



**COUNCIL OF
THE EUROPEAN UNION**

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**SIRIS 161
SCHENGEN 42
ENFOPOL 254
COMIX 889**

NOTE

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

to: Article 36 Committee (Mixed Committee EU/Iceland,
Norway/Switzerland/Liechtenstein)

No prev. doc. 9737/1/08 REV 1 SIRIS 81 SCHENGEN 16 ENFOPOL 105 COMIX 423 + COR 1

Subject: Implementation of Article 102A of the Convention Implementing the Schengen Agreement during the year 2007
- Draft report to be submitted to the European Parliament in accordance with Art. 102A(4) of the Convention Implementing the Schengen Agreement (CISA)

I. BACKGROUND

1. On the basis of a proposal submitted by the Commission in August 2003¹, the European Parliament and the Council adopted Regulation (EC) No 1160/2005 of 6 July 2005 amending the Convention Implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles².

¹ 12205/03 SIRIS 75 COMIX 524

² OJ L 191, 22.07.2005, p. 18.

2. Pursuant to this Regulation - which was the first legislative act regarding the Schengen Information System (SIS) adopted by co-decision - a new Article 102A was added to the Convention Implementing the Schengen Agreement (CISA).
3. Before this Article was added to the CISA, the SIS allowed for searching data on motor vehicles for the purposes of seizure or use as evidence in criminal proceedings, and for the purposes of discreet surveillance or specific checks.
Searching such data was a task reserved exclusively to the authorities responsible for border checks and other police and customs checks carried out within the country, and the coordination of such checks.
Furthermore, Art. 102(4) CISA provides that data may not, in principle, be used for administrative purposes.
4. Council Decision 2004/919/EC of 22 December 2004 on tackling vehicle crime with cross-border implications³ included the use of the SIS as an integral part of the law enforcement strategy against vehicle crime.
5. The new Article 102A CISA gives the services responsible in the Member States for issuing vehicle registration certificates, and clearly identified for this purpose, access to data entered in the SIS concerning motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost, trailers and caravans with an unload weight exceeding 750 kg which have been stolen, misappropriated or lost, and registration certificates for vehicles and vehicle number plates which have been stolen, misappropriated, lost or invalidated, in order to check the legal status of a vehicle before registration.
6. According to Article 2(2) of Regulation (EC) No 1160/2005 the new Article 102A entered into application on 11 January 2006⁴.

³ OJ L 389, 30.12.2004, p. 28.

⁴ 18.04.2006 in the case of Norway (see Art. 2(4)).

7. However, data on vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated has been entered into the SIS since 31 March 2006 only.
- In fact, the Regulation (EC) No 1160/2005 gave the competent authorities the right of access, but did not implement the entry of data on vehicle registration certificates and vehicle number plates.
8. To this end, the Council adopted Council Decision 2006/228/JHA of 9 March 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism⁵. Pursuant to Decision 2006/228/JHA, Member States have been allowed to enter data on vehicle registration certificates and vehicle number plates since 31 March 2006.
9. According to Article 102A(4) of the Schengen Convention each year, after seeking the opinion of the Joint Supervisory Authority (JSA) on the data protection rules set up pursuant to Article 115 CISA, the Council must submit a report to the European Parliament on the implementation of Article 102A.
- The report should include information and statistics on the use made of the provisions of Article 102A and the results obtained in their implementation and is to state how the data protection rules have been applied.
10. After having been examined by the SIS/SIRENE WP, on 7 July 2008 this report was forwarded to the JSA for an opinion. The JSA delivered its remark on 7 October 2008 (see Annex 2). On 25 November 2008, the SIS/SIRENE Working Party reached an agreement on the draft report to be submitted to the European Parliament in accordance with Art. 102A(4) of the Convention Implementing the Schengen Agreement (CISA) and took note of the JSA's opinion.
- Therefore the Article 36 Committee is invited to endorse this report and forward it to COREPER with a view to its transmission to the European Parliament.**

⁵ OJ L 81, 18.03.2006, p. 45.

II. CURRENT USE AND RESULTS

11. With a view to assessing the use made and the results obtained by the participating Member States, a questionnaire (see Annex) was drawn up and answered by the delegations participating in the Schengen Information System (see III. below).
12. As of 1 January 2007, Article 102A CISA was totally or partially implemented only in 9 of the 15 countries participating in the Schengen Information System: AT, BE, DE, DK, EL, ES, IT, NL and NO. This Article provides a right but does not impose an obligation to the Member States to give vehicle registration authorities access to the SIS.
13. It is difficult to put a figure on the hits recorded due to the implementation of this Article, because in most of the Member States which have implemented it, the authorities performing searches based on Article 102A are the same authorities as those which perform searches pursuant to Article 100(3).
14. Furthermore, in some Member States, an internal solution for the checking of newly issued registration certificates against SIS alerts by the authorities which already had access to the SIS had been found before Article 102A entered into application (e.g. BE, DE). This could explain the difficulty in making visible a probable increase in the number of alerts and hits due to the implementation of Article 102A.
For instance: In Germany about 50 % of the hits on vehicle alerts entered abroad occurred when checks were performed with a view to the registration of such vehicles in 2007.
15. For these reasons, only two (AT, DK) of the nine countries having so far implemented Article 102A could report separately on the number of hits recorded thanks to the implementation of Art. 102A.
16. In most of the Member States still preparing the implementation of Article 102A, delays are due mainly to the fact that access has to be provided to authorities that currently have no access to the SIS.

17. In some Member States there are a large number of decentralised authorities to be connected, which could explain delays. For the same reason, in some of the Member States already implementing Article 102A, access to SIS is not yet granted to all the competent authorities throughout the whole national territory.
18. On the other hand, it has to be emphasised that not all of the participating countries are applying Article 100(3)(f) CISA yet, which hinders the use of Article 102A(1)(c). Article 100(3)(f) was added to the CISA pursuant to the Council Decision 2006/228/JHA⁶, which entered into application on 31 March 2006.
19. According to Article 2(4) of Regulation (EC) No 1160/2005, Article 102A has been applied in Norway only since 18 April 2006. Unfortunately the development of a new IT system for vehicle registration, which was supposed to be set out in October 2007, has been delayed. With the new IT system for vehicle registration a search in SIS will be performed automatically every time a request for a vehicle registration is inserted in the IT system of the vehicle registration authority. In Sweden Article 102A is fully implemented since the 4 February 2008, hence no statistics are available for 2007.
20. Due to the national organization one Member State (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 OJ L 81, 18.03.2006, p. 45.

III. STATISTICS

21. Implementation of Article 102A CISA during 2007.

	AT	BE	DE	DK	EL	ES	IT	NL	NO
Additional authorities got access to SIS	YES	NO	YES	NO	YES	YES	NO	YES	NO
Government authority	NO	YES	YES	YES	YES	YES	NO	YES	YES
Direct access	NO	YES	YES	YES	NO	YES	NO	NO	NO
Indirect access	YES	NO	NO	NO	YES	NO	YES	YES	YES
A search is always automatically performed when registering vehicles	YES	YES	YES	NO	NO	NO	NO	YES	NO
Items of Article 102A implemented:									
a) motor vehicles	YES	YES	YES		YES				
b) trailers and caravans	YES		YES		YES				
c) (i) certificates	NO	NO	NO		NO				
c) (ii) number plates	YES	NO	NO		NO				
Hits occurred when registering vehicles	354 ⁷	1056	507	44 ⁸	134 ⁹	4 ¹⁰	no statistics available	34 ¹¹	no statistics available ¹²

⁷ Also 117 hits abroad on alerts issued by AT.

⁸ 54 vehicles were found abroad on alerts issued by DK

⁹ Total hits for vehicles including Article 100 CISA.

¹⁰ On the basis of VIN only.

¹¹ The new application of the Dutch Registration Authority that connects to EUCARIS as well as SIS will be fully operational in May/June 2008. The amounts will be higher then.

¹² Full implementation after the development of a new IT-System for vehicle registration.

IV. DATA PROTECTION RULES

22. None of the Member States applying Article 102A CISA totally or partially has reported any difficulties concerning the data protection.
23. 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.
24. Also the involvement of the national data protection authorities could take place in the same way as for any other data inserted in the SIS.
25. 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.
26. In fact, Article 102A gives the services in the Member States responsible for issuing registration certificates for vehicles the right to have access to data entered into the Schengen Information System, for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost.
27. 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.
28. 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.
29. 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.
30. In accordance with Article 102A(4), the opinion of the Joint Supervisory Authority is sought before submitting this report to the European Parliament.

V. CONCLUSIONS

- a) In 2007, Article 102A CISA was totally or partially implemented in 9 of the 15 SIS - Member States: AT, BE, DE, DK, EL, ES, IT, NL and NO.
- b) In the majority of these 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 year of implementation are not so visible as could have been expected.
- c) The implementation of this Article is under preparation in most of the Member States participating in the SIS. Since the Article has only been fully implemented in some Member States and for a short period of time, it is too early to make a general assessment. The added value of this Article will become more evident when all preparatory work has been completed and the application will be in full use.
- d) It can be concluded that the timeframe foreseen in Art. 2 of Regulation (EC) No 1160/2005¹³ or preparing the connection to the new authorities was not long enough. In some of the Member States, the technical preparations encompass hundreds of locations.
- e) Article 102A was generally welcomed. It is deemed an important tool against organized vehicle crime and helps to protect bona fide customers of imported stolen used cars.
- f) In one Member State (FI) the customs authority is in charge of pursuing the relevant checks. So in this case no added value is made out by the implementation of Article 102 A CISA.

¹³ Regulation of the European Parliament and of the Council of 6 July 2005 amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles. OJ L 191, 22.7.2005, p. 18-21.

- g) Otherwise it is commonly most imperative that all the Schengen States participate in the implementation of this Article to prevent that organized vehicle crime could take advantage of “holes” in the system.
- h) Therefore, it is in general considered important that the Member States also implement Art. 100(3)(f) CISA.
- i) Data protection rules have been applied according to the CISA provisions.

QUESTIONNAIRE ON THE IMPLEMENTATION OF ARTICLE 102A OF THE SCHENGEN
CONVENTION
(pursuant to Art. 102A(4))

1. Your country:
2. Which authorities obtained access to the SIS pursuant to the new Article 102A? Is this direct or indirect access?
3. Are these government services?
4. Is a search in the SIS performed automatically every time a request for a vehicle registration is inserted in the IT system of the concerned vehicle registration authority(ies)?
5. How many hits were found in your territory on alerts inserted by other Member States?
6. How many hits were found abroad on alerts issued by your Member State?
7. To what extent was the implementation of this Article a reason for an increase in the number of alerts?
8. To what extent was the implementation of this Article a reason for an increase in the number of hits?
9. To what extent does this Article contribute to the fight against organised crime? Could you give an example of the added value this Article brought about?
10. To what extent has the implementation of this Article contributed to the protection of bona fide persons who have acquired a stolen car or stolen documents?
11. How are the pertinent Schengen Convention data protection rules implemented and followed up?
12. Give your general assessment of the results of implementation of this Article (max. 5 lines).
13. Which difficulties have you faced when implementing this Article?
14. Make any other comments and/or suggestions (max. 5 lines).



ANNEX 2

**JOINT SUPERVISORY AUTHORITY
SCHENGEN**

**Brussels, 7 October 2008 (16.10)
(OR. en)**

SCHAC 2504/08

OPINION

From : Mr George de la LOYERE, Chairman
To : Mr. Pascal Courtin, Chairman of the SIS/SIRENE Working Party
Date : 7 October 2008
Subject : Implementation of Article 102A

Dear Mr. Courtin,

According to Article 102A (4) of the Schengen Convention 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 102 A. That 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.

On 7 July 2008, the JSA received a request from the SIS/SIRENE Working Party¹⁴ to give an opinion on this subject.

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 (SIS). It concerns data on motor vehicles, trailers and caravans, registration certificates for vehicles and vehicle number plates which have been stolen, misappropriated or lost.

¹⁴ Doc. 9737/1/08 REV 1.

According to Chapter II, point 11, the general implementation of Article 102A is totally or partially implemented in only 9 of the 15 countries participating in the SIS.

The JSA notices that the implementation of the CISA in 9 new Schengen States on 1 September 2007 is not taken into account. According to the Annex I of the Council Decision 2007/471/EC, the provisions of the Article 64 and Articles 92 to 119 of the CISA, as well Regulation (EC) No 1160/2005 are applicable to the new Schengen States from 1 September 2007. Although these new states may not have actually implemented Article 102A, the report does not present any information on this.

The JSA also took note of the statement from the Member States in Chapter IV, point 22 of the draft report, 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 Arts. 101, 102 and 103 to 118, like any other data processed in the SIS.*

The statistics in Chapter III present the number of hits when registering vehicles. However, the explanation in the footnotes of those hits seems to indicate that the numbers presented do not necessarily only refer to hits in the Member State or even cover hits based on Article 100.

In this respect the JSA emphasizes that a proper logging of the use by vehicle registration offices of certain data to establish whether a vehicle was stolen, misappropriated or lost is necessary. The only article in the CISA providing for an obligation to record every transmission is Article 103. The draft implementation report (Chapter IV, 22) refers to this article as being applied in relation to the use of Article 102A.

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. With these records, Member States could have easily presented the necessary statistics on the consultation of the Schengen Information System by, or on behalf of the services issuing registration certificates for vehicles.

In view of the statement of the Member States in Chapter IV, point 22 of the draft report, in relation with the conclusions in Chapter V, point b) stating that *the results in the first year of implementation are not as visible as could have been expected*, the JSA can only repeat its conclusion from the year 2006 *"that the control on the use of data on objects as provided for in Article 102A, is still not in compliance with Article 103"*. The recording of every transmission for the checking purposes allows for the appropriate authorities to actually check the lawfulness of the processing (use) of the data according to Article 102A. Not ensuring the proper control on the use of data might raise negative data protection implications, i.e. the implementation of the data quality, proportionality principles and data security.

The JSA is aware of the clarifications of the SIS/SIRENE Working Party and the Article 36 Committee made in relation to the opinion of the JSA on the implementation report 2006. After stating that the data entered into the SIS in accordance with Article 102A cannot be considered personal data if they are limited to numerical data identifying vehicles by reference to chassis number, it is further clarified that with regard to the implementation of Article 103, its inclusion in the report is intended to draw Member States' attention to the limits to which they are subject in entering data. In that respect a reference is made to the link between the registration number and the vehicle identification number as being sufficient data for achieving the objective of Article 102A.

In this respect it is important to note that Article 102A in itself does not specify all data elements to be entered in order to perform checks. The report also does not provide sufficient information on the implementation of Article 102A, in relation to the content of the searches (what data are entered (or possible to enter) in the system). This makes it possible that access to the SIS for Article 102A purposes might include personal data.

In relation to the registration number of a vehicle it should furthermore be noted that national Data Protection Authorities generally consider registration certificates and number plates as personal data, unless the circumstances of processing do not give any possibility or requires unreasonable amount of efforts for identification of the holder of the certificate or number plate. This also relates to the possibilities of the user of the data, and most of them are governmental authorities, to link a number plate to an individual person.

Notwithstanding the question whether the data concerned are personal data or not, the obligation to record the transmission of the Article 102A data is of great importance not only to have guarantees for a proper use but also to have reliable statistics.

In conclusion the JSA, acknowledging that the implementation of Article 102A and the processing of registration certificates and vehicle number plates by all Member States is not yet completed, has some concerns about the implementation. Although sufficient technical instruments are available to ensure efficient control on the use of SIS-data, apparently these are not applied to the exchange of data according to Article 102A. In view of this lack of control the JSA urges the Council to explore whether Member States fulfil their obligations of Article 103 in relation with Article 102A.

The JSA requests that this opinion should be attached to the report to the European Parliament.

Yours sincerely,

Chairman

George de la LOYERE
