



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**SIRIS 36
ENFOPOL 52
PESC 342
JAI 153
CATS 24
COTER 26
COMIX 282**

NOTE

from : SIS/SIRENE Working Party (Mixed Committee EU/Iceland, Norway and Switzerland)

to : Article 36 Committee

Subject : Use of the SIS for the implementation of EU restrictive measures on admission of persons

1. At its meeting of 16 September 2004, the RELEX/sanctions Formation asked the competent Council bodies, notably the Article 36 Committee and the SIS/SIRENE Working Party to analyse, *inter alia*, in what extent the current SIS could be used for the implementation of the EU restrictive measures on admission of persons¹.
2. The SIS/SIRENE Working Party has discussed this subject at its meetings of 15 December 2004, 25 January 2005 and 30 March 2005.
3. So far, Germany has introduced SIS alerts on a number of listed individuals, for which the sufficient identifiers were available. This implies also that Germany is carrying the burden of checking and updating these alerts, because as issuing Member State, it is responsible for their accuracy.

¹ Doc. 13452/05 PESC 858 JAI 380 SIRIS 105 SCHENGEN 22 CATS 45 COTER 65.

Thanks to the efforts of Germany, these alerts are available through the SIS at all the external borders of the Schengen territory, allowing all Member States to implement the UN obligation to refuse entry or transit to these persons.

4. There are, however, some outstanding issues in this matter:
 - the current arrangement relies on the goodwill of one Member State;
 - for a number of persons, there are not sufficient identifiers available in order to insert them in the SIS;
 - until the implementation of SIS II, there are several Member States that do not have access to the SIS;
 - a number of the listed persons are residing within the Schengen territory and because of the lifting of the border controls, Schengen States cannot through border controls prevent these persons from entering on their territory in order to comply with their UN obligations.

5. If for some reason the current arrangement, whereby Germany introduces the alerts, cannot be continued, either another Member State will have to volunteer and/or all Member States will have to ensure that they insert the listed persons in their relevant national databases. The suggestion that a third party could insert alerts in the SIS or that one Member State could insert alerts as a representative of all the Member State (thereby sharing the responsibility) would require a modification of the current legal texts and seems very complicated. Where appropriate and if there is a political mandate to do so, it could be addressed in the framework of the Commission proposals for the legal basis for the SIS II.

6. The issue of identifiers is being addressed by the UN relevant bodies, urging States to provide as much information as possible concerning the individuals they want to have listed. This is therefore not a problem that can be addressed at the SIS/SIRENE WG as the relevant Working Groups are dealing with the matter in the most appropriate way possible.
Member States only need to ensure that, if their national legislation and database rules allow, the individuals not included in the SIS for lack of identifiers, are included in the national system.

7. The same applies for the Member States not yet participating in the SIS: they should ensure that all the listed individuals are included in the national system relevant for preventing the entry or transit of these persons.
8. The last issue concerns listed individuals residing in one of the Schengen States and thus, effectively, free to travel to other Schengen States. This is also the issue that was raised in the report of the 1267 Committee Monitoring Team. If there are sufficient identifiers on these persons, they will be inserted in the SIS, meaning that if they come to the attention of the authorities for any reason, the authorities will be entitled to return them to their State of residence as a consequence of the SIS alert.
It is not within the SIS/SIRENE remit to examine any other (national) measure that could be taken with regard to such individuals.
9. **Having discussed the above in the SIS/SIRENE WG, the Presidency was requested to refer the matter to the Article 36 Committee with a view to considering more general measures of police and/or judicial cooperation in order for Member States to comply with the above-mentioned UN obligations.**
10. The SIS/SIRENE WG is available for assisting in any other measure that would be decided upon by the concerned authorities and that would concern the SIS. In this context, it can be mentioned as an example that in the SIS/SIRENE WG it was noted that in the framework of the fight against terrorism, it would be more useful to proceed to a check of the concerned person (as provided for in Article 99 of the Schengen Convention). This requires, however, a separate legal basis and therefore the complete file to be available so that national authorities can, if they so wish, use this file in accordance with national legislation to issue an alert pursuant to Article 99 of the Schengen Convention.¹

¹ This would, however, also require to withdraw the Article 96 alert (the purpose of which, refusal of entry to the territory, corresponds exactly to the UN obligation).