New SIS regulations implementation questions

SIS-SIRENE Committee 9 December 2021

DG HOME B.3

Q1(several MS): Requirement to upload dactyloscopic data to alerts “if available” (common Article 22 of the SIS regulations)

Article 22 - Requirement for an alert to be entered

The minimum set of data necessary in order to enter an alert into SIS shall be the data referred to in […]. ***The other data referred to in that paragraph shall also be entered into SIS, if available.***

What does “if available” mean?

Common meaning of “available” = “able to be used”

Can national law restrict the “availability” of certain data (for example dactyloscopic data) to be entered in the SIS? Wouldn’t such restriction be contrary to the SIS regulations?

What do the recitals say?

Common recitals in SIS Borders and SIS Police regulations

(17) Competent authorities should be able, where strictly necessary, to enter into SIS specific information relating to any specific, objective, physical characteristics of a person which are not subject to change, such as tattoos, marks or scars.

-> this does not apply to dactyloscopic data

(18) Where available, all the relevant data, in particular the forename of the individual concerned, should be inserted when creating an alert, ***in order to minimise the risk of false hits and unnecessary operational activities.***

-> this applies to dactyloscopic data

Common recitals in SIS Borders and SIS Police regulations

20) SIS should permit the processing of biometric data ***in order to assist in the reliable identification of the individuals concerned. Any entry of photographs, facial images or dactyloscopic data into SIS and any use of such data should be limited to what is necessary for the objectives pursued, should be authorised by Union law, should respect fundamental rights, including the best interests of the child, and should be in accordance with Union law on data protection, including the relevant provisions on data protection laid down in this Regulation.*** *In the same perspective, in order to avoid inconveniences caused by misidentification, SIS should also allow for the processing of data concerning individuals whose identity has been misused, subject to suitable safeguards, to obtaining the consent of the individual concerned for each data category, in particular palm prints, and to a strict limitation of the purposes for which such personal data can be lawfully processed.*

Specific recitals in the SIS return regulation

(10) It is necessary to determine 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 an activity as referred to in Articles 3 to 14 of Directive (EU) 2017/541 of the European Parliament and of the Council. Furthermore, in order to facilitate identification and detect multiple identities, the alert should include also a reference to the identification document of the person concerned and a copy of that document, where available.*

(11) Given the reliability of identifying persons using fingerprints and photographs or facial images, they should 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.

Why should dactyloscopic data be entered into SIS?

- Assist in the reliable identification of persons
- Minimise the risk of false hits
- Avoid inconveniences caused by misidentification
- Data quality (completeness of the data)

"'alert' means a set of data entered into SIS ***allowing the competent authorities to identify a person or an object with a view to taking specific action****"*

"Dactyloscopic data may be searched in all cases ***to identify a person****. However, dactyloscopic data shall be searched* ***to identify a person*** *where the identity of the person cannot be ascertained by other means.* ***For that purpose, the Central SIS shall contain an Automated Fingerprint Identification System (AFIS)."***

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Some considerations

- *The recitals indicate that it was the **intention of the legislator** to ensure that dactyloscopic data is entered in SIS alerts to the **maximum extent***
- *Not including dactyloscopic data to return alerts should be an **exception***
- *The SIS regulations do not constitute the legal basis for capturing dactyloscopic data – they constitute the **legal basis for entering dactyloscopic data into SIS if these data are available at national level***
- ***National law should not restrict but enable** the entry of "available" dactyloscopic data into SIS*
- *The purpose of the entry of dactyloscopic data into SIS is to ensure the **reliable identification** of persons for whom an alert has been issued*

Further considerations

- *The **general purpose of the SIS** is to ensure a high level of security within the area of freedom, security and justice of the Union, including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States*
- *Within this "general purpose", the **specific purpose of each alert category** is laid down in the SIS regulations – **data entered into SIS may not be used for other purposes, unless in the following case:***
  - *Any processing of SIS data by Member States for purposes other than those for which it was entered into SIS has to be **linked with a specific case and justified by the need to prevent an imminent and serious threat to public policy and to public security, on serious grounds of national security or for the purposes of preventing a serious crime**. **Prior authorisation from the issuing Member State** shall be obtained for this purpose.*

Q2(SE): Notion of “serious crime” in the context of the SIS regulations

Article 40 - Alerts on unknown wanted persons for the purposes of identification under national law

[…]Those dactyloscopic data shall be either complete or incomplete sets of fingerprints or palm prints discovered at the scenes of terrorist offences ***or other serious crimes under investigation****. […]*

Article 43 - Specific rules for verification or search with photographs, facial images, dactyloscopic data and DNA profiles

3. Dactyloscopic data in SIS in relation to alerts entered in accordance with Articles 26, 32, 36 and 40 may also be searched using complete or incomplete sets of fingerprints or palm prints discovered at the ***scenes of serious crimes*** *or terrorist offences* ***under investigation****, […]*

Q3(PL): Authority in charge of issuing return alerts and refusal of entry alerts

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Q4(NL): Questions on the consultation procedure

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Thank you



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