Briefing
EU Legislation in Progress

European Parliament

CONTENTS

18 October 2018

Third edition of a briefing originally drafted by Costica Dumbrava.

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

Print

Use of the Schengen Information System for the return of illegally staying third-country nationals

The Schengen Information System (SIS) is a large-scale information database that supports external border control and law enforcement cooperation in the Schengen states. It does so by enabling competent authorities, such as police and border guards, to enter and consult alerts on wanted or missing persons and lost or stolen property.
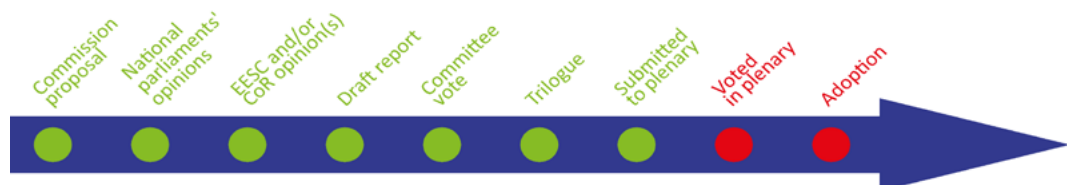
In view of responding more effectively to new migration and security challenges, in December 2016, the European Commission put forward a package of three legislative proposals aimed at revising the legal framework of the SIS. The proposal on the use of the SIS for returning illegally staying third-country nationals aims to enhance the enforcement of the EU return policy and to reduce the incentives to irregular migration to the EU. Among other things, the proposal introduces the obligation for Member States to enter all return decisions into the SIS.

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	
COM(2016) 881, 21.12.2016, 2016/0407(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')	
Committee responsible: Rapporteur: Shadow rapporteurs:	Civil Liberties, Justice and Home Affairs (LIBE) Jeroen Lenaers (EPP, Netherlands) Miriam Dalli (S&D, Malta), Jussi Halla-Aho (ECR, Finland), Gérard Deprez (ALDE, Belgium), Marie-Christine Vergiat (GUE/NGL, France), Eva Joly (Greens/EFA, France), Jörg Meuthen (EFDD, Germany), Lorenzo Fontana (ENF, Italy)
Next steps expected:	First-reading vote in plenary

Commission proposal · National parliaments' opinions · EESC and/or CoR opinion(s) · Draft report · Committee vote · Trilogue · Submitted to plenary · Voted in plenary · Adoption

EN

Introduction

The Schengen Information System (SIS) was established by the [Convention implementing the Schengen Agreement](#) in 1990, as a primary compensatory measure for the abolition of controls at the internal borders in the [Schengen area](#). The SIS II – the current version of the SIS – was established in 2006 and became operational in 2013. Its legal basis is currently defined by [Regulation (EC) No 1987/2006](#) on alerts on persons, [Regulation (EC) No 1986/2006](#) on alerts on vehicles, and [Council Decision 2007/533/JHA](#) on alerts on missing and wanted persons and objects. In 2014, [Regulation (EU) No 515/2014](#) established, within the Internal Security Fund, the instrument for financial support for external borders and visa, in order to support a common visa policy and an integrated border management.

To respond more effectively to new migration and security challenges in recent years, the EU decided to implement a set of measures aimed at strengthening its external borders and enhancing cooperation and information exchange between Member States. One such measure was the proposal for a [European Border and Coast Guard Agency](#) in 2015 and its [launch](#) in October 2016. Similarly, in December 2015, the European Commission proposed a [targeted modification](#) of the [Schengen Borders Code](#), to establish mandatory systematic checks for all travellers entering or exiting the EU, which came into force in April 2017. In January 2016, the Commission launched a [proposal for a directive](#) on the exchange of information on third-country nationals as regards the European criminal records information system. In May 2016, the Commission proposed a revision of the [Eurodac Regulation](#) to allow the use of the Eurodac database for identifying illegally staying third-country nationals who do not claim asylum in the EU. The regulation to establish an [EU entry/exit system](#) (EES) for registering data on the entry and exit of third-country nationals crossing the EU's external borders was adopted in November 2017. Another proposal, on establishing a [European travel information and authorisation system](#) (ETIAS), was adopted in September 2018.

The [proposal](#) on the use of the SIS for the return of illegally staying third-country nationals is part of a reform package that also contains a [proposal](#) for revising the SIS in the field of police cooperation and judicial cooperation in criminal matters, and a [proposal](#) for revising the SIS in the field of border checks.

The revision of the SIS rules is key to the wider process of improving and developing the EU information systems. In June 2017, the Commission presented a [proposal](#) to strengthen the mandate of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA). Two proposals on establishing frameworks for interoperability between EU information systems, one for [police and judicial cooperation, asylum and migration](#), and another in the area of [borders and visa](#), were put forward in December 2017.

Context

The number of apprehended third-country nationals staying illegally in the EU grew considerably in recent years, reaching 2.1 million in 2015, but dropping to 618 780 in 2017. While the number of return decisions issued by EU Member States between 2008 and 2015 remained relatively constant at about half a million per year, the number of effective returns has trailed, at a yearly rate of around 200 000 (see Figure 1), with a total of 188 905 in 2017. Apart from exposing deficiencies in the EU's external border management, the unprecedented [influx of irregular migrants](#), which began in 2013, has aggravated the effectiveness of the EU return system. The widening gap between the number of people staying illegally in the EU and the

🏠 | Background | Proposal | Views | Legislative process | References

Introduction
Context
Existing situation
Parliament's starting position
Council and European Council starting positions

number of people effectively returned undermines the credibility of the EU return policy and generates incentives for irregular migration.

Figure 1 - Illegally staying third-country nationals, return decisions and effective returns (in millions)
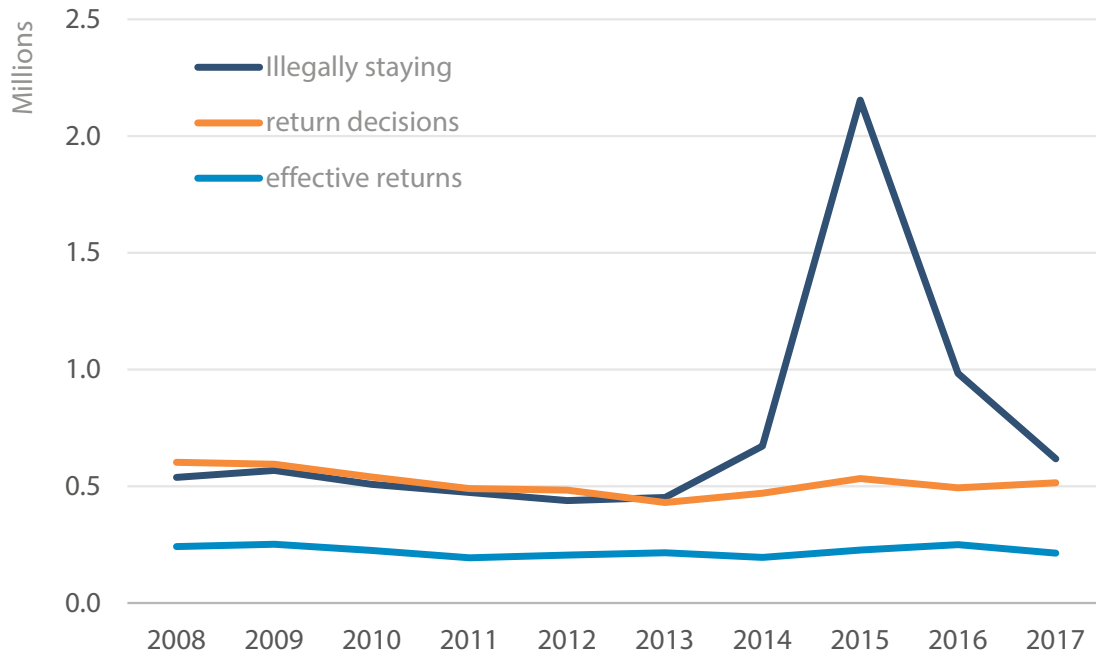
Data source: Eurostat, 2018.

Existing situation

Characteristics of the SIS

The SIS consists of three components: 1) a central system; 2) national systems in each Member State that communicate with the central system; and 3) a communication infrastructure. Member States can enter, update, delete and search data via their national systems and exchange information via the supplementary information request at the national entry bureaux (Sirene). Member States are responsible for setting up, operating and maintaining their national systems and national Sirene bureaux. The EU Agency for large-scale IT systems in the area of freedom, security and justice (eu-LISA) is responsible for the operational management of the central system and the communication infrastructure. The Commission is responsible for the general oversight and evaluation of the system and for the adoption of implementing measures. The European Data Protection Supervisor (EDPS) monitors the application of the data protection rules for the central system, while the national data protection authorities supervise the application of the data protection rules in their respective countries.

SIS alerts cover the following categories of persons and objects:

🏠 | Background | Proposal | Views | Legislative process | References

Introduction
Context
Existing situation
Parliament's starting position
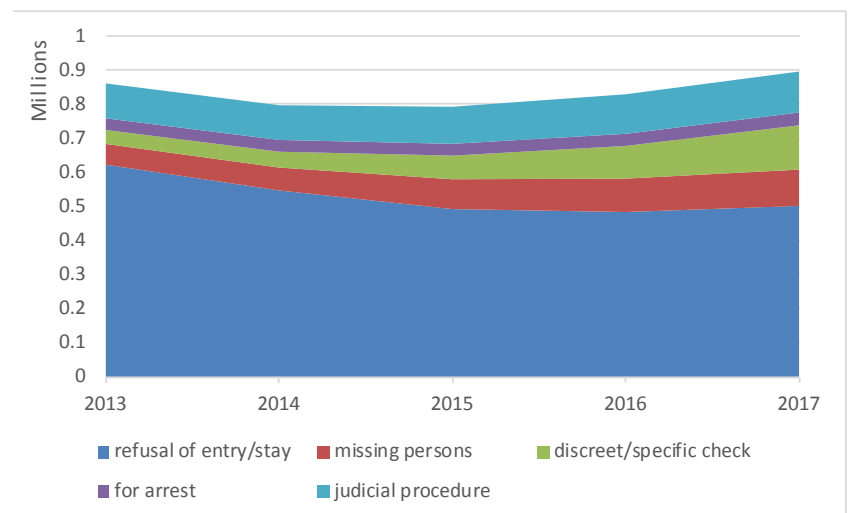Council and European Council starting positions

> refusal of entry or stay to third-country nationals who are not entitled to enter into or stay in the Schengen area;

> persons for whom a European arrest warrant or an extradition request (in the case of associated countries) has been issued;

> missing persons, in view of placing them under protection, if necessary;

> persons sought to assist with criminal judicial procedures;

> persons and objects for discreet or specific checks, in view of prosecuting criminal offences and preventing threats to public or national security;

> objects for seizure or use as evidence in criminal procedures.

SIS alerts consist of three types of data: identification data for the person or object that the alert is about; information about why the person or object is being sought; and instructions for concrete action to be taken by officers on the ground when the person or object is found.

Access to data is given to national authorities responsible for border control, police, customs, visa and vehicle registration and, by extension, to national judicial authorities when this is necessary for the performance of their tasks. The European Police Office (Europol) and the European Union's Judicial Cooperation Unit (Eurojust) have limited access rights for performing certain types of queries. SIS checks are mandatory for the processing of short-stay visas, for border checks for third-country nationals and, on a non-systematic basis, for EU citizens and other persons enjoying the right of free movement. Every police check on the territory of a Schengen state should include a check in the SIS.

Any person has the right to access SIS data related to them, as provided for by the national law of the Member State concerned. Access may only be refused when this is indispensable for the performance of a lawful task related to an alert and for protecting the rights and freedoms of other people. Individuals may bring actions before the courts or other authorities competent under the national law to access, correct, delete or retrieve information, or to obtain compensation in connection with an alert relating to them.

Figure 2 – SIS alerts on persons (in millions)

Data source: eu-LISA, 2014, 2015, 2016 and 2017.

Identified shortcomings

Currently, Member States are not obliged to enter alerts on entry bans and return decisions in the SIS. As evidenced by a number of eu-LISA reports, despite an increase in the total number of SIS alerts from 50 million in 2013 to 76 million in 2017, the number of alerts on persons remained stable over that period, with 861 900 in 2013 and 896 791 in 2017 (see Figure 2). Available data also suggest that, during that period, the distribution of alerts among Member States was uneven. Accordingly, in 2017, three countries generated more than half the total number of alerts: Italy (19 million), Germany (10 million) and France (11 million). The number of searches in the SIS increased from 1.2 billion to 5.1 billion between April 2013 and December 2017. Member States do not use the SIS equally: in 2017, four Member States conducted about half of the searches: France (991 million), Spain (584 million), the UK (541 million) and Germany (497 million).

SIS alerts on refusal of entry or stay constitute the majority of alerts on persons. However, the decrease in the number of alerts on refusal of entry or stay between 2013 and 2015 contrasts sharply with the rise in irregular migration and the number of return decisions issued by Member States (see Figure 2). For example, in 2015, Member States issued 533 395 return decisions, whereas the alerts on refusal of entry or stay introduced into the SIS were 492 655. Member States are often unaware of the number of irregular migrants who comply voluntarily with return decisions and, without systematically entering return decisions into the SIS, they cannot verify compliance.

Parliament's starting position

The European Parliament has consistently advocated for more effective cooperation between Member States' law enforcement authorities, provided that appropriate safeguards on data protection and privacy are maintained. In its resolution of 11 February 2015 on anti-terrorism measures, the Parliament restated its call on the Member States to make optimal use of existing databases and reiterated that 'all data collection and sharing, including by EU agencies such as Europol, should be compliant with EU and national law and based on a coherent data protection framework offering legally binding personal data protection standards at an EU level'. In its resolution of 6 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament stressed the need to improve the effectiveness of the EU's return system. In its resolution of 6 July 2016 on the strategic priorities for the Commission 2017 work programme, the Parliament called on the Commission to present proposals to improve and develop existing information systems, address information gaps and move towards interoperability.

Council and European Council starting positions

The **European Council** has repeatedly called for reinforcing the management of the EU's external borders in order to cope with migration pressure and security challenges. The European Council's Strategic guidelines for justice and home affairs of June 2014 identified the need to improve the link between the EU's internal and external policies and called for the intensification of operational cooperation among Member States, 'while using the potential of Information and Communication Technologies' innovations'. In its conclusions of 15 October 2015, the European Council called for devising 'technical solutions to reinforce the control of the EU's external borders to meet both migration and security objectives, without

	Background	Proposal	Views	Legislative process	References

Introduction
Context
Existing situation
Parliament's starting position
Council and European Council starting positions

hampering the fluidity of movement'. In its conclusions of 17- 18 December 2015, the European Council urged to address the shortcomings at the external borders, notably by ensuring systematic security checks with relevant databases.

In its conclusions of 10 June 2015 on the renewed European Union internal security strategy 2015-2020, the **Council** called for 'reinforcing border security through systematic and coordinated checks against the relevant databases based on risk assessment', and for 'improving information exchange and accessibility, especially by ensuring the interoperability of different information systems'. In June 2016, the presidency put forward a roadmap to enhance information exchange and information management including interoperability solutions in the area of justice and home affairs. The roadmap explored, among others, possibilities for inserting return decision in the SIS. It also restated the need to adhere to the principles of full respect for fundamental rights and data protection rules. The Council endorsed the roadmap on 10 June 2016 and reaffirmed the importance of 'investing in swift, effective and qualitative information management'.

Proposal

Preparation of the proposal

In its communication on EU return policy of 28 March 2014, the European Commission recommended to enhance the role of the SIS in the field of return policy and suggested introducing an obligation on Member States to enter into the SIS alerts for entry bans issued under the Return Directive. In its communication on a European agenda on migration, the Commission underlined that establishing an effective EU return policy is essential for achieving the key objectives of reducing incentives for irregular migration to the EU. In the EU action plan on return the Commission called for making better use of the existing European information systems to enhance the effectiveness of the EU return system, and announced its intention to put forward legislative proposals for making the introduction of entry bans and return decisions in the SIS compulsory. The Commission communication on stronger and smarter information systems for borders and security explored options on how existing and future information systems could enhance external border management and internal security, and discussed the possibility of creating a SIS alert on irregular migrants subject to return decisions.

In June 2016, the high-level expert group on information systems and interoperability (HLEG) was established to work on a joint strategy to make data management in the Union more effective and efficient. The HLEG interim report, presented in December 2016, emphasised the need to raise the standards of data quality and data usage and identified priority options to be considered in promoting the interoperability of information systems.

The comprehensive evaluation of the SIS, finalised by the Commission in December 2016, found that 'SIS has been a genuine operational success', and that changes were needed in order to provide a better response to ongoing security and migration challenges. The report emphasised the need to harmonise national procedures in the field of managing refusals of entry and stay in respect of third-country nationals. In the preparation of the proposal, the Commission took into account the results of consultations with relevant stakeholders, such as the SISVIS Committee and the Return Directive contact group. The Commission did not carry out an impact assessment but relied on the findings of a feasibility study by PricewaterhouseCoopers. The study concluded that entering return decisions as alerts in the SIS would be technically feasible and would result in tangible benefits in respect of enforcing return decisions, monitoring compliance, identifying illegally staying third-country nationals and collecting statistics on return. The proposed changes would require the establishment of adequate infrastructure within the Member States to enter and manage alerts on return in the SIS, and additional storage capacity in the SIS central system.

The changes the proposal would bring

Alerts on return decisions

Currently, Member States may insert alerts in the SIS in respect of persons subject to an entry ban. The proposal introduces an obligation on Member States to enter into the SIS all return decisions issued in accordance with the provisions of the Return Directive. Member States will be obliged to create alerts on return decisions in respect of a) third-country nationals staying illegally on their territory; b) third-

country nationals who are subject to a refusal of entry at a border crossing point or when apprehended in connection with the irregular crossing of the external border and who did not receive an authorisation to stay; and c) third-country nationals subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures. The alerts will indicate if a period for voluntary departure is still running, or if a decision has been suspended or the removal has been postponed. A new functionality will allow the issuing Member State to receive an automatic notification when the period for voluntary departure has expired.

Procedures

Each Member State will designate an authority responsible for the exchange of supplementary information on alerts related to return and illegal stay. Member States will be obliged to confirm the departure of the third-country national subject to an alert on return, to the Member State that entered the alert. The proposal specifies the procedures to deal with situations where a third-country national subject to an alert on return is identified and apprehended in another Member State. It clarifies the rules on the consultation process in the case of conflicting decisions between Member States, such as when return decisions clash with decisions on issuing residence permits. Retention and deletion rules are established in order to make sure that there in no time-gap between the moment of deletion of a return alert following the departure of the third-country national and the activation of the alert on the entry ban.

Access to data

Access to SIS data will be given to all Member State authorities responsible for issuing return decisions in accordance with the provisions of the Return Directive, including judicial authorities and authorities responsible for identifying third-country nationals during border, police or other law enforcement checks. Europol and the European border and coast guard agency will also be able to access data in the SIS, if this is necessary for carrying out their tasks.

Fundamental rights

Since the proposal involves the processing of personal data which may impact individuals' fundamental rights, it puts in place safeguards in order to respect the principles set out in the Charter of Fundamental Rights of the European Union, and in particular Article 8 (protection of personal data) thereof. Data will be kept in the SIS as long as required to achieve the purpose of return. Member States will be obliged to delete the data immediately after receiving confirmation of return, or if the return decision is no longer valid.

Budgetary implications

The estimated costs of the changes required under the proposal amount to €3.6 million. The budget will be secured through a re-programming of the remainder of the smart borders envelope within the Internal Security Fund.

Views

Advisory committees

The advisory committees are not consulted mandatorily on this proposal.

National parliaments

The deadline for the subsidiarity check passed on 30 May 2017. Chambers of national parliaments from 18 Member States considered the proposals and a number submitted comments for political dialogue.

Stakeholders' views[1]

In his opinion of May 2017, the **European Data Protection Supervisor** (EDPS) praised the proposal for the attention paid to data protection, but expressed concerns about the rules governing the collection and processing of sensitive data (such as DNA profiles), the broadening of institutional access to data and the extension of the data retention period for most of the alerts on persons.

---

1   This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

Legislative process

The legislative proposal on the use of the Schengen Information System for the return of illegally staying third-country nationals (COM(2016) 881) was published on 21 December 2016. It falls under the ordinary legislative procedure (2016/0407(COD)).

In the European Parliament, the LIBE committee's rapporteur, Jeroen Lenaers (EPP, the Netherlands) presented his draft report in June 2017. He welcomed the Commission's proposal, and recommended making the national Sirene bureaux responsible for the efficient and swift exchange of supplementary information in connection to alerts on return between Member States. The final report was adopted in the LIBE committee in November 2017. The Committee on Foreign Affairs (AFET) also voted an opinion on the proposal in July 2017.

On 15 November 2017, the Parliament approved the LIBE committee's mandate to enter into interinstitutional negotiations. The Council also adopted its mandate to start interinstitutional negotiations in November 2017. After a long series of trilogue meetings, on 12 June 2018, the EP and Council negotiators announced they had reached agreement on the proposal. On irregular migrants' return, Member States are obliged to enter return decisions into SIS, introduce a new alert system on the expiry of the voluntary leaving period and inform the Member State launching then alert that a non-EU national has left the EU. The LIBE committee voted to endorse the provisional agreement on 20 June 2018, and a vote by the full Parliament is expected during the October II plenary session.

References

EP supporting analysis

Dumbrava, C., Revision of the Schengen Information System for law enforcement, EPRS, February 2018.

Dumbrava, C., Revision of the Schengen Information System for border checks, EPRS, February 2018.

Dumbrava, C., Interoperability of European information systems for border management and security, June 2017.

Dumbrava, C., European information systems in the area of justice and home affairs: An overview, EPRS, May 2017.

Gatto, A., Carmona, J., European Border and Coast Guard System, EPRS, October 2016.

Milt, K. Management of the external borders, Fact Sheets, European Parliament, June 2017.

Orav, A., D'Alfonso, A., Smart Borders: EU Entry/Exit System, EPRS, January 2018.

Radjenovic A., European Travel Information and Authorisation System (ETIAS), EPRS, October 2017.

Other sources

Use of the Schengen Information System (SIS) for the return of illegally staying third country nationals, European Parliament Legislative Observatory (OEIL).