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### **OUTCOME OF PROCEEDINGS**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	12564/21
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol – Mandate for negotiations with the European Parliament

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At its meeting on 13 October 2021, the Permanent Representatives Committee agreed on the mandate for negotiations with the European Parliament, as set out in the Annex.

Changes compared to the Commission proposal are marked with **bold underlined** for additions and ~~striketrough~~ for deletions.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 88(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Schengen Information System ('SIS') constitutes an essential tool for maintaining a high level of security within the area of freedom, security and justice of the Union by supporting operational cooperation between national competent authorities, in particular border guards, the police, customs authorities, immigration authorities, and authorities responsible for the prevention, detection, investigation or prosecution of criminal offences or execution of criminal penalties. Regulation (EU) 2018/1862 of the European Parliament and of the Council<sup>1</sup> constitutes the legal basis for SIS in respect of matters falling within the scope of Chapters 4 and 5 of Title V of Part Three of the Treaty on Functioning of the European Union (TFEU).

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<sup>1</sup> 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).

- (2) Alerts on persons and objects entered in SIS are in real time made available directly to all end-users of the competent national authorities of Member States that use SIS pursuant to Regulation (EU) 2018/1862. SIS alerts contain information about a particular person or object as well as instructions for the authorities on what to do when the person or object has been found.
- (3) The European Union Agency for Law Enforcement Cooperation (Europol), established by Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>2</sup>, plays an important role in the use of SIS and in the exchange of supplementary information with Member States on SIS alerts. ~~Nevertheless, according to existing rules, alerts in SIS can only be issued by Member States' competent authorities.~~
- (3a) The fight against serious crime and terrorism should be subject to continuous coordination amongst the Member States on the processing of data and on the insertion of alerts into the SIS.**
- (4) Given the increasingly global nature of serious crime and terrorism brought about by growing mobility, the information that third countries and international organisations, such as the International Criminal Police Organization and the International Criminal Court, obtain about criminals and terrorists is increasingly relevant for the Union's security. Such information should contribute to the comprehensive efforts to ensure internal security in the European Union. Some of this information is only shared with Europol. While Europol holds valuable information received from external partners on serious criminals and terrorists, it cannot issue alerts in SIS. Member States are also not always able to issue alerts in SIS on the basis of such information.
- (5) In order to bridge the gap in information sharing on serious crime and terrorism, in particular on foreign terrorist fighters – where the monitoring of their movement is crucial – it is necessary to ensure **that upon the proposal of Europol, Member States are able to enter an alert in the interest of the Union.** ~~Europol is able to make this information available directly and in real-time to front-line officers in Member States.~~
- ~~(6) Europol should therefore be authorised to enter alerts in SIS pursuant to Regulation (EU) 2018/1862, in full respect of fundamental rights and data protection rules.~~
- (7) To that end, a specific category of alert should be created in SIS, to be issued **by the Member States at their discretion and subject to their verification and analysis upon the proposal of Europol in the interest of the Union on third-country nationals** ~~exclusively by Europol~~, 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 subject to the alert has been located.

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<sup>2</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114).

- (8) In order **for the requested Member State** to assess whether a concrete case is adequate, relevant and important enough to warrant the entry of an alert in SIS, and in order to confirm the reliability of the source of information and the accuracy of the information on the person concerned, Europol should **share all of the information it holds on the case, in particular the outcome of** ~~carry out a detailed individual assessment of each case including further consultations with the third country or international organisation that shared the data on the person concerned, as well as further analysis of the case, in particular by cross-checking it~~ **the data** ~~against information it already holds in its databases, information relating to the accuracy and reliability of the information and complement it with other data on the basis of its own databases~~**data and** ~~. The detailed individual assessment should include the analysis of whether there are sufficient grounds for considering that the person has committed or taken part in, or will commit a criminal offence in respect of which Europol is competent.~~
- (8a) In order to ensure the lawfulness, completeness and accuracy of SIS data, Europol should transmit additional or modified data in relation to an alert that was entered upon its proposal to the issuing Member State without delay, in order to allow the issuing Member State to complete or modify the alert, in particular, if Europol becomes aware that the information received from the authorities of a third country or international organisation was incorrect or was communicated to Europol for unlawful purposes, for example if sharing the information on the person was motivated by political reasons.**
- ~~(9) — Europol should only be able to enter an alert in SIS if the person concerned is not already subject to a SIS alert issued by a Member State. A further precondition for the creation of such an alert should be that Member States do not object to the alert being issued in SIS. Therefore, it is necessary to establish rules on the obligations of Europol prior to entering data in SIS, in particular the obligation to consult the Member States in line with Regulation (EU) 2016/794. It should also be possible for Member States to request the deletion of an alert by Europol, in particular if they obtain new information about the person who is the subject of the alert, if their national security requires so or when it is likely that the alert would represent a risk for official or legal inquiries, investigations or procedures.~~
- ~~(10) — Europol should keep records of the individual assessment of each case, which should include the grounds for entering the alert, for the purposes of verifying the lawfulness of the data processing, self monitoring and ensuring proper data integrity and security. In accordance with Regulation (EU) 2016/794, Europol should co-operate with the European Data Protection Supervisor and make these records available upon request, so that they can be used for monitoring processing operations.~~
- ~~(11) — It is necessary to establish rules concerning the deletion of alerts entered in SIS by Europol. An alert should be kept only for the time required to achieve the purpose for which it was entered. It is therefore appropriate to set out detailed criteria to determine when the alert should be deleted. An alert entered by Europol in SIS should be deleted in particular if a Member State objects, another alert is entered in SIS by a Member State, or if Europol becomes aware that the information received from the third country or international organisation was incorrect or was communicated to Europol for unlawful purposes, for example if sharing the information on the person was motivated by political reasons.~~

- (12) ~~When entering alerts in SIS, Europol should be bound by the same requirements and obligations applicable to the Member States pursuant to Regulation (EU) 2018/1862 when they enter alerts in SIS. In particular, Europol should comply with common standards, protocols and technical procedures established to ensure the compatibility of its technical interface with Central SIS for the prompt and effective transmission of data. Requirements concerning general data processing rules, proportionality, data quality, data security, reporting and obligations related to collecting statistics applicable to Member States when entering alerts in SIS should apply to Europol as well.~~
- (13) Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2016/794 should apply to the processing of personal data by Europol when carrying out its responsibilities under this Regulation. ~~The European Data Protection Supervisor should carry out periodic audits on the data processing of Europol concerning SIS and the exchange of supplementary information.~~
- (14) Since the objectives of this Regulation, namely the establishment and regulation of a specific alert category issued **by Member States upon a proposal by Europol in the interest of the Union** by Europol in SIS in order to exchange information on persons who represent a threat to the internal security of the European Union, cannot be sufficiently achieved by the Member States, but can rather, by reason of their nature be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (15) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation fully respects the protection of personal data in accordance with Article 8 of the Charter of Fundamental Rights of the European Union while seeking to ensure a safe environment for all persons residing on the territory of the Union.
- (16) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

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<sup>3</sup> Regulation (EU) 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 (OJ L 295, 21.11.2018, p. 39).

- (17) Ireland is taking part in this Regulation in accordance with Article 5(1) of Protocol No 19 annexed to the TEU and to the TFEU and Article 6(2) of Council Decision 2002/192/EC<sup>4</sup> and Council Implementing Decision (EU) 2020/1745<sup>5</sup>.
- (18) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>6</sup>, which fall within the area referred to in Article 1, point (G) of Council Decision 1999/437/EC<sup>7</sup>.
- (19) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>8</sup>, which fall within the area referred to in Article 1, point (G), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA<sup>9</sup>.

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<sup>4</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

<sup>5</sup> Council Implementing Decision (EU) 2020/1745 of 18 November 2020 on the putting into effect of the provisions of the Schengen *acquis* on data protection and on the provisional putting into effect of certain provisions of the Schengen *acquis* in Ireland (OJ L 393, 23.11.2020, p. 3).

<sup>6</sup> OJ L 176, 10.7.1999, p. 36.

<sup>7</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

<sup>8</sup> OJ L 53, 27.2.2008, p. 52.

<sup>9</sup> Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

- (20) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>10</sup>, which fall within the area referred to in Article 1, point (G), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU<sup>11</sup>.
- (21) As regards Bulgaria and Romania, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession and should be read in conjunction with Council Decisions 2010/365/EU<sup>12</sup> and (EU) 2018/934<sup>13</sup>.
- (22) As regards Croatia, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2011 Act of Accession and should be read in conjunction with Council Decision (EU) 2017/733<sup>14</sup>.
- (23) Concerning Cyprus, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession [to add eventual Council Decision].

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<sup>10</sup> OJ L 160, 18.6.2011, p. 21.

<sup>11</sup> Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

<sup>12</sup> Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 166, 1.7.2010, p. 17).

<sup>13</sup> Council Decision (EU) 2018/934 of 25 June 2018 on the putting into effect of the remaining provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 165, 2.7.2018, p. 37).

<sup>14</sup> Council Decision (EU) 2017/733 of 25 April 2017 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Croatia (OJ L 108, 26.4.2017, p. 31).

- (24) The European Data Protection Supervisor was consulted, in accordance with Article 41(2) of Regulation (EU) 2018/1725 of the European Parliament and the Council<sup>15</sup>.
- (25) Regulation (EU) No 2018/1862 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*  
**Amendments to Regulation (EU) 2018/1862**

In Article 2, paragraph 2 is replaced by the following:

~~‘2. This Regulation also lays down provisions on the technical architecture of SIS, on the responsibilities of the Member States, the European Union Agency for Law Enforcement Cooperation (‘Europol’) and of the European Union Agency for the Operational Management of Large Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), on data processing, on the rights of the persons concerned and on liability.’~~

**In Article 3, point 8 is replaced by the following:**

**‘(8) ‘flag’ means a suspension of the validity of an alert at the national level that may be added to alerts for arrest, alerts on missing and vulnerable persons, alerts for discreet, inquiry and specific checks and information alerts on third-country nationals in the interest of the Union;’**

In Article 3, the following point is added:

‘(22) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU, with the exception of persons who are beneficiaries of the right of free movement within the Union in accordance with Directive 2004/38/EC or with an agreement between the Union or the Union and its Member States on the one hand, and a third country on the other hand;’

**Article 20 is amended as follows:**

**Paragraphs 1 and 2 are replaced by the following:**

**‘1. Without prejudice to Article 8(1) or to the provisions of this Regulation providing for the storage of additional data, SIS shall contain only those categories of data which are supplied by each Member State, as required for the purposes laid down in Articles 26, 32, 34, 36, 37a, 38 and 40.’**

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<sup>15</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons 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 (OJ L 295, 21.11.2018, p. 39).



**2. The categories of data shall be as follows:**

**(a) information on persons in relation to whom an alert has been entered;**

**(b) information on objects referred to in Articles 26, 32, 34, 36, 37a, and 38.'**

Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where a Member State considers that to give effect to an alert entered in accordance with Article 26, 32, 36 or 37a is incompatible with its national law, its international obligations or essential national interests, it may require that a flag be added to the alert to the effect that the action to be taken on the basis of the alert will not be taken in its territory. ~~Flags on alerts entered in accordance with Article 26, 32 or 36~~ **The flag** shall be added by the SIRENE Bureau of the issuing Member State, ~~flags on alerts entered in accordance with Article 37a shall be added by Europol.'~~

~~(b) paragraph 3 is replaced by the following:~~

~~'3. If in particularly urgent and serious cases, an issuing Member State or Europol requests the execution of the action, the executing Member State shall examine whether it is able to allow the flag added at its behest to be withdrawn. If the executing Member State is able to do so, it shall take the necessary steps to ensure that the action to be taken can be carried out immediately.'~~

The following Chapter IXa is inserted:

'CHAPTER IXa

**ALERTS ENTERED BY EUROPOL ON PERSONS OF INTEREST**

**Information alerts on third-country nationals in the interest of the Union**

*Article 37a*

*Objectives and conditions for entering alerts*

**1. Member States may enter information alerts on third-country nationals in SIS, in accordance with point r) of Article 4(1) of Regulation (EU) 2016/794, upon a proposal by Europol to enter an alert on the basis of information from the authorities of third countries or international organisations.**

**2. Such information alerts shall be issued in the interest of the Union for the purpose of informing end-users carrying out a search in SIS of the suspected involvement of those third-country nationals in terrorist offences or in serious and organised crime as listed in Annex I to Regulation (EU) 2016/794, with a view to obtain the information set out in Article 37b.**

3. Europol may only propose the entry of information alerts on persons in one or more of the following circumstances:
  - (a) where there is a factual indication that a person intends to commit or is committing an offence referred to in paragraph 2;
  - (b) where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to believe that that person may commit an offence referred to in paragraph 2.
4. Europol may only propose the entry of information alerts on persons after it has ensured all of the following:
  - (a) an analysis of the data provided in accordance with Article 17(1)(b) of Regulation (EU) 2016/794 confirmed the reliability of the source of information as well as the accuracy of the information on the person concerned, permitting Europol to determine that the conditions of paragraph 3 are met, where necessary, after having carried out further exchanges of information with the data provider in accordance with Article 25 of Regulation (EU) 2016/794;
  - (b) a search in SIS, carried out in accordance with Article 48 of this Regulation, did not disclose the existence of an alert on the person concerned.
5. Europol shall make available the information it holds on the case and the results of the assessment referred to in paragraphs 3 and 4 to the Member States and propose that one or more Member States enter the alert.
6. Information alerts shall be entered in SIS at the discretion of the Member State requested to enter an alert and shall be subject to its verification and analysis of Europol's proposal. The issuing Member State shall communicate the entry of alerts under this Article to the other Member States and Europol through the exchange of supplementary information.
7. Member States may refuse entering the alert upon the proposal by Europol or may also, if the respective conditions are met, decide to enter another type of alert on the same person.
8. Member States shall put in place a periodic reporting mechanism in order to inform other Member States and Europol on the outcome of the verification and analysis and on whether or not the data has been inserted in the SIS, within a period of 12 months from the communication by Europol of its information to the Member States.
9. Where Europol has relevant additional or modified data in relation to an alert that was entered upon its proposal, it shall transmit them without delay, through the exchange of supplementary information, to the issuing Member State to enable the latter to complete or modify the alert.

- 10. Where Europol has evidence suggesting that data entered in SIS according to paragraph 1 of this Article are factually incorrect or have been unlawfully stored, it shall, through the exchange of supplementary information, inform the issuing Member State as soon as possible and not later than two working days after that evidence has come to its attention. The issuing Member State shall check the information and, if necessary, correct or delete the data in question without delay.**
- 11. Where there is a clear indication that the objects referred to in points (a), (b), (c), (e), (g), (h), (j) and (k) of Article 38(2) or non-cash means of payment are connected with a person who is the subject of an alert pursuant to paragraph 1 of this Article, alerts on those objects may be entered in order to locate the person. In such cases, the alert on the person and the alert on the object shall be linked in accordance with Article 63.**
- 12. Member States shall put in place the necessary procedures for entering, updating and deleting information alerts in SIS in accordance with this Regulation.**
- 13. Europol shall keep records relating to its requests for entering alerts in SIS under this Article and provide reports to Member States every six months on the alerts inserted in the SIS and the cases where Member States did not enter the alerts.**
- 14. The Commission shall adopt implementing acts to lay down and develop rules necessary for entering, updating, deleting and searching the data referred to in paragraph 11 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 76(2).**

~~1. — Europol may enter alerts on persons in SIS for the purpose of informing end users carrying out a search in SIS of the suspected involvement of those persons in a criminal offence in respect of which Europol is competent in accordance with Article 3 of Regulation (EU) 2016/794, as well as for the purpose of obtaining information in accordance with Article 37b of this Regulation that the person concerned has been located.~~

~~2. — Europol may only enter an alert in SIS on persons who are third country nationals on the basis of information received from a third country or an international organisation in accordance with Article 17(1)(b) of Regulation (EU) 2016/794, where the information relates to one of the following:~~

- ~~(a) — persons who are suspected of having committed or taken part in a criminal offence in respect of which Europol is competent in accordance with Article 3 of Regulation (EU) 2016/794, or who have been convicted of such an offence;~~
- ~~(b) — persons regarding whom there are factual indications or reasonable grounds to believe that they will commit criminal offences in respect of which Europol is competent in accordance with Article 3 of Regulation (EU) 2016/794.~~

~~3. — Europol may only enter an alert in SIS after it has ensured all of the following:~~

- ~~(a) — an analysis of the data provided in accordance with paragraph 2 confirmed the reliability of the source of information and the accuracy of the information on the person concerned, permitting Europol to determine that that person falls within the scope of paragraph 2, where necessary, after having carried out further exchanges of information with the data provider in accordance with Article 25 of Regulation (EU) 2016/794;~~
- ~~(b) — a verification confirmed that entering the alert is necessary for achieving Europol's objectives as laid down in Article 3 of Regulation (EU) 2016/794;~~
- ~~(c) — a search in SIS, carried out in accordance with Article 48 of this Regulation, did not disclose the existence of an alert on the person concerned;~~
- ~~(d) — a consultation, involving the sharing of information on the person concerned with Member States participating in Regulation (EU) 2016/794 in accordance with Article 7 of that Regulation, confirmed that:
  - ~~(i) no intention was expressed by a Member State to enter an alert in SIS on the person concerned;~~
  - ~~(ii) no reasoned objection was expressed by a Member State regarding the proposed entry of an alert in SIS on the person concerned by Europol.~~~~

~~4. — Europol shall keep detailed records relating to the entry of the alert in SIS and the grounds for such entry to permit verification of compliance with the substantive and procedural requirements laid down in paragraphs 1, 2 and 3. Such records shall be available for the European Data Protection Supervisor on request.~~

~~5. — Europol shall inform all Member States of the entry of the alert in SIS through the exchange of supplementary information in accordance with Article 8 of this Regulation.~~

~~6. — The requirements and obligations applicable to the issuing Member State in Articles 20, 21, 22, 42, 56, 59, 61, 62 and 63 shall apply to Europol when processing data in SIS.~~

#### *Article 37b*

##### *Execution of the action based on an alert*

1. In the event of a hit on an **information** alert, entered by Europol, the executing Member State shall:
  - (a) — collect and communicate **to the issuing Member State all or some of** the following information:
    - (a)** the fact that the person who is the subject of an alert has been located;
    - (b)** the place, time and reason for the check;

- (c) the route of the journey and destination;
  - (d) the persons accompanying the subject of the alert who can reasonably be expected to be associated with the subject of the alert;
  - (e) objects used or carried, including travel documents;
  - (f) the circumstances in which the person was located.
- (b) ~~in accordance with national law, decide whether it is necessary to take any further measures.~~
2. The executing Member State shall communicate the information referred to in paragraph 1(a) ~~to Europol~~ through the exchange of supplementary information.
3. The executing Member State shall ensure the discreet collection of as much information described in paragraph 1 as possible during routine activities carried out by its national competent authorities. The collection of this information shall not jeopardise the discreet nature of the checks and the subject of the alert shall in no way be made aware of the existence of the alert.'

Article 43 is amended as follows:

Paragraph 3 is replaced by the following:

- '3. Dactyloscopic data in SIS in relation to alerts entered in accordance with Articles 26, 32, 36, 37a, and 40 may also be searched using complete or incomplete sets of fingerprints or palm prints discovered at the scenes of serious crimes or terrorist offences under investigation, where it can be established to a high degree of probability that those sets of prints belong to a perpetrator of the offence and provided that the search is carried out simultaneously in the Member State's relevant national fingerprints databases.'

Article 48 is amended as follows:

- (a) the title is replaced with the following:

'Access to and search of data in SIS by Europol'

~~'Entry and processing of data in SIS by Europol'~~

(b) paragraph 1 is replaced by the following:

‘1. Europol shall, where necessary to fulfil its mandate, have the right to access and search data in SIS, ~~and to enter, update and delete alerts pursuant to Article 37a of this Regulation. Europol shall enter, update, delete and search SIS data through a dedicated technical interface. The technical interface shall be set up and maintained by Europol in compliance with the common standards, protocols and technical procedures defined in Article 9 of this Regulation and shall allow direct connection to Central SIS.~~

Europol shall ~~may also~~ exchange ~~and further request~~ supplementary information in accordance with the provisions of the SIRENE Manual. ~~To that end, Europol shall ensure availability to supplementary information related to its own alerts 24 hours a day, 7 days a week.~~’

(c) paragraph 4 is replaced by the following:

‘4. Europol's use of information obtained from a search in SIS or from the processing of supplementary information shall be subject to the consent of the Member State that provided the information ~~either as issuing Member State or as executing Member State~~. If the Member State allows the use of such information, its handling by Europol shall be governed by Regulation (EU) 2016/794. Europol shall only communicate such information to third countries and third bodies with the consent of the Member State that provided the information and in full compliance with Union law on data protection.’

**(d) paragraph 8 is replaced by the following:**

**‘8. Member States shall inform Europol through the exchange of supplementary information of any hit on:**

**(a) alerts issued under Article 37a also when hits occur in the territory of the issuing Member State; and**

**(b) alerts related to terrorist offences which are not issued under Article 37a.**

**Member States may exceptionally not inform Europol of hits on alerts under point b) of this paragraph if doing so would jeopardise current investigations, the safety of an individual or be contrary to essential interests of the security of the issuing Member State.’**

**(e) paragraph 9 is deleted.**

~~(d) the following paragraph 7a is inserted:~~

~~‘7a. The European Data Protection Supervisor shall carry out an audit of the data processing operations of Europol under this Regulation in accordance with international auditing standards at least every four years.’~~

Article 53 is amended as follows:

(a) ~~the following paragraph 5a is inserted:~~

~~‘5a. Europol may enter an alert on a person for the purposes of Article 37a (1) for a period of one year. Europol shall review the need to retain the alert within that period. Europol shall, where appropriate, set shorter review periods.’~~

(~~a~~) paragraphs 4, 6, 7 and 8 are replaced by the following:

**4. A Member State may enter an alert on a person for the purposes of points (c), (d) and (e) of Article 32 (1), of Article 36, and of Article 37a for a period of one year. The issuing Member State shall review the need to retain the alert within the one year period.**

6. Within the review period referred to in paragraphs 2, 3, 4, and 5 ~~and 5a~~, the issuing Member State, ~~and in the case of personal data entered in SIS pursuant to Article 37a of this Regulation, Europol,~~ may, following a comprehensive individual assessment, which shall be recorded, decide to retain the alert on a person for longer than the review period, where this proves necessary and proportionate for the purposes for which the alert was entered. In such cases paragraph 2, 3, 4, and 5 ~~or 5a~~ of this Article shall also apply to the extension. Any such extension shall be communicated to CS-SIS.’

‘7. Alerts on persons shall be deleted automatically after the review period referred to in paragraphs 2, 3, 4, and 5 ~~and 5a~~ has expired, except where the issuing Member State ~~or in the case of alerts entered in SIS pursuant to Article 37a of this Regulation Europol,~~ has informed CS-SIS of an extension pursuant to paragraph 6 of this Article. CS-SIS shall automatically inform the issuing Member State ~~or Europol~~ of the scheduled deletion of data four months in advance. **CS-SIS shall also inform Europol of the scheduled deletion of data entered under Article 37a four months in advance. Europol shall assist the issuing Member State without delay with its comprehensive individual assessment mentioned in paragraph 6.**’

‘8. Member States ~~and Europol~~ shall keep statistics on the number of alerts on persons the retention periods of which have been extended in accordance with paragraph 6 of this Article and transmit them, upon request, to the supervisory authorities referred to in Article 69.’

**Article 54 is amended as follows:**

**Paragraph 3 is replaced by the following:**

- 3. Alerts on objects entered in accordance with Articles 26, 32, 34, 36 and 37a shall be reviewed pursuant to Article 53 where they are linked to an alert on a person. Such alerts shall only be kept for as long as the alert on the person is kept.'**

**Article 55 is amended as follows:**

(a) ~~In Article 55, ¶~~The following paragraph ~~64~~**4a** is inserted:

**4a. Information alerts in the interest of the Union** ~~Alerts on persons entered by Europol pursuant to Article 37a,~~ shall be deleted upon:

- (a) the expiry of the alert in accordance with Article 53; **or**
- (b) a decision to delete them by **the competent authority of the issuing Member State, where appropriate upon a proposal by Europol.** ~~Europol, in particular when after entering the alert Europol becomes aware that the information received under Article 37a (2) was incorrect or was communicated to Europol for unlawful purposes, or when Europol becomes aware or is informed by a Member State, that the person who is the subject of the alert no longer falls under the scope of Article 37a(2);~~
- (c) ~~a notification, through the exchange of supplementary information, of Europol by a Member State, that it is about to enter, or has entered an alert on the person who is the subject of the alert issued by Europol;~~
- (d) ~~a notification of Europol by a Member State participating in Regulation (EU) 2016/794 in accordance with Article 7 of that Regulation, of its reasoned objection to the alert.'~~

**(b) Paragraph 7 is replaced by the following:**

**7. Where it is linked to an alert on a person, an alert on an object entered in accordance with Articles 26, 32, 34, 36 and 37a shall be deleted when the alert on the person is deleted in accordance with this Article.'**

Article 56 is amended as follows:

(a) paragraph 1 is replaced by the following:

- 1. The Member States shall only process the data referred to in Article 20 for the purposes laid down for each category of alert referred to in Articles 26, 32, 34, 36, 37a, 38 and 40.'**



(b) paragraph 5 is replaced by the following:

‘5. With regard to the alerts laid down in Articles 26, 32, 34, 36, 37a, 38 and 40 of this Regulation, any processing of information in SIS for purposes other than those for which it was entered into SIS has to be linked with a specific case and justified by the need to prevent an imminent and serious threat to public policy and to public security, on serious grounds of national security or for the purposes of preventing a serious crime. Prior authorisation from the issuing Member State or from Europol if the data was entered pursuant to Article 37a of this Regulation, shall be obtained for this purpose.’

In Article 61, paragraphs 1 and 2 are replaced by the following:

~~‘1. Where upon a new alert being entered it becomes apparent that there is already an alert in SIS on a person with the same description of identity, the SIRENE Bureau shall contact the issuing Member State or if the alert was entered pursuant to Article 37a of this Regulation Europol, through the exchange of supplementary information within 12 hours to cross check whether the subjects of the two alerts are the same person.’~~

~~‘2. Where the cross check reveals that the subject of the new alert and the person subject to the alert already entered in SIS are indeed one and the same person, the SIRENE Bureau of the issuing Member State shall apply the procedure for entering multiple alerts referred to in Article 23. By way of derogation, Europol shall delete the alert it has entered as referred to in point (c) of Article 55(6a).’~~

Article 67 is replaced by the following:

*‘Article 67*

*Right of access, rectification of inaccurate data and erasure of unlawfully stored data*

~~(1) Data subjects shall be able to exercise the rights laid down in Articles 15, 16 and 17 of Regulation (EU) 2016/679, in the national provisions transposing Article 14 and Article 16 (1) and (2) of Directive (EU) 2016/680 and in Chapter IX of Regulation (EU) 2018/1725.~~

~~(2) A Member State other than the issuing Member State may provide to the data subject information concerning any of the data subject's personal data that are being processed only if it first gives the issuing Member State an opportunity to state its position. If the personal data was entered in SIS by Europol, the Member State that received the request shall refer the request to Europol without delay, and in any case within 5 days of receipt, and Europol shall process the request in accordance with Regulation (EU) 2016/794 and Regulation (EU) 2018/1725. If Europol receives a request concerning personal data entered in SIS by a Member State, Europol shall refer the request to the alert issuing Member State without delay, and in any case within 5 days of receipt. The communication between those Member States and between the Member States and Europol shall be carried out through the exchange of supplementary information.~~

~~(3) A Member State in accordance with its national law, including law transposing Directive (EU) 2016/680 and, in the case of personal data entered in SIS under Article 37a of this Regulation, Europol in accordance with Chapter IX of Regulation (EU) 2018/1725, shall take a decision not to provide information to the data subject, in whole or in part, to the extent that, and for as long as such a partial or complete restriction constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and legitimate interests of the data subject concerned, in order to:~~

~~(a) avoid obstructing official or legal inquiries, investigations or procedures;~~

~~(b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;~~

~~(c) protect public security;~~

~~(d) protect national security; or~~

~~(e) protect the rights and freedoms of others.~~

~~In cases referred to in the first subparagraph, the Member State or, in the case of personal data entered in SIS pursuant to Article 37a of this Regulation, Europol, shall inform the data subject in writing, without undue delay, of any refusal or restriction of access and of the reasons for the refusal or restriction. Such information may be omitted where its provision would undermine any of the reasons set out in points (a) to (e) of the first subparagraph of this paragraph. The Member State or, in the case of personal data entered in SIS pursuant to Article 37a of this Regulation, Europol, shall inform the data subject of the possibility of lodging a complaint with a supervisory authority or of seeking a judicial remedy.~~

~~The Member State or, in the case of personal data entered in SIS pursuant to Article 37a of this Regulation, Europol, shall document the factual or legal reasons on which the decision not to provide information to the data subject is based. That information shall be made available to the competent supervisory authorities. For such cases, the data subject shall also be able to exercise his or her rights through the competent supervisory authorities.~~

~~(4) Following an application for access, rectification or erasure, the Member State or, in the case of personal data entered in SIS pursuant to Article 37a of this Regulation, Europol, shall inform the data subject about the follow up given to the exercise of the rights under this Article without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The Member State or, in the case of personal data entered in SIS pursuant to Article 37a of this Regulation, Europol, shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic means, the information shall, where possible, be provided by electronic means unless otherwise requested by the data subject.<sup>2</sup>~~

Article 68 is replaced by the following:

~~Article 68~~  
~~Remedies~~

- ~~(1) Without prejudice to the provisions on remedies of Regulation (EU) 2016/679 and of Directive (EU) 2016/680, any person may bring an action before any competent supervisory authority or a court, under the law of any Member State to access, rectify, erase, obtain information or obtain compensation in connection with an alert relating to him or her.~~
- ~~(2) Without prejudice to the provisions on remedies of Regulation (EU) 2018/1725, any person may lodge a complaint with the European Data Protection Supervisor in order to access, rectify, erase, obtain information or obtain compensation in connection with an alert relating to him or her entered by Europol.~~
- ~~(3) The Member States and Europol undertake mutually to enforce final decisions handed down by the courts, authorities or bodies referred to in paragraphs 1 and 2 of this Article, without prejudice to Article 72.~~
- ~~(4) Member States and Europol shall report annually to the European Data Protection Board on:
  - ~~(a) the number of access requests submitted to the data controller and the number of cases where access to the data was granted;~~
  - ~~(b) the number of access requests submitted to the supervisory authority and the number of cases where access to the data was granted;~~
  - ~~(c) the number of requests for the rectification of inaccurate data and for the erasure of unlawfully stored data to the data controller and the number of cases where the data were rectified or erased;~~
  - ~~(d) the number of requests for the rectification of inaccurate data and the erasure of unlawfully stored data submitted to the supervisory authority;~~
  - ~~(e) the number of court proceedings initiated;~~
  - ~~(f) the number of cases where the court ruled in favour of the applicant;~~
  - ~~(g) any observations on cases of mutual recognition of final decisions handed down by the courts or authorities of other Member States on alerts entered by the issuing Member State or Europol.~~~~

A template for the reporting referred to in this paragraph shall be included in the SIRENE Manual.

- ~~(5) The reports from the Member States and Europol shall be included in the joint report referred to in Article 71(4).<sup>2</sup>~~

Article 72 is replaced by the following:

~~Article 72~~  
~~Liability~~

- ~~(1) Without prejudice to the right to compensation and to any liability under Regulation (EU) 2016/679, Directive (EU) 2016/680, Regulation (EU) 2018/1725 and Regulation (EU) 2016/794:~~
- ~~(a) any person or Member State that has suffered material or non-material damage, as a result of an unlawful personal data processing operation through the use of N.SIS or any other act incompatible with this Regulation by a Member State, shall be entitled to receive compensation from that Member State;~~
  - ~~(b) any person or Member State that has suffered material or non-material damage as a result of any act by Europol incompatible with this Regulation shall be entitled to receive compensation from Europol;~~
  - ~~(c) any person or Member State that has suffered material or non-material damage as a result of any act by eu LISA incompatible with this Regulation shall be entitled to receive compensation from eu LISA.~~

~~A Member State, Europol or eu LISA shall be exempted from their liability, in whole or in part, if they prove that they are not responsible for the event which gave rise to the damage.~~

- ~~(2) If any failure of a Member State or Europol to comply with its obligations under this Regulation causes damage to SIS, that Member State or Europol shall be held liable for such damage, unless and insofar as eu LISA or another Member State participating in SIS failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.~~
- ~~(3) Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the national law of that Member State. Claims for compensation against Europol for the damage referred to in paragraphs 1 and 2 shall be governed by Regulation (EU) 2016/794 and subject to the conditions provided for in the Treaties. Claims for compensation against eu LISA for the damage referred to in paragraphs 1 and 2 shall be subject to the conditions provided for in the Treaties.<sup>2</sup>~~

In Article 74, paragraph 3 is replaced by the following:

- ~~3. eu LISA shall produce daily, monthly and annual statistics showing the number of records per category of alerts, both for each Member State, Europol and in aggregate. eu LISA shall also provide annual reports on the number of hits per category of alert, how many times SIS was searched and how many times SIS was accessed for the purpose of entering, updating or deleting an alert, both for each Member State, Europol and in aggregate. The statistics produced shall not contain any personal data. The annual statistical report shall be published.<sup>2</sup>~~

In Article 79, the following paragraph 7 is inserted:

- ‘7. The Commission shall adopt a decision setting the date on which **Member States** ~~Europol~~ shall start entering, updating and deleting data in SIS **according to Article 37a of** ~~pursuant to~~ this Regulation as amended by Regulation [XXX], after verification that the following conditions have been met:
- (a) the implementing acts adopted pursuant to this Regulation have been amended to the extent necessary for the application of this Regulation as amended by Regulation [XXX];
  - (b) **Member States and** Europol **have** ~~has~~ notified the Commission that **they have** ~~it has~~ made the necessary technical and procedural arrangements to process SIS data and exchange supplementary information pursuant to this Regulation as amended by Regulation [XXX];
  - (c) eu-LISA has notified the Commission of the successful completion of all testing activities with regard to CS-SIS and to the interaction between CS-SIS **and N.SIS.** ~~the technical interface of Europol referred to in Article 48(1) of this Regulation as amended by Regulation [XXX].~~

This decision shall be published in the *Official Journal of the European Union*.’

## **Article 2** **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date determined in accordance with Article 79 (7) of Regulation (EU) 2018/1862.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*