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From: Slovak delegation
To: Working Party on Frontiers/Mixed Committee
(EU-Iceland/Liechtenstein/Norway/Switzerland)
Subject: SIS recast and alerts on return

SIS recast has brought new alerts into practice, which also create new situations when carrying out border checks at external borders.

Article 3 of Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals refers to the entry of new alerts on third-country nationals subject to a return decision. This alert serves to verify compliance with the return obligation and to support the enforcement of return decisions. This alert shall be entered in the SIS immediately after the return decision has been issued.

At the exit at the external border, where a third-country national with such an alert is positively hit, the executing Member State shall communicate to the Member State which issued the alert, the set of information referred to in Article 6(1) of this Regulation. The issuing Member State shall immediately delete the alert for return purposes upon receipt of the return confirmation. Where necessary, it shall immediately enter the alert for refusal of entry and stay in accordance with Article 24(1)(b) of Regulation (EU) 2018/1861.

In the event of a positive entry clearance at the external borders, pursuant to Article 8(a), where the return decision is accompanied by entry ban, the executing Member State shall immediately inform the issuing Member State by means of an exchange of supplementary information. The issuing Member State shall immediately delete the alert for return and enter an alert for refusal of entry and stay pursuant to Article 24(1)(b) of the Regulation.

In practice, the situation arises that, once the external border has been crossed, the Member State issuing the return alert does not delete that one and replace it with an alert pursuant to Article 24(1)(b).

The other situation arises that the third-country national, who is entering the external border still has this Article 3 return alert, but after the exchange of information with the issuing Member State, the change in the SIS to an Article 24 alert does not take place immediately but several days.

In this case, there is a situation that the Member State that has the third-country national at its external border crossing point has to deal with. The third-country national cannot be allowed to cross the external border, but at the same time he cannot be refused entry either.

The question is whether even an undeleted Article 3 alert to which the issuing Member State does not immediately react can be considered as a ground for refusal of entry. If not, the Slovak Republic would like to ask the European Commission for guidance on how to proceed correctly in this matter and the Member States for information on whether they have encountered this situation and how they are proceeding.