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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee/Council |
| No. prev. doc.: | 11604/15 |
| Subject: | Draft Council Conclusions on alerts in the SIS for the purpose of refusing entry and stay pursuant to Article 24 of the SIS II Regulation upon a return decision |

1. At its meeting on 25 and 26 June 2015, the European Council concluded that "*Member States will fully implement the Return Directive¹, making full use of all measures it provides to ensure the swift return of irregular migrants; return decisions issued by the Member States will be introduced in the Schengen Information System².*"
2. At the meeting of the Working Party for Schengen Matters (SIS/SIRENE) on 8 July 2015, the Commission indicated that it would launch a study on this subject, followed by an impact assessment which would be taken into consideration in the framework of the ongoing proceedings with a view to proposing a new legislative package on the SIS.

¹ Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in the Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

² See EUCO 22/15, p. 3, point I.5.d).

3. At the same meeting, the Presidency concluded that, in parallel with the medium- and long-term measures addressed by the Commission, a short-term approach would be sought for immediate implementation of the European Council mandate within the existing legal framework.
4. The JHA Counsellors group examined at its meeting on 8 September 2015 the draft Council Conclusions prepared by the Presidency and set out in 11604/15. The draft Council Conclusions aim at providing for a political commitment to insert entry-ban decisions issued in accordance with Article 11 of the Return Directive in the SIS pursuant to Article 24 of the SIS II Regulation. This would constitute a substantial step forward in the short-term, awaiting a more comprehensive long-term approach based on appropriate legislative proposals.

The JHA Counsellors agreed, subject to scrutiny reservations by a few delegations, on the revised text set out in the Annex.

5. The Permanent Representatives Committee is invited to confirm agreement on the draft Council Conclusions as set out in the Annex and to submit them to the Council (Justice and Home Affairs) on 14 September 2015 for adoption as an A point.

DRAFT COUNCIL CONCLUSIONS ON THE INSERTION OF ALERTS IN THE SIS
PURSUANT TO ARTICLE 24 OF THE SIS II REGULATION
UPON A RETURN DECISION

The Council,

1. *Taking into consideration* the conclusions adopted by the European Council at its meeting on 25 and 26 June 2015¹, stating that Member States "*will fully implement the Return Directive*², *making full use of all measures it provides to ensure the swift return of irregular migrants;*" and that "*return decisions issued by the Member States will be introduced in the Schengen Information System*";
2. *Recalls* the obligations resulting from Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals³, in particular Article 6 and Article 11 thereof, which provides for entry bans accompanying return decisions;
3. *Recalls* that, in accordance with Article 24(3) of the SIS II Regulation⁴, a Member State may insert an alert in the SIS for the purpose of refusing entry and stay in respect of persons subject to an entry ban based on a failure to comply with national migration legislation;
4. *Welcomes* the ongoing long-term proceedings carried out by the Commission with a view to proposing enhanced rules on this matter in the context of a new legislative package on the SIS;

¹ See EUCO 22/15, p. 3, point I.5.d).

² Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in the Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

³ OJ L 348, 24.12.2008, p. 98.

⁴ Regulation (EC) No 1987/2006 of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

5. *Invites* Member States to take all the necessary measures in order to ensure that entry-ban decisions issued in accordance with Article 11 of the Return Directive are always inserted in the Schengen Information System pursuant to Article 24(3) of the SIS II Regulation;
6. *Welcomes* the fact that the Commissions Return Handbook⁵, adopted on 9 September 2015, recommends in its section 11.2. the systematic insertion into the SIS of entry bans issued under the Return Directive.
7. *Urges* Member States, in this context, to:
 - a) make full use of all pertinent cooperation mechanisms, in particular the consultation procedures provided for in Article 11(4) of the Return Directive;
 - b) respect the deadline of 12 hours for providing a substantial reply for such consultations as required by Section 1.13 of the SIRENE Manual⁶ and respect the procedure as described in Sections 4.5-4.7 thereof;
 - c) pay particular attention to periods granted for voluntary departure, as provided for in Article 11(1)(a) of the Return Directive, in order to avoid any concomitance with the validity period for executing an alert in the SIS for the purposes of refusing entry and stay;
 - d) ensure appropriate follow-up of the execution of individual return decisions;
 - e) enhance the cooperation between their authorities responsible for issuing return decisions and their authorities responsible for entering and following up alerts in the Schengen Information System, in particular the SIRENE Bureaux.
8. *Encourages* the Commission to propose legislative amendments, on the basis of the result of a feasibility study, to facilitate the execution and follow-up of individual return decisions.

⁵ Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, C(2015) 6250.

⁶ Commission Implementing Decision (EU) 2015/219 of 29 January 2015 replacing the Annex to Implementing Decision 2013/115/EU on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 44, 18.2.2015, p. 75).