

EDPS Formal comments on three draft Commission Implementing Decisions concerning information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 21 August 2023, the European Commission consulted the EDPS on three draft Commission Implementing Decisions concerning information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union ('the draft implementing decision(s)'):
 - **Draft Commission Implementing Decision replacing Annexes 4 and 5 of Commission Implementing Decision of 18.11.2021 laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of border checks and return ('SIRENE Manual – Borders and return') C(2021) 7900 final;**
 - **Draft Commission Implementing Decision laying down detailed rules for the tasks of the SIRENE Bureaux and the exchange of supplementary information regarding alerts in the Schengen Information System in the field of police cooperation and judicial cooperation in criminal matters ('SIRENE Manual - Police') and repealing Commission Implementing Decision C(2021) 7901;**
 - **Draft Commission Implementing Decision amending Commission Implementing Decision C(2021) 92 as regards the entry of information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union.**
2. The objective of the draft implementing decisions is to provide for the necessary legal amendments concerning the Schengen Information System and SIRENE procedures in order to implement the new 'information alert', entered in the SIS by Member States

¹ OJ L 295, 21.11.2018, p. 39.

upon the proposal by Europol, based on information from third countries or international organisations.

3. The draft implementing decisions concerning SIRENE Manual-Border and Return and SIRENE Manual-Police are adopted pursuant to Article 8(4) of Regulation (EU) 2018/1861² and Article 8(4) of Regulation (EU) 2018/1862³, respectively. The draft implementing decision amending Commission Implementing Decision C(2021) 92 on the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of police cooperation and judicial cooperation in criminal matters is adopted pursuant to Article 9(5), Article 20(4), Article 37a(15) and Article 63(6) of Regulation (EU) 2018/1862, as amended by Regulation (EU) 2022/1190⁴.
4. The EDPS has previously issued formal comments of 10 March 2021 on the Proposal for amendment of Regulation (EU) 2018/1862 on the use of SIS within the field of police and judicial cooperation as regards entry of alerts by Europol⁵; formal comments of 26 August 2020 on draft CID on the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of border checks and return and CID on the technical rules necessary for entering, updating, deleting and searching data in the Schengen Information System (SIS) and other implementing measures in the field of police cooperation and judicial cooperation in criminal matters⁶; and EDPS comments of 2 June 2021 on the draft Commission Implementing Decisions on SIRENE Manual – Borders and return and SIRENE Manual - Police.
5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in preamble of the three draft implementing decisions.
6. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes

² Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, p. 14.

³ Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU, OJ L 312, 7.12.2018, p. 56.

⁴ Regulation (EU) 2022/1190 of the European Parliament and of the Council of 6 July 2022 amending Regulation (EU) 2018/1862 as regards the entry of information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union, OJ L 185, 12.7.2022, p. 1.

⁵ https://edps.europa.eu/system/files/2021-03/21-03-10_sis_within_police_judicial_cooperation_en.pdf

⁶ [https://edps.europa.eu/sites/default/files/publication/20-08-](https://edps.europa.eu/sites/default/files/publication/20-08-26_edps_comments_on_draft_commission_implementing_decision_on_technical_rules_necessary_for_entering Updating deleting and searching data in sis and other implementing measures en.pdf)

[26_edps_comments_on_draft_commission_implementing_decision_on_technical_rules_necessary_for_entering Updating deleting and searching data in sis and other implementing measures en.pdf](https://edps.europa.eu/sites/default/files/publication/20-08-26_edps_comments_on_draft_commission_implementing_decision_on_technical_rules_necessary_for_entering Updating deleting and searching data in sis and other implementing measures en.pdf)

available, for example as a result of the adoption of other related implementing or delegated acts⁷.

7. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft delegated decision that are relevant from a data protection perspective.

2. Comments

8. Regulation (EU) 2022/1190 established a specific category of information alerts in SIS on third-country nationals in the interest of the Union ('information alerts'). Such information alerts are entered into SIS by the Member States at their discretion and subject to their verification and analysis of the proposal by Europol in the interest of the Union on third-country nationals, in order to inform end-users carrying out a search in SIS that the person concerned is suspected of being involved in a criminal offence in respect of which Europol is competent, and in order for Member States and Europol to obtain confirmation that the person who is the subject of the information alert has been located and to obtain further information.
9. The EDPS positively notes that his previous formal comments referred to in paragraph 4, in particular his recommendations regarding the Proposal for Regulation (EU) 2022/1190 and the Proposal for Commission Implementing Decision C(2021) 92, have been to great extent taken on board and reflected in the final texts of the legal acts.
10. The EDPS furthermore notes that the proposed changes in the SIRENE Manuals and in Commission Implementing Decision C(2021) 92 on the technical rules necessary for entering, updating, deleting and searching data in SIS have a predominantly technical nature with the only objective to ensure the practical implementation of the provisions on information alerts in the SIS, provided for in Regulation (EU) 2018/1862, as amended by Regulation (EU) 2022/1190. Consequently, the EDPS considers that the three draft implementing decisions on information alerts in the SIS do not raise any specific concerns as regards the right to the protection of personal data.

Brussels, 2 October 2023

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁷ In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.