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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.:	15812/16
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 compromise version of Articles 1 to 4

At its meetings on 7 March 2017, the Working Party for Schengen Matters (Acquis) initiated the examination of the Proposal for a Regulation of the European Parliament and of the Council on 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 Articles 1 to 4, taking into account the outcome of the debates during that meeting and the written comments received from the delegations.

General scrutiny reservations on this instrument are pending from AT, BG, CZ, DE, EL, FI, HU, IT, LT, NL, PL, PT, SE, SI, SK and UK. Parliamentary reservations are pending from DE, PL, SE and UK. Reservations on specific provisions are indicated in footnotes.

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

Article 1¹
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], 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 an return administrative or judicial decision within the meaning of point (e) 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;²

¹ FR entered a reservation on this Article.

² 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.

- (e) ‘voluntary departure’ means voluntary departure as defined in Article 4(8) of Directive 2008/115/EC;
- (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].

Article 3³
Entry of data in SIS

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.
2. The period for voluntary departure⁴ granted to third-country nationals subject to a return decision issued in accordance with provisions respecting Directive 2008/115/EC shall be immediately recorded in the alert.
3. 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.

Article 4
~~Data e~~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);

³ NL entered a scrutiny reservation on this Article.

⁴ 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.

- (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 is armed, violent, has escaped, **poses a risk of suicide** or 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) dactylographic~~ies~~**scopic** data;
- (v) a ~~colour~~ copy of the identity document;

(va) date of issuing of the return decision;

- (w) **date** ~~period~~ for voluntary departure;

(wa) date of enforceability of the return decision;

- (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.

An alert may not be entered without the data referred to in (a), (g), (k), (m), (n) and (w). When available, all other data listed above shall also be entered.
