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NOTE

From:	Presidency
To:	DAPIX: Friends of Presidency on interoperability of EU information systems
Subject:	Access to central EU systems for borders and security

In the context of negotiations on the Entry/Exit System in the Council, on 2 March 2017 the Commission was called upon to propose a **comprehensive framework** for law enforcement access to the various databases in the area of justice and home affairs, 'with a view to greater simplification, consistency, effectiveness and attention to operational needs'.

Taking this into account, the High Level Expert Group on information systems and interoperability considered various aspects of law enforcement access and proposed the following recommendations:

- The Commission should explore a new law enforcement access approach based on differentiating between: (i) identification and investigation, and (ii) normal processes and emergency situations.

- When the purpose is identification of a suspect, perpetrator or victim of a crime, the systems should be swiftly accessible without prior authorisation and in one search using, where possible, alphanumeric identity data, facial images or fingerprints. The queries should be logged and responses from the systems should in the first instance be provided on a hit/no-hit basis only.

- Only in case of actual hits should access to system data be necessary. This access should continue to require, except in emergency situations and under clearly defined conditions, *ex ante* verification and authorisation in accordance with the respective legal bases of the systems.

- Requests for investigations should continue to require, except in emergency situations and under clearly defined conditions, *ex ante* verification and authorisation. This should immediately lead to full access to all relevant systems and should not be subject to a cascade procedure.

- The co-legislators should examine, in the context of ongoing negotiations of relevant proposals, the possibility of granting direct access in emergency situations, under clearly defined conditions, as already proposed in the Eurodac proposal.

- The legal aspects of the above approach should be further assessed as a priority.

In its Conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems of 8 June 2017, the Council called on the Commission, as regards access to EU information systems, "to explore options as proposed by the High-Level Expert Group for achieving greater simplification, consistency, effectiveness and attention to operational needs, and to make corresponding legislative proposals providing a necessary framework to facilitate such access in compliance with data protection principles, and present it for discussion at the Council in early 2018".

This topic was further discussed on 20-21 July 2017 at the informal joint meeting of COSI-CATS in Tallinn. Following this discussion, the Commission Services studied the issue of access to various EU large-scale IT systems in a systematic manner trying to identify various information gaps. The result of this examination is outlined in the table set out in the Annex to this note.

The Presidency intends to bring this discussion forward on the basis of the overview of current conditions and possibilities for access to central EU systems for borders and security set out in the Annex and in view of contributing to the upcoming legislative proposal on interoperability, which, in line with the recommendations of the High-Level Expert Group, will aim at creating the European Search Portal (ESP), the shared Biometric Matching Service (sBMS) and the Common Identity Repository (CIR). Member States are therefore invited to examine the table set out in the Annex and provide answers to the questions raised below. If available, the replies could be complemented with relevant statistics.

As regards access to EU systems for identification purposes, it is currently possible to access most systems in the context of border controls and migration management (no specific restrictions, the person to be identified is present) but not in the context of police checks (for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties). The table summarises what information could become accessible through the ESP, the sBMS and the CIR for the respective purposes of access, without changing any of the existing access rights. The table shows why the ESP and sBMS will need to be configured with great care: depending on the purpose of access (and the specific user) certain data sets can be accessed and certain actions can be taken. The introduction of these three innovations would as such not enlarge access rights, but would ensure that queries are done in a systematic, seamless, reliable and fast way. The introduction of ESP, sBMS and notably CIR would also help fighting identity fraud. The necessity of notably the CIR will need to be demonstrated against this background. This facilitation and systemisation and well as enhanced possibilities to fight identity fraud is a major added value of enhanced interoperability.

Questions to Member States:

1)   Considering the above possibilities offered by the interoperability of EU information systems, would you agree that in the context of the interoperability proposal the existing access rights for identification purposes should not be extended?

2)   If you consider that existing access rights are too limited, how should they be changed?

3)   For what purposes in particular do you see the added value of ESP and sBMS and CIR?

4) Looking at SIS, VIS and Eurodac, do you have examples of detected multiple identities? More generally, looking at all information systems holding biometric information, can you provide figures or estimates of the number of cases of identity fraud?

5) As regards <u>law enforcement access to the systems for investigation purposes</u> in the context of prevention, detection and investigation of terrorism and serious crime, currently different safeguards apply and cascading is required. Would you agree that the conditions for such law enforcement access should be harmonised in all instruments concerning EU information systems? If so, could EES be used as a model?

6) Can you provide examples of how the current cascade system has prevented authorities from accessing necessary information?

ACCESS TO CENTRAL EU SYSTEMS FOR BORDERS AND SECURITY - CURRENT SITUATION

	Schengen Information System both for EU and third country nationals primary objective: both border management and law enforcement		Other systems only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement				Other systems only for third country nationals primary objective: judicial cooperation
		SIS (new*)	**VIS**	**EURODAC (new*)**	**EES**	**ETIAS (proposal)**	**ECRIS-TCN (proposal)**
Identity data recorded in system		- Biographic data - Passport/ID card details - Fingerprints - Palm prints* - Photographs - Facial images*	- Biographic data - Passport details - Fingerprints (10) - Facial images - Visa status	- Biographic data* - Passport/ID card details** (where available) - Fingerprints (10) - Facial images*	- Biographic data - Passport details - Fingerprints (4) - Facial images	- Biographic data - Passport details - Travel authorisation status - IP address	- Biographic data - Fingerprints (10) - Facial images
Additional categories of information held by system		- Refusal of Entry and stay - European Arrest warrant - Missing persons/ children at risk of parental abduction - Requested to assist in judicial criminal procedure - Persons and objects for discreet/inquiry*/ specific check - Objects which are lost/stolen/sought as evidence - Unknown wanted persons* - Return decisions*	- Issued, refused, discontinued, extended, revoked or annulled single/double/multiple entry visa - Authority where visa application was lodged; - Background information: MS(s) of destination, purpose of travel, intended date of arrival and intended stay, applicant's home address, occupation and employer etc. - (In case of families or groups): links between applications; - History of applications of person.	Information concerning third country nationals or stateless persons above 6 years old: - applicants for international protection - persons apprehended in connection with the irregular crossing of an external border - persons found illegally staying in a Member State	- Entry data - Exit data - Refusal of entry data - Remaining authorised stay - List if persons overstaying - Statistics on persons overstaying	- Issued, refused,, revoked and annulled travel authorisations - Declarative information provided in application - Additional information provided at request - Results of the processing of the travel authorisation request, notably hits against other EU systems, the ETIAS watch list and Interpol system).	- convicting Member State (including a reference number and the code of the convicting MS)
Possible actions by users of system		- Search alphanumeric data (biographic and/or passport/ID) - Search fingerprints - Search palm prints*[1] - Search facial images* - Create/Update/Delete	- Search alphanumeric data (biographic and/or passport) - Verify/Search fingerprints - Link records - Create/Update/Delete applications	- Search alphanumeric data (for law enforcement authorities) **[2] - Search fingerprints - Search facial image* - Take/Transmit/Update/ Delete	- Search alphanumeric data (biographic and/or passport) - Verify/ Search fingerprints - Verify / Search facial-images - Link records - Create/Update/Delete	- Search alphanumeric data (biographic and/or passport) - Process travel authorisation application - Create/Update/Delete	- Search alphanumeric data - Verify/ Search fingerprints - Create/update/delete

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* COM proposals.
** As proposed in Council Document 10079/17 (mandate for negotiations with the parliament)

	Schengen Information System both for EU and third country nationals primary objective: both border management and law enforcement		Other systems only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement				Other systems only for third country nationals primary objective: judicial cooperation
		SIS (new*)	**VIS**	**EURODAC** (new*)	**EES**	**ETIAS** (proposal)	**ECRIS-TCN** (proposal)
Purpose of access **Border control**[3]	*Access to categories of information*: **all** *Possible actions*: **all**	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Verify/Search fingerprints	*Access to categories of information*: **all** *Possible actions*: - Search fingerprints - Search facial image - Take/Transmit biometric data	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Verify/Search fingerprints - Verify facial images - Create/Update/Delete	*Access to categories of information*: - Travel authorisation status (ok/not ok) *Possible actions*: - Search alphanumeric data	**No access** (where appropriate, ECRIS-TCN can inform decisions on inclusion of alerts in the SIS).
Purpose of access **Issuance of short-stay visa**	*Access to categories of information*: - Refusal of entry and stay - Certain categories of lost/stolen objects (blank official, and issued identity documents), as provided for by national law *Possible actions:* - Search alphanumeric data - Search fingerprints - Search palm prints (legally possible, but not used) - Search facial images	*Access to categories of information*: **all** *Possible actions*: **all**	**No access**[4]	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints and facial image (using EES/VIS interconnection)	**No access**	**No direct access,** but information may be requested through criminal records authorities where possible under national law

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[3]   In the case of Eurodac the access for border control purposes refers to a situation of irregular crossing of the external border
[4]   Potential gap in information architecture

	Schengen Information System both for EU and third country nationals primary objective: both border management and law enforcement		Other systems only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement				Other systems only for third country nationals primary objective: judicial cooperation
		SIS (new*)	**VIS**	**EURODAC (new*)**	**EES**	**ETIAS (proposal)**	**ECRIS-TCN (proposal)**
Purpose of access **Issuance of ETIAS authorisation**		*Access to categories of information*: - Refusals of entry and stay - Lost, stolen or invalidated travel documents - European Arrest Warrants *For information also*: - Missing persons/ children at risk of parental abduction - Requested to assist in judicial criminal procedure - Persons and objects for discreet/inquiry/ specific check - Objects which are lost/stolen/sought as evidence - Unknown wanted persons - Return decisions *Possible actions*: - Search alphanumeric data NB: access and actions are indirect, via ETIAS Central System	*Access to categories of information*: - Refusals, revocation and annulments of short stay visas *Possible actions*: - Search alphanumeric data NB: access and actions are indirect, via ETIAS Central System	*Access to categories of information*: - Return decisions or removal orders[5] *Possible actions*: - Search alphanumeric data NB: access and actions are indirect, via ETIAS Central System	*Access to categories of information*: - Refusal of entry data - Persons overstaying *Possible actions*: Search alphanumeric data NB: access and actions are indirect, via ETIAS Central System	*Access to categories of information*: **all** *Possible actions*: **all**	Not foreseen under ECRIS-TCN proposal
Specific user **EBCG Agency**		*Access to categories of information*: - Alerts for refusal of entry or stay *Possible actions*: - Search some biographic data (for analytical purposes)	**No access**	**No access**	*Access to categories of information*: - Entry and exit data - Number of persons overstaying *Possible actions*: - Search some biographic data (for *the purpose of risk analyses and vulnerability assessments*)	*EBCG hosts the ETIAS central unit (see box on "issuance of travel authorisation").*	**No access**

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[5]   According to the Eurodac proposal this information will not be recorded in that system

	SIS (new*)	VIS	EURODAC (new*)	EES	ETIAS (proposal)	ECRIS-TCN (proposal)
Schengen Information System both for EU and third country nationals primary objective: both border management and law enforcement		**Other systems** only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement				**Other systems** only for third country nationals primary objective: judicial cooperation
Specific user **EBCG teams**[6]	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints - Search palm prints (legally possible, but not used) - Search facial images	**No access**	*Access to categories of information*: **all** *Possible actions*: - Search fingerprints - Search facial image - Take/Transmit biometric data *(on behalf of requesting state)*	**No access**	**No access**	**No access**
Specific user **Carriers**	**No access**	Access to categories of information: - - Existence of valid visa (ok/not ok) *Possible actions*: - Search alphanumeric data	**No access**	Access to categories of information: - Usage of single/double entry Schengen short stay visa (ok/not ok) *(through website)* *Possible actions*: - Search alphanumeric data	*Access to categories of information*: - Existence of valid travel authorisation (ok/not ok) *Possible actions*: - Search alphanumeric data	**No access**
Specific user **National authorities examining applications for national travel facilitation programmes**	**No access**	**No access**	**No access**	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints - Search facial-images	**No access**	**No access**

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6 Teams of EBCG staff involved in return-related tasks, and members of the migration management support teams.

	Schengen Information System **both for EU and third country nationals primary objective: both border management and law enforcement**		Other systems **only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement**				Other systems **only for third country nationals primary objective: judicial cooperation**
		SIS (new*)	**VIS**	**EURODAC** (new*)	**EES**	**ETIAS** (proposal)	**ECRIS-TCN** (proposal)
Purpose of access **Police checks: Identification or verification of identity (in territory)**		*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints - Search palm prints (legally possible, but not used) - Search facial images	**No access**	**No access**	**No access**	**No access**	**No access**
Purpose of access **Prevention, detection or investigation of <u>terrorist</u> offences and other <u>serious criminal</u> offences**		*Access to categories of information*: **all** (but in context of counter-terrorism implementation is subject to national law (direct-indirect access)) *Possible actions*: **all**	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints *(after ex-ante authorisation)*	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints - Search facial images *(after ex-ante authorisation and cascade via national databases, Prüm and VIS)*[7]	*Access to categories of information*: **all** *Possible actions*: For **identification**: Search alphanumeric data, fingerprints, facial image *(after ex-ante authorisation & cascade via national databases and Prüm; specific procedure for emergencies and terrorist offences)*. For **investigation**: Search alphanumeric data *(no cascading)*	*Access to categories of information*: **all** (but restrictions applicable for specific fields) *Possible actions*: Search alphanumeric data *(after ex-ante authorisation & cascade via national databases and Europol data)*	**No direct access,** but information may be requested through criminal records authorities

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[7]   Council Document 10079/17 (mandate for negotiations with the parliament) proposes to delete VIS.

		Schengen Information System **both for EU and third country nationals primary objective: both border management and law enforcement**	Other systems **only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement**				Other systems **only for third country nationals primary objective: judicial cooperation**
		SIS (new*)	**VIS**	**EURODAC (new*)**	**EES**	**ETIAS (proposal)**	**ECRIS-TCN (proposal)**
Specific user **Europol**		*Access to categories of information*: **all** *Possible actions*: **all**, except Create/Update/delete	As above[8]	As above (cascading *via databases that are accessible to Europol*)	As above (cascading (for identification) *via databases that are accessible to Europol*)	As above ((cascading *via Europol data*)	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints
Purpose of access **Judicial cooperation between Member States**		*Access to categories of information*: **all,** but implementation is subject to national law (direct-indirect access) *Possible actions*: **all,** but the implementation subject to national law (direct-indirect access)	**No access**	**No access**	*Access to categories of information*: **all,** but subject to national law *Possible actions*: **all,** but subject to national law	**No access**	*Access to categories of information*: **all** *Possible actions*: **all**
Specific user **Eurojust**		*Access to categories of information:* - European arrest warrant - Missing persons/ children at risk of parental abduction - Requested to assist in judicial criminal procedure - Lost/stolen objects - Unknown wanted persons *Possible actions*: - Search alphanumeric data - Search fingerprints - Search palm prints - Search facial images	**No access**	**No access**	**No access**	**No access**	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints

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[8]   However, not applied in practice to date.

	Schengen Information System **both for EU and third country nationals primary objective: both border management and law enforcement**		Other systems **only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement**				Other systems **only for third country nationals primary objective: judicial cooperation**
		SIS (new*)	**VIS**	**EURODAC** (new*)	**EES**	**ETIAS** (proposal)	**ECRIS-TCN** (proposal)
Purpose of access **Migration management:** verification of identity and verification of conditions for entry or stay (for TCNs, in territory)		*Access to categories of information*: **all** but implementation is subject to national law (direct-indirect access) *Possible actions*: - Search alphanumeric data - Search fingerprints - Search palm prints (legally possible, but not used) - Search facial images	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Verify/Search fingerprints	*Access to categories of information*: **all** *Possible actions*: - Search fingerprints - Search facial images	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Verify/Search fingerprints - Verify/Search facial images	**No access**	**No direct access,** but information may be requested through criminal records authorities where possible under national law
Purpose of access **Return of irregular Third Country Nationals**		*Access to categories of information*: **all,** but implementation is subject to national law (direct-indirect access) *Possible actions*: **all** as defined in national law	*Access to categories of information*: **all** *Possible actions*: **all**	*Access to categories of information*: **all** *Possible actions*: - Search fingerprints - Search facial images - Update the file with the date of removal or date when person has left the country	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Verify/Search fingerprints - Verify/Search facial images	**No access**	**No direct access,** but information may be requested through criminal records authorities where possible under national law

	Schengen Information System both for EU and third country nationals primary objective: both border management and law enforcement	Other systems only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement				Other systems only for third country nationals primary objective: judicial cooperation
	SIS (new*)	**VIS**	**EURODAC** (new*)	**EES**	**ETIAS** (proposal)	**ECRIS-TCN** (proposal)
Purpose of access **Assessment of request for asylum**	*Access to categories of information*: **all** but implementation is subject to national law (direct-indirect access) *Possible actions*: - Search alphanumeric data - Search fingerprints - Search palm prints (legally possible, but not used) - Search facial images	*Access to categories of information*: **all** *Possible actions*: - Search alphanumeric data - Search fingerprints	*Access to categories of information*: all *Possible actions*: - Search fingerprints - Search facial images - Take/Transmit/Update/Delete	**No access**[9]	**No access**	**No direct access,** but information may be requested through criminal records authorities where possible under national law
Specific user **Member State asylum expert teams**[10]	**No access**	**No access**	*Access to categories of information*: **all** *Possible actions*: - Search fingerprints - Search facial image - Take/Transmit biometric data *(on behalf of requesting state)*	**No access**	**No access**	**No direct access,** but information may be requested through criminal records authorities

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[9]   Potential gap in information architecture
[10]   Teams of Member State asylum experts deployed by EASO.

Schengen Information System both for EU and third country nationals primary objective: both border management and law enforcement		Other systems only for third country nationals primary objective: border / migration / asylum management secondary (ancillary) objective: law enforcement				Other systems only for third country nationals primary objective: judicial cooperation
	SIS (new*)	**VIS**	**EURODAC** (new*)	**EES**	**ETIAS** (proposal)	**ECRIS-TCN** (proposal)
Purpose of access **Issuance of residence permits / long-stay visas**	*Access to categories of information*: **all** but implementation is subject to national law (direct-indirect access) *Possible actions*: - Search alphanumeric data - Search fingerprints - Search palm prints (legally possible, but not used) - Search facial images	**No access**	**No access**	**No access**	**No access**	**No access**
Purpose of access **Customs checks**	*Access to categories of information*: **all** *Possible actions*: **all**	**No access**	**No access**	**No access**	**No access**	**No access**