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from: Presidency  
to: Working Party for Schengen Matters (SIS/SIRENE) / Mixed Committee (EU/Iceland, Norway and Switzerland, Liechtenstein)  
Subject: Analysis of practical problems connected with alerts issued pursuant to Art. 96 of the CISA, i.e. reservations regarding aliens

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**INTRODUCTION**

The priority "Analysis of practical problems connected with alerts issued pursuant to Art. 96 of the CISA, i.e. reservations regarding aliens" has been adopted by the Presidency in response to problems encountered by the SIRENE Bureaux when it comes to accessing the supplementary data and the identification material to the alerts in SIS relating to aliens subject to entry refusal. Additionally, the Presidency has undertaken this initiative with a view to approaching the issue of a long waiting time for the data requested by the SIRENE Bureaux and difficulties that the law enforcement authorities are facing when it comes to the quality of the data in the SIS relating to persons refused entry.

The automated, multiple or phonetic systems of control of the data in the SIS, recommended by the Council and adopted by some of the MS, makes it possible to obtain hits during border control; however, undertaking appropriate actions defined in the alert often requires confirmation of the identity of the persons whose data, or similar data, has been revealed in the SIS during control. The personal data entered in the SIS may be incomplete, outdated or different from the data used by the aliens subject to entry refusal.

The abovementioned problems are becoming particularly important because of the increased rate of the process of migration and consequently an increasing number of third-country nationals entering EU territory. Providing high standards of security and public order within the Schengen Area and the EU, while paying attention to the issues of an open Europe and respecting human rights, has become a crucial problem.

The European Council invites Member States to take all necessary steps in order to build an open and border-free Europe, respecting the fundamental rule of the freedom of movement, while at the same time ensuring security, intensifying the exchange of information and strengthening the co-operation between competent authorities, in order to combat cross-border crime successfully.

A report on monitoring the application of alerts issued pursuant to Art. 96 of the CISA, presented by the JSA in 2010, includes, among other things, recommendations on developing formal means to ensure that the Art. 96 data is accurate, up-to-date and lawful, so that persons moving to and through the Schengen Area as well as persons who may pose a threat to its security are identified, while not putting Member States at risk of being accused of infringing legal provisions.

In view of the above, the Presidency wished to identify the sources of problems that the SIRENE Bureaux are encountering when it comes to the exchange of information in specific fields, and together with the Member States, to find solutions that would improve the co-operation between the SIRENE Bureaux and the competent national authorities.

Having analysed the answers to the questionnaire submitted by Member States, the Presidency would like to present the solution currently operating in the area of co-operation between the SIRENE Bureaux in the following fields:

- the information about the authorities entering alerts pursuant to Art. 96 of the CISA and conducting consultations under Art. 25 of the CISA;
- the SIRENE Bureaux' access to supplementary information and identification material for alerts pursuant to Art. 96 of the CISA;
- the consultation processes regarding the issuance of the long-term visas pursuant to Art. 25 of the CISA;
- the quality of the data pursuant to Art. 96 of the CISA and the exchange of information where data proves to be legally or factually incorrect or inadmissible pursuant to Art. 106 of the CISA .

The Presidency would also like to draw Member States' attention to the following issues:

- the availability of supplementary data and identification material,
- the number and diversity of structures and competences of the national authorities involved in the consultation procedure under Art. 25 of the CISA and consequently an adequate organization of the information exchange based on effective national communication channels,
- the basic terms applicable in the process and elements of procedures adopted for an effective information exchange.

Moreover, on the basis of responses to the questionnaire and discussions with Member States, the Presidency would like to work out optimal solutions acceptable to all Member States for better cooperation, including through an understanding of the possible difficulties and problems that SIRENE Bureaux face in this area at the national level. In addition, jointly with Member States, we would like to elaborate solutions concerning co-operation with consular services in the sphere of application of Art. 25 of the CISA, which will contribute to effective co-operation in this, a new field for the SIRENE Bureaux.

On the basis of the answers received from 26 Member States, the Presidency presents below the outcomes and the conclusions of the survey and would like to thank the Member States for sharing their experience and thus contributing to the study. We especially thank them for the comments and suggestions contained in the documents submitted.

Up to 3 June 2011 the Presidency received 26 completed questionnaires (document no 8918/11 SIRIS 26 COMIX 228), of which 24 were completed by Member States entering alerts into SIS under Art. 96 of the CISA refusing entry. The resources of the entries pursuant to Art. 96 of the CISA whose owners wished to share their experiences is presented in the following table.

<b>N.SIS of Member State</b>	<b>Number of main records under Art. 96 of the CISA*</b>	<b>Percentage in C.SIS</b>
<b>NIT</b> <b>Italy</b>	319 632	45,147%
<b>NDE</b> <b>Germany</b>	89 196	12,599%
<b>NGR</b> <b>Greece</b>	74 780	10,563%
<b>NES</b> <b>Spain</b>	50 160	7,085%
<b>NFR</b> <b>France</b>	49 583	7,004%
<b>NCH</b> <b>Switzerland</b>	24 532	3,465%
<b>NNL</b> <b>Netherlands</b>	18 421	2,602%
<b>NAT</b> <b>Austria</b>	15 294	2,160%
<b>NCZ</b> <b>Czech Republic</b>	14 383	2,032%
<b>NPL</b> <b>Poland</b>	12 316	1,740%
<b>NHU</b> <b>Hungary</b>	11 087	1,566%
<b>NNO</b> <b>Norway</b>	8 147	1,151%
<b>NPT</b> <b>Portugal</b>	3 956	0,559%
<b>NSE</b> <b>Sweden</b>	3 883	0,548%
<b>NMT</b> <b>Malta</b>	3 051	0,431%
<b>NSK</b> <b>Slovakia</b>	2 438	0,344%
<b>NFI</b> <b>Finland</b>	1.757	0,277%
<b>NDK</b> <b>Denmark</b>	1 517	0,214%
<b>NLV</b> <b>Latvia</b>	757	0,107%
<b>NLT</b> <b>Lithuania</b>	709	0,100%
<b>NLU</b> <b>Luxembourg</b>	703	0,099%
<b>NEE</b> <b>Estonia</b>	660	0,093%
<b>NBE</b> <b>Belgium</b>	638	0,090%
<b>NSI</b> <b>Slovenia</b>	135	0,019%
<b>NIS</b> <b>Iceland</b>	30	0,004%
<b>NRO</b> <b>Romania</b>	1	0,000%
<b>NBG</b> <b>Bulgaria</b>	0	0,000%
<b>Total Main Records</b>	<b>707973</b>	<b>100,000%</b>

\* SIS database from C.SIS point of view, Thursday 19 May 2011

In total, answers were provided by the owners of more than 99.5% of the SIS records based on Art. 96 of the CISA.

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## **ANALYSIS OF THE ANSWERS:**

### **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**

The questions in this part of the questionnaire were designed to examine the conditions in which SIRENE Bureaux operate, and the amount and the variety of national partners on whose behalf and with whom they exchange information on their own records. Through this part of the survey tool we wanted to become acquainted with the solutions adopted by Member States and the communication channels used by SIRENE Bureaux, especially when exchanging information during consultations pursuant to Art. 25 of the CISA.

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

All the 26 Member States which completed the questionnaire answered the question: in most Member States, alerts pursuant to Art. 96 of the CISA are entered in the SIS by administrative and migration authorities - 18 Member States (AT, BE, BG, CH, CZ, DE, FI, FR, HU, IT, LT, LU, LV, NL, NO, PL, PT, RO).

In 16 Member States, the authorities which enter alerts pursuant to Art. 96 CISA in the SIS are the police (BG, CZ, DE, DK, EE, ES, FI, FR, EL, HU, IS, IT, RO, SE, SI, SK).

In 8 of the 25 Member States, alerts pursuant to Art 96 CISA are entered in the SIS by both the police and administrative and migration authorities (BG, CZ, DE, FI, FR, HU, IT, RO). In addition, 2 of the 8 Member States (FR, IT) have adopted a solution whereby alerts pursuant to Art. 96 CISA are entered in the SIS by the judicial authority. In the case of SI, alerts pursuant to Art. 96 CISA are entered in the SIS by the police and judicial authorities.

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

The question was answered by 26 Member States. 13 Member States (BE, BG, CZ, DK, EE, IS, LT, LU, LV, NO, PL, PT, SE) said that the authorities authorised to enter alerts in the SIS pursuant to Art. 96 CISA are placed in the national structure at the central level. However, 3 Member States (BG, CZ, SK) said their central authorities had local branches. 6 Member States (AT, DE, ES, FR, NL, SI) enter alerts in the SIS pursuant to Art. 96 CISA at the local level; and 6 Member States (CH, EL, FI, HU, IT, RO) enter these alerts at both central and local levels.

***3-6. 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? And next questions about the nature of the authority, mediate in the consultations pursuant to Art. 25 CISA and its place in the organizational structure of the State.***

The question was answered by 26 Member States. In 19 Member States (BE, BG, CH, CZ, DE, DK, EE, ES, FR, HU, IT, LT, LU, NL, NO, PL, PT, RO, SI) the SIRENE Bureau holds consultations pursuant to Art. 25 of the CISA directly with the national authority/authorities authorized to enter alerts.

8 out of 25 Member States have adopted a solution in which the consultation process is held indirectly, by a different, competent authority (AT, CH, EL, FI, IS, LV, SE, SK). 3 Member States (AT, EL, FI) have adopted a solution whereby, independently of the fact that alerts are being entered at the local level, the national SIRENE Bureau holds consultations for its own alerts directly through the central authority.

3 out of 8 Member States hold consultations through police authorities. Other Member States have adopted solutions based on the exchange of information between the SIRENE Bureau and the administrative migration authorities. CH and FR also hold consultations with the judicial authorities.

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

The question was answered by 26 Member States. In 14 Member States (AT, BE, DK, EE, ES, FI, IS, LT, LU, NO, PL, PT, SE, SK) consultations are held by the SIRENE Bureau with one national authority. AT has adopted a solution whereby consultation forms are sent by the system direct to the competent central authority - VISION Austria. In 12 Member States (BG, CH, CZ, DE, FR, EL, HU, IT, LV, NL, RO, SI) consultations pursuant to Art. 25 CISA are held with various authorities in the form of an exchange of letters. The gathered data indicates that it refers to more than 1200 entities of various structure and nature.

AT, LV, PT and SE mentioned the use of N, O and M forms. It appears from our experience (e.g. the exchange of SIRENE operators) that other SIRENE Bureaux also use these consultation forms when holding consultations with national authorities.

**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)?**

22 out of 25 Member States use electronic mail; some Member States emphasized that their electronic mail system meets high security standards. 1 Member State has adopted as a communication channel a consultation application. Only 2 Member States use conventional mail and fax to exchange information with the competent national authorities to hold consultations pursuant to Art. 25 of the CISA.

The abovementioned statements by Member States mean that less than 12% of all records in the SIS under Art. 96 of the CISA may be subject to consultations where SIRENE Bureaux have to communicate with the competent national authorities by channels that might delay the exchange of information.

The aim of the analysis was not to find out the quantity of workload the national SIRENE Bureaux have and the details of national procedures on information exchange. But the Presidency would like to emphasize that these factors are crucial for co-operation between Member States.

**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?**

16 Member States (BE, BG, CH, CZ, DK, EE, FI, FR, EL, HU, IT, NO, PL, PT, RO, SK) stated that their SIRENE Bureau informs the relevant SIRENE Bureau of having taken their opinion into consideration and of any refusal to grant a residence document to an alien who is entered in the SIS pursuant to Art. 96 of the CISA. In 6 Member States (LT, LU, LV, NL, SE, SI) SIRENE Bureaux make such notification only at the request of the owner of an alert, i.e. a Member State who sent its opinion. Only DE, ES and IS do not inform the owner of an alert about a negative decision.

**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)?**

19 Member States (AT, BE, BG, CH, CZ, DK, EE, FI, FR, HU, IT, LU, NL, NO, PL, PT, RO, SI, SK) expressed a positive opinion about informing the owner of an alert of the refusal to grant a residence document to an alien who is entered in the SIS pursuant to Art. 96 of the CISA. 7 Member States take the opposite view (DE, ES, EL, IS, LT, LV, SE) arguing that this solution should be optional - an addition to the obligation to inform the owner of an alert about positive decisions.

In their comments, CZ and PT put forward an argument justifying the opinion of the majority of Member States. The information was essential for the authorities involved in the consultation process and was relevant to administrative proceedings conducted pursuant to Art. 25 CISA (which allows the case to be ended). In addition, an important argument was that this action would provide the owner of an alert with all necessary information concerning the current situation, which might be important and necessary in case of the next hit of the same record.

***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?***

Answers were given by 25 Member States. 10 Member States (AT, BG, DE, HU, IS, LT, LU, LV, RO, SE) said that, under their national law, the competent national authority, after holding consultations with the owner of an alert on the basis of Art. 25 (1) of the CISA had the right to issue a residence document or a national long-term visa only after deletion of the alert from the SIS. In 6 Member States (CH, CZ, DK, FR, NO, PL) in certain cases, the national law allows these documents to be issued either before or after the deletion of an alert and depends on the circumstances of the case. NO argued that issuing the documents before deleting the alert was justified in situations when the owner of the alert failed to respond promptly. In 8 Member States the documents were issued before the deletion of the alert from the SIS (BE, ES, EL, FI, IT, NL, PT, SI).

**CONCLUSIONS:**

- Because of the very complicated and varied structure of the competent national authorities with which each SIRENE Bureau cooperates in handling its own alerts, it is essential to develop high-speed communication channels and automated ways of exchanging information, for example, using SIRENE forms.
- Improving communication channels for data exchange at national level will help to shorten the waiting time for the opinion of the owner of the alert to be sent to the Member State requesting it pursuant to Art. 25 of the CISA.
- Due to different interpretations of the CISA in each Member State, and because of the administrative nature of the proceedings conducted under Art. 25 of the CISA by the national authorities, it is recommended that the owner of the alert be informed of any decision regarding the issuance of a residence document (including a negative one). This information is essential for the authorities involved in the consultation process and is relevant for the administrative proceedings conducted in connection with Art. 25 of the CISA (which allows the case to be ended). Moreover, this action will provide the owner of an entry with all necessary information about the current situation, which may be important and necessary in the case of the next hit of the same record.

- Where national law allows a residence document or a national long term visa to be issued before the deletion of an alert from the SIS, it would be advisable and beneficial to introduce a good practice whereby the SIRENE Bureau is informed each time by the competent national authority of the issuance of such a document. It is necessary to enable the exchange of the request for the deletion of the alert from the SIS between Bureaux and to avoid entering into explanations through SIRENE Bureaux when there are unsolved cases during border controls.

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

The purpose of this part of the questionnaire was to examine what data is processed in the national databases in different categories of records under Art. 96 of the CISA, by what means the SIRENE Bureau obtains access to it at the national level, how effective the methods are to ensure that the deadlines and procedures specified in the SIRENE Manual and previous Council recommendations are implemented? Questions were designed to gather data on the national structures of circulation of information and methods of obtaining the identification material for the alerts based on Art. 96 of the CISA by the SIRENE Bureaux.

***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?***

24 Member States said there was a central database, containing information that could be used as supplementary information for their own alerts pursuant to Art. 96 of the CISA. 2 Member States said they did not have such a database.

***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?***

6 out of 26 Member States do not have access to a database which contains supplementary information regarding alerts based on Art. 96 of the CISA.

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

Information about the type of the decision and the national competent authority is processed in 20 Member States which have databases available for the SIRENE Bureau. 18 out of 20 MS process the information concerning the justification of the decision and concerning the effect/scope of the decision. Photos of undesirable persons are only held in the databases of 15 Member States (AT, CZ, DE, DK, EE, ES, FI, IS, IT, LT, NO, PL, PT, RO, SK).

**4-5 National SIRENE Bureau access to specific data (for its own alerts) with information about the form of indirect access to the categories of data.**

25 MS provided answers.

**Information about the type of the decision** is available directly in databases for 19 SIRENE Bureau in MS (AT, BG, CH, CZ, DE, DK, EE, FI, FR, HU, IS, IT, LT, PL, PT, RO, SE, SI, SK). 4 of the abovementioned Member States (FI, HU, PL, SI) said that they provide access to this category of data in both direct and indirect mode. 6 MS (BE, EL, LU, LV, NL, NO) said they implement indirect access to this category of data. Only 14 MS said there was a specific period of time for access to this data.

Only 7 out of the 9 MS where SIRENE Bureaux implement indirect access to this data said that such access could be achieved immediately or in up to 48 hours. In the case of one Member State, data availability depends on the working hours of the competent national bodies, while another Member State said that such a period of time was not specified.

**Information about the justification/basis of the decision** is available directly in the database for 14 SIRENE Bureaux (AT, BG, CZ, EE, FI, FR, IS, NO, PL, PT, RO, SE, SI, SK). In 12 Member States access to the information is indirect. Out of these 11, 5 Member States said the period of time for accessing the data was longer than 1 working day, or depended on the working hours of the competent national authorities or - in one case - was not specified at all.

### **Access to the photos of persons who are covered by the entry refusal.**

14 Member States (AT, CZ, DE, DK, FI, IS, IT, LT, NO, PL, PT, RO, SE, SK) said there was direct access to this category of data; 4 out of the abovementioned States (FI, NO, PL i SE) can additionally benefit from indirect access, while the SIRENE offices in 7 Member States use only an indirect channel of access to the pictures of undesirable persons.

5 Member States said their SIRENE Bureaux did not have access to such categories of data in the national databases. 1 Member said that access was possible in selected cases. 2 Member States indicated that access was possible only indirectly. However, of the 11 countries that declared an actual period of time for access to such data, 7 were able to obtain photos within a period of more than 12 hours.

### **Access to the papillary lines copies / fingerprints copies data**

8 countries (AT, CH, DE, FI, IS, IT, NO, PT) had direct access to the database containing fingerprints. 16 Member States (BE, BG, CZ, DK, EE, EL, HU, IS, LT, NL, NO, PL, RO, SE, SI, SK) said they offered indirect access to this data through contact with the appropriate authority. 1 Member State said that access was possible in selected cases. 6 Member State that offered indirect access to this data said they were able to obtain it within a period of more than 12 hours.

### **Access to the identity cards copies based on which SIS database entry has been created**

Only 3 Member States (FI, IS, PT) said they had direct access to this category of data. 17 Member States (AT, BE, CH, CZ, EE, FR, EL, HU, IT, LT, LU, LV, NL, NO, PL, RO, SI) said that access was possible only in certain circumstances, and indirectly - through contact with the competent national authorities. 2 MS did not collect copies of identity documents of undesirable persons.

### ***6-7. The source of identification material gathered by the national SIRENE Bureau (for its own alerts) for different categories of persons refused entry:***

Answers were given by 24 Member States, except for 2 which - in question n° 3 -said their SIRENE Bureaux had access to the databases processing both the photos and the fingerprints of persons refused entry.

In 8 Member States (AT, CZ, DE, IT, LT, LU, LV, SK) the SIRENE Bureaux have access to **the photos of persons** refused entry that are collected in the database. 7 SIRENE Bureaux (DK, EE, FI, NO, PL, PT, RO, SE) may obtain them both from the database and through contact with the competent authorities, although 1 of them (PL SIRENE BUREAU) can obtain online access only to the photos of such persons who are facing charges in criminal cases. The SIRENE Bureaux in 8 Member States (BE, BG, CH, FR, EL, HU, NL, SI) have this access only through contact with the competent national authority.

Few countries indicated the categories of persons refused entry for whom photo access is missing. 1 member (LU) said that no biometric material was available for alerts regarding persons refused entry. Additionally, CH SIRENE Bureau said it had access to the photos only in the case of persons who had committed crimes or had applied for asylum.

The SIRENE Bureaux in 7 Member States (AT, CH, DE, IT, LT, LU, SK) have access to **the fingerprints of persons** refused entry from the databases. In 8 Member States (BE, CZ, DK, FI, LV, NO, PT, SE), the SIRENE Bureaux have the access to the fingerprints both from the database and through contact with the competent authorities. 9 national SIRENE Bureaux (BG, EE, FR, EL, HU, NL, PL, RO, SI) have the access to this data only through contact with the competent authority.

Few Member States indicated categories of persons refused entry for whom fingerprints access is missing. 1 Member State reported that it did not collect fingerprints of persons entered in the SIS database in relation to the procedures concerning the legalization of stay or illegal stay beyond the period of visa validity. 1 Member State said that no biometric material was available for alerts relating to persons refused entry. CH reported that its SIRENE Bureau had access to the fingerprints only in the case of persons who had committed crimes or had applied for asylum.

Most Member States said that biometric data was collected for all categories of persons refused entry. In several countries, different categories of persons refused entry require different access to the data, direct or indirect, as appropriate. For example, 1 country (NO) indicated that, for the “national security” category, obtaining the fingerprints required contact with the appropriate authority.

**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 authorized to enter alerts pursuant to Art. 96 of the CISA or other authority)**

Photos

In most cases - 16 Member States (AT, BE, CH, DE, DK, ES, FR, EL, HU, IS, IT, NO, PL, SE, SI) - the police authorities supply the databases with the photos of persons refused entry. 6 of these countries (CH, DE, FI, HU, NO, PL) said the photos were available to both the police and other authorities, i.e. migration and administrative. 7 Member States (BG, EE, LT, LV, NL, PT, RO) said that the pictures were for the exclusive use of the administrative/migration authorities. In 1 case (LU), they were in the possession of the judicial authorities.

Fingerprints:

7 Member States (BG, HU, LT, LV, NL, PT, SE) said that this type of data was collected and then entered in the databases via the migration authorities. Other MS said that fingerprints were collected by the appropriate police services. 6 MS said that the national AFIS database constituted the source of the data.

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

From the declarations by the Member States it is possible to state that the fingerprints are available in most cases (for most records). However, most difficulties lie in the lack of identification material in cases concerning aliens who:

- are applicants for residence permits. This is due to the lack of legal grounds for taking fingerprints for administrative procedures (except in the case of foreigners seeking protection in the territory of the Member States, whose biometrics are in EURODAC).
- pose a threat to state security and public order. This is due to the specificity of the alerts in this category.

It seems that the availability of fingerprints is the broadest in the case of persons convicted by a final verdict in the Member States or individuals expelled from the territory of a Member State.

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

In response to this question only 4 Member States replied giving percentages (DE, FR, SI, ES). Also, 4 States (BE, IS, IT, ES) said they had the identification material in the form of photos and fingerprints for all records relating to the Art. 96 of the CISA. 16 States did not carry out analyses in this area or the tools necessary to carry them out were not available.

**CONCLUSIONS:**

- Based on the analysis of the available data, in the field of access - as reported by Member States - of a SIRENE Bureau to the databases containing the supplementary information and identification material concerning alerts pursuant to Art. 96 of the CISA, it should be noted that not all the SIRENE Bureaux in Member States are able to achieve access to the data within the time limits recommended by the Council, contained in the SIRENE Manual and the catalogue of best practices<sup>1</sup> and therefore they are not able to provide an effective exchange of information in urgent matters.
- The analysis shows that in many MS there is no legal basis that would allow the collection of biometric data for all categories of persons refused entry. Thus, the owner of an entry does not always have the access to the identification material.
- It is therefore important to ensure that the SIRENE Bureaux have 24/7 access to the supplementary data to the alert in the SIS so as to efficiently service their own alerts and enable the competent authorities in Member States to access the information that will ensure that appropriate action is taken against any person who was entered in SIS pursuant to Article 96 CISA.
- It is important that a SIRENE Bureau has on-line access to the information, when in a particular case the identification material is not available, thus eliminating the long-term process of ultimately fruitless waiting to obtain this information in an indirect mode.
- In order to improve the information exchange, it is advisable that Member States review their national systems and channels of communication, sources of acquisition of the biometric data of persons refused entry and the extent of their processing in the national databases.

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<sup>1</sup> Doc. 18161/10 SCH-EVAL 158 SIRIS 181 COMIX 837.

- It is advisable that Member States review their national legislation, examining the scope for introducing solutions that would provide a basis for collecting and processing biometric data with a view not only to supplying the presently operational national databases, but also the alerts pursuant to Art. 96 CISA in the SIS II (which will be known as Article 20 alerts, under Regulation 1987/2006).
- It is advisable that Member States take action to ensure 24/7 access for national SIRENE Bureaux to supplementary data and to identification material for alerts in the SIS under Art. 96 CISA , in order to ensure an efficient service of their alerts and in order to enable the competent authorities in Member States to access the information that will ensure that appropriate action is taken against any person who was entered in SIS pursuant to Article 96 CISA.

#### **The exchange of information on the results of a comparison of the identification material.**

The purpose of the next two questions (11-12) was to examine the current practices of the MS relating to the exchange of information on the results of a comparison of the identification material. It appears that the procedures adopted for the SIRENE Bureaux in the SIRENE Manual are not always strictly implemented. One example might be the exchange of identification material, which takes place not only on the basis of L forms dedicated to this purpose under the SIRPIT, but often M, G or O are accompanied by biometric material. The SIRENE Manual obliges Member States to respect the principle of sending feedback concerning the results of comparisons carried out under the SIRPIT.

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

18 Member States said they inform the relevant SIRENE Bureau of the result of the identification material comparison. 10 Member States do so at the request of the owner of the alert.

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

22 Member States expressed a positive opinion on the merits of informing the relevant SIRENE bureau of the result of each comparison carried out on the basis of the identification material provided by the said bureau. 4 MS did not agree with the idea of forwarding such information each time (LT, LU, PT, SE). They considered that the result of the comparison should only be transmitted when positive.

**CONCLUSIONS:**

- Given the fact that activities relating to the comparison of the identification material usually take place in the case of doubt as to the identity of persons and could lead, alongside the effective implementation of alerts in the SIS pursuant to Art. 96 CISA, to the verification and update of the records entered under Art. 96 CISA, it is worth considering a recommendation that the owner of an entry be informed each time of the result of a comparison that is carried out (including negative results). This type of action and information could be extremely helpful in the case of the next hit of the same entry in the SIS. They can also accelerate and organize the exchange of information with the relevant national authorities.
- It should also be noted that in many Member States the exchange of sensitive data such as biometric data requires a very specific framework, so it seems that, given the positive opinion expressed by the vast majority of States, it is advisable in each case to inform the alert's owner of the result of a comparison regardless of the form of exchange in which the material was made available, because the purpose of this exchange of information remains the same.
- Considering the procedure of using L form defined in the SIRENE Manual, i.e. using it for both requesting a comparison and reporting the result, SIRENE Bureaux should review their practices to ensure that they comply with the SIRENE Manual procedures.
- It is advisable that SIRENE Bureaux should consider introducing the practice of informing the owner of each alert of the result of any comparisons - of identification material relating to the alert in the SIS under Art. 96 CISA - which are conducted (including negative results).

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

The purpose of this part of the questionnaire was to establish the ways of communication between SIRENE Bureaux in the Member States and their consular services or other authorities competent in visa issues in connection with the entry into force of Art. 25(3) CISA.

Moreover, the questions were designed to scrutinize the applicable deadlines that are used in the MS when issuing long-term visas. This was done in order to establish/work out a common deadline acceptable to Member States that would standardize the current practices.

In order to work out a uniform deadline, we asked MS to provide the existing/preferable deadlines for a reply for consultation requests based on Art. 25(3) of the CISA in connection with Art. 25(1) of the CISA. Our purpose was also to collect feedback from MS concerning the advisability of establishing the deadlines relating to the co-operation with consular services in the framework of replying for visa requests.

***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):***

21 MS replied to this question. It emerged that most MS communicated with their consular services using more than one channel. Mostly this is e-mail (15 MS :BE, BG, CZ, DE, DK, FI, HU, IT, LT, NL, PL, RO, SE, SI, SK) and fax (10 MS: BE, BG, DE, DK, FR, IT, LU, NL, PL, SI). Additionally, 6 MS use the ordinary mail (EL, FR, IT, L, RO, SI). BE uses also diplobag. ES uses a special application. Using several channels at the same time, mostly the e-mail, ensures a more effective correspondence between competent authorities. It is worth mentioning that in 3 MS (DE, HU, SK) special secured e-mail channels are used. To sum up, it is appreciated that most MS use fast channels like e-mail and fax. This kind of communication allows a more effective and faster proceeding with cases and exchanging necessary data. Some doubts may arise as to the use of the ordinary post as the only channel (1 MS). Undoubtedly, it causes the exchange of information to be slower.

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

19 MS answered the question, indicating the deadline. In 8 of them (EE, ES, HU, LV, RO, SI, SK) this deadline is 30 days. In BG, in connection with planned changes of law, the deadline will soon be shortened from 30 days to 15 days. On the other hand, in PT the deadline for issuing a long-term visa is between 30 and 60 days.. In 2 MS the deadline is shorter and is set at 15 days – LT and, as mentioned before, BG. 2 MS – LU and NL – apply 6-month deadlines. It may be noted that in 3 MS – CZ, FI and NO – the maximum length of the deadline depends on the purpose of the visa and in 7 other MS (BE, DE, DK, FI, IT, PL, SE) no deadline at all has been set. However, in practice, the Polish consular service applies a 15-day. An analysis of deadlines for issuing a national long-term visas reveals the existing discrepancies between MS and how difficult it could be to work out a deadline acceptable to all MS. Nevertheless, the Presidency invites MS to make an effort to establish such a deadline that would allow the system of exchange of information in the Schengen Area, under the Art. 25(3) CISA in connection with Art. 25(1) and (2) CISA, to be as uniform and effective as possible.

**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?**

21 MS replied to the question. 10 MS (BE, CZ, DE, DK, FI, IS, IT, PL, SE, SK) explained that, under their national law, there were no such deadlines, except PL, where the consular services uses deadlines similar to those used for Schengen visas, i.e. 15 days. On the other hand, the minimum deadline reported by the MS ranges from an immediate reply to 15 days, and the maximum deadline from 5 days to 6 months. 5 MS reported a 30-day deadline (EE, LV, PT, RO, SI), 1 MS – LT – a maximum 5 days deadline. Additionally, 1 MS (EL) set a 60-day. SE did not provide any deadlines; it expected its requests to be answered immediately.

**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(I)?**

24 MS replied to the question, out of which 15 MS (BG, CZ, DK, EL, ES, HU, LT, LV, NL, NO, PL, PT, RO, SI, SK) appreciated the idea of introducing a deadline for replying to a request for consultation. According to the MS, establishing such terms could be useful for making communication more effective, resulting in better and faster resolution and conduct of cases, although if more complicated cases occur, such a deadline should not be an obstacle to due process (SK, RO, NO). HU suggested establishing a 30-day, stressing that in no circumstances should non-observance of the deadline be considered as an authorization for granting a residence permit. Supporting the need for introducing such a deadline, CZ drew attention to the need for thorough discussion between MS if difficulties in observing the deadline were foreseen. According to 4 MS (CH, DE, FR, SE), there is no need to introduce recommended deadlines. 3 MS (EE, LU, PT) replied that the deadline for executing a consultation request should be in conformity with the indications of the requesting party. Also, 4 MS (BE, DK, IS, IT) explained that decisions should comply with the present SIRENE Manual regulations.

**CONCLUSIONS:**

- Due to the necessity of conducting cases efficiently, and sending and exchanging information in order to appropriately comply with the obligations imposed by the CISA, it is suggested that MS scrutinize their respective channels for exchange of information and try to introduce channels that would enable effective and immediate communication between competent authorities.
- It would be advisable to set out a maximum deadline, acceptable to all MS, for receiving a reply for a consultation request. Undoubtedly, it would contribute to better co-operation in this field and render the whole process of requesting the opinion of the owner of an alert more effective. In the Presidency's opinion, it would be advisable to aim at unification of the deadlines in the Schengen Area.
- Undertaking the effort to agree on a common deadline will result in more effective co-operation and communication between SIRENE Bureaux, leading to a more effective elimination of the conflict of sanctions revealed in SIS resulting from a reservation made by a MS and an entry or stay permit granted by a different MS.

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

The below questions were aimed at assessing the technical means of the MS in the field of scanning the documents presented during controls/checks and containing data that was changed in comparison with the data stored in SIS. The Presidency's aim was to analyze MS' practice in this field as well. Raising the following questions, the Presidency wished also to obtain MS' feedback concerning the utility of providing the owner of an alert with scans of documents containing data that was changed in comparison with the data stored in SIS.

***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)?***

25 MS replied to the question (AT, BE, BG, CH, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IS, IT, LT, LU, NL, NO, PL, PT, RO, SE, SI, SK), of which 19 MS (AT, BE, BG, CZ, DE, EL, ES, FI, FR, HU, IS, LU, NL, NO, PL, PT, RO, SI, SK) gave an affirmative answer.

6 MS (CH, DK, EE, IT, LT, SE) said they did not possess the technical means to scan documents containing data that was changed in comparison to the data stored in SIS under Art 96 of the CISA.

SK also explained that it uses scanners to read the OCRB code from the document and subsequently conducts checks in SIS. For control purposes in SIS, ICAO transliteration rules and Schengen transliteration table are used automatically.

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

25 MS (AT, BE, BG, CH, CZ, DE, DK, EE, EL, ES, FR, HU, IS, IT, LT, LU, LV, NL, NO, PL, PT, RO, SE, SI, SK) replied to the question, of which 20 MS gave an affirmative answer (AT, BE, BG, CH, DE, DK, EL, ES, FI, FR, HU, IS, LT, LU, LV, PL, PT, RO, SE, SK).

AT said that supplying the owner of an alert with scans of documents takes place only on request and if they are available. SK said that where the SIRENE Bureau receives scans of ID documents, they are transmitted to the Central Visa Authority so that the information can be taken into account. Moreover, according to the regulation of the Ministry of Interior Affairs on SIRENE, the SIRENE Bureau is authorized to create an alias after receiving such information.

4 MS (CZ, EE, NL, SI) said they did not hand over scans of ID documents containing changed data to the owner of an alert under Art. 106 of the CISA. CZ added that such action was undertaken only on request. SI said that, in some cases, copies of ID documents were available.

2 MS (IT, NO) did not give an explicit answer, although IT transmits scans of documents to the owner of an alert only if there is such a need and NO does so depending on the situation.

***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?***

26 MS answered the question (AT, BE, BG, CH, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IS, IT, LT, LU, LV, NL, NO, PL, PT, RO, SE, SI, SK).

In the opinion of 24 MS, providing the owner of an alert with scans of documents containing data that is changed in comparison to the data stored in SIS under Art. 96 of the CISA is justified and helpful for updating and verifying the alerts. Just one MS (IT) answered in the negative.

1 MS was unable to give an explicit answer. According to CZ it cannot take place in SIS 1+ as it would call for technical changes. Such a solution may be discussed before or when SIS II becomes operational. CZ suggests, as an example, adding a sort of flag to the alert under Art. 96 which would indicate that a particular country has issued a residence permit to a particular alien. However, according to CZ, ID materials and data concerning the document in question (number, etc.) are in most cases a sufficient basis for establishing identity as well as for most other purposes.

## **CONCLUSIONS:**

- The analysis of replies shows that most Member States have the technical means to scan identity documents containing changed personal data that is different from the data stored in SIS under Art. 96 of the CISA.
- Most Member States hand over - under Art 106 of the CISA - the scans of identity documents containing changed personal data that is different from the data stored in SIS under Art. 96 of the CISA.
- Only a few Member States do not undertake such activities or undertake them only at the request of the owner of the alert.
- The analysis leads to the conclusion that the introduction of the recommended procedure concerning the transmission of scans of identity documents to the owner of an alert under Art. 106 of the CISA containing personal data different from the data stored in SIS under Art. 96 of the CISA will not cause significant changes, because in most Member States such tasks are already carried out.
- Moreover, it would be advisable that the information about the hit of the person, whose personal data was entered in the new travel document obtained in the person's country of origin should be immediately supplemented with the scan of a document which contains different data from the one previously processed in the SIS.
- It may not be possible for the alert owner's request for the transmission of the scan of the document to be performed after completion of the activities by the appropriate services dealing with the reservation, considering that the alien and her/his ID documents are already out of reach.
- Taking into consideration the limitations of the undertaken activities to the necessary minimum, handing over such information directly with the request for updating seems to be justified.
- In the opinion of almost all the MS, making the scans of documents available for the owner of an alert is justified and helpful for updating and verifying the alerts entered under art. 96 of the CISA.
- It is recommended to conduct an overview and adapt the technical solutions to allow the authorities that derive the restrictions from Art. 96 of the CISA to execute the tasks connected with the scanning of identity documents containing altered personal data - disclosed during control - as compared with the data which is processed in SIS and concerns undesirable persons in the Schengen area (persons refused entry).

- Considering the necessity of a thorough verification and updating of the alerts, through entering aliases, and the MS' acceptance of making the scans containing changed personal data available for the owner of the alert, it is recommended to introduce a good practice - relating to Art. 106 of the CISA in conjunction with Art. 96 of the CISA - whereby the owner of the alert is sent each time the scans of identity documents containing the changed personal data in relation to an alien's personal data which is processed in SIS under Art 96 of the CISA.

As mentioned in the introduction, the choice of the priority was aimed at diagnosing the problems which are encountered in the work of the SIRENE Bureaux' national operators and which are undoubtedly the source of numerous problems appearing in the daily work of the Border Guard and Police officers. As a result of the effort made by the MS in answering the questionnaire, we received many valuable comments which we have put forward in the present document.

The Presidency is fully aware that many of the proposed recommendations go beyond the scope of competence of Working Party for Schengen Matters (SIS/SIRENE) and relate mainly to the public administration bodies.

Considering the effort made by the MS in collecting and providing the answers to the questionnaire and, moreover, the importance of the issues raised, the Presidency is of the opinion that the conclusions drawn from the questionnaires could be further used by other EU formations such as: Working Party on Frontiers, Visa Working Party, Schengen Matters Working Party (Scheval) – being competent for updating the Catalogue of the Best Practices. They could also be used for the purpose of a more complete incorporation of the abovementioned matters in the evaluation questionnaires. Several of the above mentioned problems are already covered by the Best Practice Catalogue, the SIRENE Manual and various recommendations adopted by the Working Party for Schengen Matters (SIS/SIRENE), therefore it raises concern that they still occur. Considering this there is a need to undertake actions directed at the full implementation of the existing rules and recommendations. The incorporation of the above mentioned problems in the Schengen Evaluations could be a good motivation for the Member States to comply with the said rules and recommendations.

The Presidency is of the opinion that the implementation of the recommendations – even a partial one - will contribute to effective cooperation between public administration bodies and the authorities competent for executing the provisions of the Art. 25 and Art. 96 of the CISA, thereby ensuring that these provisions are implemented according to the expectations of all interested parties.

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