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NOTE

from: Presidency
to: Working Party for Schengen Matters (SIS/SIRENE) /Mixed Committee
(EU-Iceland/Norway and Switzerland/Liechtenstein)

Subject: Implementation of Article 102A of the Convention Implementing the Schengen Agreement during the year 2009
- Draft report to be submitted to the European Parliament in accordance with Art. 102A(4) of the Convention Implementing the Schengen Agreement (CISA)

I. GENERAL

1. According to Article 102A (4) CISA each year, after seeking the opinion of the Joint Supervisory Authority on the data protection rules, the Council must submit a report to the European Parliament on the implementation of Article 102A. The report shall include information and statistics on the use made of the provisions of this Article; the results obtained in their implementation and shall state how the data protection rules have been applied. This is the third report since the Regulation No 1160/2005 on the new Article 102A entered into application in January 2006.

Article 102A of the Schengen Convention introduces, for services in the Member States responsible for issuing registration certificates for vehicles, a right to have access to specific data in the Schengen Information System. This concerns data on motor vehicles, trailers and caravans which have been stolen, misappropriated or lost, and registration certificates for vehicles and number plates.

Pursuant to decision 2006/228/JHA, data on these certificates and number plates may be processed in the Schengen Information System since 31 March 2006.

II. CURRENT USE AND RESULTS

2. The table¹ shows the number of hits when registering vehicles (102A CISA). However, some Member States were not able to provide the relevant figures for 2009 for various reasons.
3. Few Member States may have fully implemented the requirement to record every transmission thus allowing them to provide statistics. Several Member States cannot make the difference between hits based on Article 100 or Article 102A.
4. In NL the Dutch Registration Authority for Vehicles and Driving Licences (RDW) has indirect access to SIS via the Dutch Police. Information on SIS-alerts is not available for RDW. RDW only keeps statistics on hits that were encountered via EUCARIS.
5. Due to the national organization, FI does not gain any added value on giving access to the services for issuing registration certificates for vehicles, because its customs authority is responsible for the equivalent verifications regarding imported vehicles.
6. In most of the countries currently applying Article 102A CISA, the authorities performing the checks are authorities which performed such checks in the past, mostly police authorities. Also in SK police authorities are responsible for issuing registration certificates for vehicles and access the SIS, while registering vehicles.

¹ Chapter III. Statistics.

7. In DK the tax authorities obtained access (read only), since 1 January 2008, the task of issuing vehicle registration certificates was transferred from National Police to the Tax and Customs Administration. No significant raise in the number of hits has been recorded.
8. So far, in only one Member State (AT) these services are not government services. As provided for in the second paragraph of Article 102A(2), these services have no direct access to the SIS.
9. In PL the implementation of Article 102 A has allowed 115 hits recorded for the category of vehicle and 2 for the document category. As a result of actions taken by the local police 18 hits could be confirmed and 18 cases are pending clarification. In PL the application of Art. 102A, in addition to other methods and police techniques, has contributed to the fight against organized crime by preventing the registration of vehicles stolen, misappropriated or lost in another way.
10. As well as in the previous year, in DE 70% of the hits on foreign alerts concerning vehicles are because of a check of vehicle, which had been registered. Due to the fact, that it is possible to check every vehicle before registration, police can take measures to prevent the legalization of vehicles in DE. As a result, bona fide persons can also be better protected by taking legal action earlier. Before the implementation DE already checked vehicles by the police after registration. This procedure will be maintained in the future also. The implementation of this Article now allows additionally vehicle registration authorities to check before registration for all of the 422 local authorities.
11. In LT the government enterprise for vehicle registration received direct access on 16 September 2008. It has registered 270 hits in 2009.

12. In SE an increase of the number of hits has been noted since the implementation of Article 102A CISA. This increase is due mainly to the new automatic and routine SIS checks, which are now performed on all vehicles that are to be registered in SE. SE assumes, that the implementation of Article 102A provides no little or no protection to a bona fide person who has bought a stolen vehicle outside of its national Member State due to differences in private law. Hence a bona fide buyer has little or no chance of recovering his money. However it provides protection for subsequent bona fide persons who otherwise would have bought a stolen vehicle after it was re-registered in another Member State. SE and HU believe, that the public knowledge about the extent of pre registration checks has a preventive effect. However organized crime has likely changed its methods from falsified documents with correct VIN numbers to ringing or cloning vehicles using documents from crashed or burned vehicles. Registration of accident information and sharing of such information as well as SIS information would provide better possibilities for fighting organized crime.
13. CZ does not see any added value for bona fide buyers by the implementation of Article 102A CISA. However it seems that the application of Article 102A changed the modus operandi of the organized crime groups as they rather dismantle the stolen vehicles into parts and sell them one by one as spare parts.
14. The number of hits in BE shows that still a big amount of stolen vehicles has been tried to get registered. As this is not possible anymore, it also reduces the value of a stolen vehicle on the illegal national market. In BE a bona fide buyer can keep its vehicle.

In conclusion in 2009, Article 102A CISA was totally or partially implemented in the following countries participating in the Schengen Information System: AT, BE, CZ, DE, DK, ES, HU, LT, LV, MT, NL, SE, SI, SK, PL, CH and NO.

III. STATISTICS

Implementation of Article 102A CISA during 2009.

	AT	BE	CZ	DE	DK	ES	HU	LT	LV	MT	NL	PL	SE	SI	NO	CH	IT	SK
Additional authorities got access to SIS	NO	NO	YES	NO	NO	NO	YES	YES	YES	NO	YES	YES	YES	YES	YES	NO	YES	NO
Government authority	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	yes	YES	yes	YES	YES	YES	YES
Direct access	NO	YES	YES	YES	NO	YES	YES	YES	YES				YES	yes	NO	YES		YES
Indirect access	YES			NO	YES						YES	x			YES	NO		NO
A search is always automatically performed when registering vehicles	YES	YES	YES	NO			YES	YES	YES	NO	YES	no	YES					YES
Items of Article 102A implemented:	X		X	X				X		X						X		X
a) motor vehicles												X	X					
b) trailers and caravans	X			X				X		partial		X	X			X		X
c) (i) certificates																X		
c) (ii) number plates	X							X				X	X			X		
Hits occurred when registering vehicles	²	963 ³	²	1136 ³	2 ³ 8 ⁴	16 ³	²	270 ³	²	3 ³	²	115 ³⁵ 2 ⁶	7 ³	²	²	²	²	²

² Statistics only including Art. 100.

³ Hits on own territory issued by other countries.

⁴ Hits abroad on own alerts.

⁵ Hits for the category of vehicle, as a result of actions taken by local police confirmed hits: 18, and 18 are pending clarification.

⁶ Hits for the document category.

IV. DATA PROTECTION RULES

Pursuant to Article 101(1) of the CISA, access to data entered in the SIS and the right to search such data directly was reserved exclusively to the authorities responsible for border checks and other police and customs checks. Article 102(1) established the purpose limitation principle – the data provided may only be used for in Articles 95 to 100 only for the purposes laid down for each category of alert referred to in those Articles. Furthermore, Article 102(4) of the CISA laid down a general prohibition to use the data for administrative purposes. Regulation (EC) No 1160/2005⁷ added a new Article 102A to the CISA by introducing a right to the services in the Member States responsible for issuing registration certificates for vehicles to have access to the specific data in the Schengen Information System (SIS).

This new provision was necessary in order clearly identified services (other than police and customs) responsible for issuing registration certificates for vehicles would be granted a right of access to certain SIS data for the sole purpose – to check whether the vehicles presented to them for registration have been stolen, misappropriated or lost. The introduction of an exemption to Articles 92, 100, 101, 102, has changed the purpose of the SIS allowing to the data not only for the law enforcement purposes but also for administrative purpose.

Article 102A contains certain conditions laid down in order to ensure that the fundamental data protection principles would be respected. It specifically defines the services responsible for issuing registration certificates for vehicles, granting the access right for the sole purpose of checking whether the vehicles presented for registration have been stolen, misappropriated or lost.

The authorities performing the checks are authorities which performed such checks in the past, mostly police authorities. Considering that the use of Article 100 data for the purpose laid down in Article 102A is the use of data for another purpose (checking vehicles before registration), such use of the data (Article 100, Article 102A) must be properly logged.

⁷ OJ L 191, 22.07.2005, p.18.

The difference between the purpose of Articles 100 and 102A should be clearly distinguished. Article 100 (1) provides that data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in the SIS. Article 102A(1) states that the services responsible for issuing registration certificates for vehicles shall have the right to access the data entered into the SIS (under Article 100) for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost. According to the recital (6) of the Regulation (EC) No 1160/2005 such use of the data foreseen in Article 102A will be for the administrative purpose. Therefore, the conditions laid down in Article 102A shall be interpreted strictly.

The only article in the CISA providing for an obligation to record every transmission is Article 103. The reference to Article 103 – the recording of every transmission for purposes of checking whether the search is admissible or not – is interesting since these records may provide for the statistical information on the use of the data referred to in Article 102A. Article 103 also provides Member States with the possibility to ensure control of the data used according to Article 102A. Also Article 118 (e) stipulates that one of the necessary measures to be adopted by the Member States in relation to the SIS is to ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control). Hence a proper logging of the use by vehicle registration offices of certain data to establish whether a vehicle was stolen, misappropriated or lost is obligatory.

The recording of every transmission for the purpose of checking enables the appropriate authorities to check the lawfulness of the processing of the data in accordance with Article 102A and to comply with the obligation to ensure data access control (Article 118 (e)). Failure to ensure the proper control of the use of data may have negative implications for data protection, i.e. implementation of the data quality, proportionality principles and data security. The obligation to record the transmission of Article 102A data is of great importance not only to ensure proper use but also to have reliable statistics.

In accordance with Article 102A(1) in fine, the access to data referred to in this Article by the competent services is governed by the national law of each Member State.

The Member States stated that the implementation and the use of Article 102A CISA was strictly subject to the same rules on data protection as those laid down in the appropriate CISA provisions, notably in Arts. 101, 102, and 103 to 118, like any other data processed in the SIS. The national Data Protection Agencies are the supervisory authorities under Articles 114 and 128 CISA.

Data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates, so no personal data is included in these alerts as the circumstances of processing did not give any possibility for identification of the holder of the certificate or number plate.

Regulations in place prohibit information to be retrieved by the authorized personnel unless they have an active investigation regarding the vehicle in question. The SIS can only be accessed from specific computers where a specific user has logged in. Every consultation is logged properly. The SIS has only been made available to a limited number of people and information retrieved is in the form hit/no-hit. A hit will always be reported to the police who will investigate the matter.

In accordance with Article 102A(4), the opinion of the Joint Supervisory Authority will be sought before submitting this report to the European Parliament.

V. CONCLUSIONS

- a) According to the Annex I of the Council Decision 2007/471/EC, the provisions of the Article 64 and Articles 92 to 119 CISA, as well Regulation (EC) No 1160/2005 are applicable to the new Schengen States from 1 September 2007. Almost all of the "new" Member States have implemented or partially implemented Article 102A CISA on time or with short delays already in the course of 2008.
- b) Hence, in 2009 Article 102A CISA was totally or partially implemented in the following Member States: AT, BE, CZ, DE, DK, EE, EL, ES, HU, LT, LV, MT, NL, SE, SK, SL, PL. Also CH and NO implemented it.

- c) In most of the countries currently applying Article 102A CISA, the authorities performing the checks are authorities which performed such checks in the past, mostly police authorities.
- d) In the majority of the countries, the checks foreseen in Art. 102A were already performed before the implementation of this Article, by means of cooperation between the vehicle registration authorities and the law enforcement authorities, which had access to SIS. This may explain why the results in the first years of implementation are not so visible as could have been expected.
- e) Several Member States do not collect records in relation to Article 102 A CISA and some are still developing an effective tool for the relevant statistics. Few Member States may have fully implemented the requirement to record every transmission thus allowing them to provide statistics.
- f) Nevertheless most of the Member States realized already an added value of the implementation of Article 102A CISA.
- g) Article 102A deemed an important tool against organized vehicle crime and helps to protect bona fide customers of imported stolen used cars.
- h) It was also observed that Article 102A may have an influence of the changed modus operandi of organized crime which could request further measures.
- i) Data protection rules have been applied according to the CISA provisions. Data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates, so no personal data is included in these alerts as the circumstances of processing did not give any possibility for identification of the holder of the certificate or number plate.

VI. NEXT STEPS

After having been examined by the Working Party for Schengen Matters on 4 October 2010, this report will be forwarded to the Joint Supervisory Authority (JSA) for an opinion. After the JSA has delivered its observation it the report will be finalised by the Working Party for Schengen Matters. Then the draft report will be submitted to COREPER and Council to be forwarded to the European Parliament in accordance with Art. 102 A (4) of the Convention Implementing the Schengen Agreement.