Where a third-country national who is the subject of an alert on return is identified when exiting **the territory of the Member States** through the external borders of a Member State **in which SIS is in operation and to which Directive 2008/115/EC applies**, the Member State that identified the third-country national concerned shall communicate the following information to the issuing Member State through the exchange of supplementary information:
 - (a) the fact that the third-country national has been identified;
 - (b) the location and time of the check;
 - (c) ~~whether~~ **the fact that** the third-country national has left the territory of the Member States;
 - (d) ~~whether the return was a voluntary compliance with an obligation to return or was enforced;~~
 - (e) the third-country of destination.

Where a third-country national, who is the subject of an alert on return, exits **the territory of the Member States** through the external border of the issuing Member State, the confirmation of return shall be communicated to the competent authority in accordance with national law **procedures**.

¹⁸ Several delegations (AT, CZ, DE, LV, NL and SK) expressed concerns and indicated the need for more clarity.

¹⁹ BE entered a scrutiny reservation on this Article.

2. The issuing Member State shall ~~immediately~~ delete the alert following the receipt of the confirmation of return.
3. The Member States shall provide on a ~~monthly~~ **quarterly** basis statistics to the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council²⁰ ('the Agency') on the number of confirmed returns, ~~on whether the return was carried out in voluntary compliance with an obligation to return or was enforced, and on the third countries of destination. Those statistics shall not contain personal data.~~

Article 7

Non-compliance with return decisions issued in accordance with provisions respecting Directive 2008/115/EC

1. CS-SIS shall notify the Member States about their alerts on return for which the period for voluntary departure has expired.
2. Where a third-country national who is subject of an alert on return is identified by a competent authority and it has been ascertained by the same authority that the obligation to return has not been complied with, that authority shall ~~immediately consult~~ **notify** the issuing Member State through the exchange of supplementary information ~~in order to determine without delay the action to be taken.~~ **The competent authority shall take all necessary measures with view to return in accordance with national law implementing Directive 2008/115/EC.**

²⁰ Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p.1).

1. Where a **granting** Member State considers granting **or extending** a residence permit or ~~other authorisation offering a right to stay~~ **long-stay visa** to a third-country national who is the subject of an alert on return entered by another Member State, the ~~former~~ **granting Member State** shall first consult, through the exchange of supplementary information, the **issuing** Member State ~~that entered the alert~~. The **issuing** Member State ~~that entered the alert~~ shall **notify the granting Member State without delay about the reasons for the return decision** ~~reply within seven~~ **working** days. **The granting Member State shall take into account the interests of the issuing Member State.** If the **granting** Member State considering granting a residence permit or other authorisation offering a right to stay decides to grant ~~it~~ **the residence permit or long-stay visa**, the alert on return shall be deleted. **The issuing Member State may nevertheless include the third-country national concerned in a national list of alerts for the purpose of refusing entry into or stay on its territory. If the circumstances of the case so require the third-country national may also be included in SIS for discreet, inquiry or specific checks in accordance with Article 36 of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters].**

²¹ Article aligned with Article 26 of the proposal on Border Checks (see 9593/17).

2. Where a Member State considers entering an alert for return concerning a third-country national who is the holder of a valid residence permit or ~~other authorisation offering a right to stay~~ **a long-stay visa** issued by another Member State, it shall inform through the exchange of supplementary information the **granting** Member State ~~that issued the permit~~ in order to allow that Member State to decide whether there are reasons justifying its ~~the~~ **withdrawal of the residence permit or long-stay visa**. The **granting** Member State ~~that issued the permit~~ shall ~~provide a definite reply within seven days~~ **notify the other Member State without delay about its decision to withdraw or maintain the residence permit of long-stay visa**. **The Member State considering entering the alert may include the third-country national concerned in a national list of alerts for the purpose of refusing entry into or stay on its territory. If the circumstances of the case so require the third-country national may also be included in SIS for discreet, inquiry or specific checks in accordance with Article 36 of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters].**

2a.²² Where it emerges that an alert for the purposes of return has been issued for a third-country national who holds a valid residence permit or long-stay visa issued by a Member State, the issuing Member State shall consult the Member State which issued the residence permit or long-stay visa in order to determine whether there are sufficient reasons for withdrawing the residence permit or long-stay visa. If the residence permit or long-stay visa is not withdrawn, the issuing Member State shall withdraw the alert but may nevertheless include the third-country national concerned on its national list of alerts for the purpose of return. If the circumstances of the case so require the third-country national may also be included in SIS for discreet, inquiry or specific checks in accordance with Article 36 of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters].

²² Based on Article 25(2) of the Convention Implementing the Schengen Agreement (CISA), (OJ L 239, 22.9.2000, p.19).

3. In the event of a hit on an alert on return concerning a third-country national who is the holder of a valid residence permit or a long-stay visa~~other authorisation offering a right to stay~~, the Member State that identified the third-country national concerned shall consult immediately the involved Member States, through the exchange of supplementary information, in order to determine the action to be taken. **In addition, the Member State that issued the residence permit or long-stay visa and the Member State that entered the alert shall carry out a consultation in accordance with paragraph 2.**
4. 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 immediately inform, through the exchange of supplementary information, the issuing Member State in order to ~~delete the alert~~ **determine the action to be taken.**
5. Member States shall provide on an annual basis statistics to the Agency about the consultations carried out in accordance with paragraphs 1, 2, **2a**, 3 and 4.

*Article 9**

Deletion of alerts

1. Without prejudice to Articles 6 and 8, alerts on return shall be deleted when the decision upon which the alert was based 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 they have left the territory of the Member States in compliance with a return decision issued in accordance with provisions respecting Directive 2008/115/EC.
2. Alerts on return entered in respect of a person who has acquired citizenship of a Member State or of any State whose nationals are beneficiaries of the right of free movement within the Union shall be deleted as soon as the issuing Member State becomes aware, or is informed pursuant to Article 39 of Regulation (EU) 2018/xxx [border checks], that the person in question has acquired such citizenship.

* Article deemed as agreed at the Working Party level.

*Article 10**

Transfer of personal data to third countries for the purpose of return

Data processed in SIS and the related supplementary information pursuant to this Regulation may be transferred or made available to a third-country in accordance with Chapter V of Regulation (EU) 2016/679 with the authorisation of the issuing Member State, only for the purpose of identification of and issuance of an identification or travel document to an illegally staying-third country national in view of return.

Article 11

Statistics

Without prejudice to the provisions on statistics in Article 54 of Regulation (EU) 2018/xxx [Border checks], the Agency shall produce daily, monthly and annual statistics, both in total number and per each Member State on the number of alerts on return entered in SIS, including on the data referred to in Article 4(x) of this Regulation, on the notifications referred to in Article 7(1) of this Regulation and the number of alerts on return deleted due to compliance with an obligation to return. ~~The Agency shall produce monthly and annual statistics about the data provided by the Member States in accordance with Article 6(3) and Article 8(5) of this Regulation.~~²³ Those statistics shall not contain personal data.

Article 12

Right to access data in SIS

1. Access to data entered in SIS and the right to search such data shall be reserved to the national authorities referred to in points (a), (b), (c), ~~and (d)~~ **and (e)** of Article 29(1) and in Article 29(2) of Regulation (EU) 2018/ xxx [Border checks] for the purpose of identification and return of third-country nationals.

* Article deemed as agreed at the Working Party level.

²³ Deleted to align with Article 6(3).

2. Europol shall have within their mandate the right to access and search data entered in SIS for the purpose of supporting and strengthening action by the competent authorities of the Member States and their mutual cooperation in preventing and combating migrant smuggling and facilitation of irregular migration in accordance with the conditions laid down in Article 30 of Regulation (EU) 2018/ xxx [Border checks].
3. Members of the European Border and Coast Guard teams or teams of staff involved in return-related tasks as well as the members of the migration management support teams shall have within their mandate the right to access and search data entered in SIS for the purpose of carrying out border checks, border surveillance and return operations via the technical interface set up and maintained by the European Border and Coast Guard Agency as referred to and in accordance with the conditions laid down in Articles 31 and Article 32(2) of Regulation (EU) 2018/ xxx [Border checks].

*Article 13**

Applicability of the provisions of Regulation (EU) 2018/xxx [Border checks]

As far as not established in this Regulation, the provisions on responsibilities of the Member States and the Agency, the entry and processing of alerts, the conditions to access and retention of alerts, data processing, data protection, liability and monitoring and statistics laid down in Articles 6 to 19, Article 20(3)-(4) as well as in Articles 21, 22, 28, 29(4) and 33 to 54 of Regulation (EU) 2018/ xxx [Border checks] shall apply to data entered and processed in SIS in accordance with this Regulation.

* Article deemed as agreed at the Working Party level.

*Article 14**
Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

It shall apply from the date fixed by the Commission in accordance with Article 58(2) of Regulation (EU) 2018/xxx [border checks].

Done at Brussels,

For the European Parliament
The President

For the Council
The President

* Article deemed as agreed at the Working Party level.