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**NOTE**

From:	Presidency
To:	Working Party for Schengen Matters (Acquis) / Mixed Committee (EU/Iceland, Norway and Switzerland, Liechtenstein)
No. prev. doc.:	8108/17
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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 - Revised draft compromise text

At its meetings on 7 March 2017, 15 and 16 May 2017, 19 June 2017 and 3, 4, 5 July 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, PT, SE, SI, SK and UK. Parliamentary reservations are pending from DE, SE and UK. Reservations on specific provisions are indicated in footnotes.

The Articles already agreed by the Working Party are not included in the present version (Articles 9, 10, 11, 13, 14).

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

*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] **and Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters]**, 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;<sup>1</sup>

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<sup>1</sup> 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;<sup>2</sup>**

**(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;<sup>3</sup>**

**(dc) 'removal' means removal as defined in Article 3(5) of Directive 2008/115/EC;<sup>4</sup>**

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

**(ea) 'issuing Member State' means the Member State which entered the alert in SIS<sup>5</sup>;**

**(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;**

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> Same definition as in Directive 2008/115/EC.

<sup>5</sup> 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).

**(ec) ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’)<sup>6</sup>;**

**(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];<sup>7</sup>**

**(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 1030/2002<sup>8</sup> 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) 2016/399<sup>9</sup>, with the exception of:**

**(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<sup>10,11</sup>**

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<sup>6</sup> 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).

<sup>7</sup> See 9593/17.

<sup>8</sup> **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).**

<sup>9</sup> **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).**

<sup>10</sup> **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).**

<sup>11</sup> Same definition as in the proposal on Border Checks (see Art. 3(1)(q) in 9593/17).

- (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<sup>12 13</sup>.**
- (i) a 'hit' in SIS means the occurrence of the following steps:**
- (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 or, in the case of a match based on the comparison of biometric data, the match is confirmed in accordance with national procedures for biometric verification; and**
  - (5) further actions are requested;<sup>14</sup>**
- ~~(j) 'end-users' mean competent authorities directly searching CS-SIS, N-SIS or a technical copy thereof.<sup>15</sup>~~**
- (i) 'threat to public health' means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organization and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.**

<sup>12</sup> **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).**

<sup>13</sup> Same definition as in the proposal on Border Checks (see Art. 3(1)(r) in 9593/17).

<sup>14</sup> 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).

<sup>15</sup> ~~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).~~

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~~.
  - 1a 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. When the third-country national concerned is released from detention without removal the alert shall be entered in SIS without delay.**
  - 1b Member States may also refrain from entering data on third-country nationals subject to a return decision in SIS when the decision is issued at the external border of a Member State and is executed immediately.**
2. The period for voluntary departure<sup>17</sup> ~~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, and its prolongation,** shall be ~~immediately~~ recorded in the alert **without delay**.
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 **without delay**.

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<sup>16</sup> NL entered a scrutiny reservation on this Article.

<sup>17</sup> 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.

Article 4<sup>18</sup>

~~Data~~ 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);
- (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;<sup>;</sup>
  - ii. is violent;<sup>;</sup>
  - iii. has absconded or escaped;<sup>;</sup>

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<sup>18</sup> AT and FR entered a reservation on this Article.



**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, **whenever possible in colour,** 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 from which ~~of enforceability of~~ the return decision is enforceable, taking into account any period for voluntary departure;**

- (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;

**(y) whether the return decision is accompanied by an entry ban.**

**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). ~~When available, all other data listed above shall also be entered.~~

*Article 5<sup>19</sup>*

*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 6<sup>20</sup>*

*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;~~

<sup>19</sup> Several delegations (AT, CZ, DE, LV, NL and SK) expressed concerns and indicated the need for more clarity.

<sup>20</sup> BE entered a scrutiny reservation on this Article.

(e) the third-country of **first** 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~~ **sent** to the competent authority **of that Member State** in accordance with national law **procedures**.

2. The issuing Member State shall ~~immediately~~ delete the alert **without delay** 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 Council<sup>21</sup> ('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 **the** 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 a view to return in accordance with national law implementing Directive 2008/115/EC.**

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<sup>21</sup> 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].<sup>23</sup>

<sup>22</sup> — Article aligned with Article 26 of the proposal on Border Checks (see 9593/17).

<sup>23</sup> Paragraph moved to new Article 8B.

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].~~<sup>24</sup>

~~2a.~~<sup>25</sup> ~~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]~~.<sup>26</sup>

<sup>24</sup> Paragraph moved to new Article 8C.

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

<sup>26</sup> Paragraph moved to new Article 8D.

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.~~<sup>27</sup>
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.~~<sup>28</sup>
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.~~<sup>29</sup>

#### *Article 8A*

#### *Hits at entry*

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 **determine the action to be taken.**

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<sup>27</sup> Paragraph moved to new Article 8E.

<sup>28</sup> Paragraph moved to new Article 8A

<sup>29</sup> Paragraph moved to new Article 8F.

## *Article 8B*

### *Prior consultation before granting or extending a residence permit or long-stay visa*

Where a 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 Member States involved shall **consult each other, through the exchange of supplementary information**, according to the following rules:

- a) the granting Member State shall consult the issuing Member State prior to granting or extending the residence permit or long-stay visa;**
- b) the issuing Member State shall reply to the consultation request within seven ten calendar days;**
- c) the absence of a reply by the deadline referred to in point b) shall mean that the issuing Member State does not object to the granting or extending of the residence permit or long-stay visa;**
- d) when making the relevant decision, the granting Member State shall take into account the interests of the issuing Member State and shall consider any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose;**
- e) the granting Member State shall notify the issuing Member State about its final decision; and**
- f) where the granting Member State notifies the issuing Member State that it decides to grant or extend the residence permit or long-stay visa, the issuing Member State shall delete the alert on return.**

**Article 8C**

**Prior consultation before entering an alert on return**

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~~granted~~ by another Member State, the involved Member States shall exchange information according to the following rules:

- a) the Member State that has taken the return decision shall inform the granting Member State about the decision;
- b) the exchange of information referred to in point a) shall contain substantial information about the reasons for the return decision;
- c) the granting Member State shall consider on the basis of the information provided by the Member State that has taken the return decision whether there are reasons for withdrawing the residence permit or long-stay visa;
- d) when making the relevant decision, the granting Member State shall take into account the interests of the Member State that has taken the return decision and shall consider any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose; and
- e) the granting Member State shall notify the Member State that has taken the return decision within ten calendar days after the receipt of the information request about its final decision; the deadline may be extended upon the reasoned request of the granting Member State.



Article 8D

A posteriori consultation after entering an alert on return

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 granted by a Member State the involved Member States shall exchange information, through the exchange of supplementary information, according to the following rules:

- a) the issuing Member State shall inform the granting Member State about the return decision ;
- b) the exchange of information referred to in point a) shall contain substantial information about the reasons for the alert on return;
- c) the granting Member State shall consider on the basis of the information provided by the issuing Member State whether there are reasons for withdrawing the residence permit or long-stay visa;
- d) when making the relevant decision, the granting Member State shall take into account the interests of the issuing Member State and shall consider any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose; and
- e) the granting Member State shall notify the issuing Member State within seven–ten calendar days after the receipt of the information request about its final decision; the deadline may be extended upon the reasoned request of the granting Member State.

Article 8E  
Consultation in case of a hit

Where a Member State has encountered a hit on an alert for refusal of entry and stay entered by a Member State in respect of a third-country national who is the holder of a valid residence permit or long-stay visa the involved Member States shall consult each other, through the exchange of supplementary information, according to the following rules:

- a) the executing Member State shall inform the issuing Member State about the situation;
- b) the issuing Member State shall inform the granting Member State about the return decision;
- c) the exchange of information referred to in point b) shall contain substantial information about the reasons for the alert on return;
- d) the granting Member State shall consider on the basis of the information provided by the issuing Member State whether there are reasons for withdrawing the residence permit or long-stay visa;
- e) when making the relevant decision, the granting Member State shall take into account the interests of the issuing Member State and shall consider any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose;
- f) the granting Member State shall notify the issuing Member State within seventeen calendar days after the receipt of the information request about its final decision; the deadline may be extended upon the reasoned request of the granting Member State; and
- g) the issuing Member State shall notify the executing Member State about the final outcome of the exchange of information.

**Article 8F**

**Statistics**

Member States shall provide on an annual basis statistics to the Agency about the consultations carried out in accordance with Articles 8A to 8E **and the instances in which the consultation deadline was not met.**

*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.~~
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] **and Article 46 of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters].**

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] **and Articles 48 and 49(1) of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters]**.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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