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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	7812/22; 8509/22
Subject:	Draft Council Conclusions on the implementation of the EU information systems and their interoperability at national level

Delegations will find in the annex revised text proposals by the Presidency on the above-mentioned subject.

Changes against document 8509/22 are marked in **bold underline** and ~~striketrough~~, except for the renumbering of the paragraphs.

Draft Council Conclusions on certain aspects of the implementation at national level of the EU information systems and their interoperability ~~at national level~~

THE COUNCIL OF THE EUROPEAN UNION,

1. Recalling that one of the major objectives of the European Union is to ensure a high level of security for its citizens in the area of freedom, security and justice by promoting police and judicial cooperation and the management of the Union's external borders in accordance with the provisions of Title V of the Treaty on the Functioning of the European Union;
2. Stressing that measures taken to strengthen police cooperation, judicial cooperation and the management of the Union's external borders must be in accordance with the principle of proportionality and in conformity with the principle of subsidiarity;
3. Recalling that measures taken to strengthen the security of citizens in the area of freedom, security and justice must respect the fundamental rights recognised, in particular, by the Charter of Fundamental Rights of the European Union, such as respect for private life and the protection of personal data ;
4. Considering that the implementation of ~~European~~ EU information systems and their interoperability contribute to the internal security objectives of the Union insofar as they facilitate police and judicial cooperation between Member States, the prevention, ~~and~~ detection, investigation or prosecution of terrorist and other serious criminal offences, and contribute to the management of external borders by improving the effectiveness and efficiency of checks at the external borders, the fight against illegal immigration and the control of migration flows;

5. Stressing that the Schengen Information System (SIS) contributes to maintaining a high level of security in the Union's area of freedom, security and justice by supporting operational cooperation between Member State's authorities responsible of the prevention, detection, investigation or prosecution of criminal offences or execution of criminal penalties, border and migration management;
6. Recalling that the Entry/Exit System (EES), which has the objectives of preventing illegal immigration, facilitating the management of migration flows and contributing to the **identification of any person who does not fulfil or no longer fulfils the conditions of duration of the authorised stay on the territory of the Member States**, prevention, and detection, **investigation or prosecution** of terrorist or other serious criminal offences, will contribute to the effective management of the Union's external borders by ensuring a high level of protection;
7. Stressing that **a European Search Portal, a shared Biometric Matching Service, a Common Identity Repository (CIR) and a Multiple-Identity Detector are established as interoperability components to contribute to the fight** ~~the objective of the interoperability components of the European information systems is to contribute to the fight~~ against identity fraud and to rationalise access to those systems for the purposes of preventing and detecting terrorist offences or other serious criminal offences and for the management of the Union's external borders and the fight against illegal immigration;
8. Recalling that the ~~Common Identity Repository (CIR)~~ is to be established **in particular for** the purpose of facilitating the correct identification of persons, including persons who are unknown and unable to identify themselves or unidentified human remains;

9. Stressing that the European legal framework establishing European EU information systems and their interoperability offers several optional mechanisms to the Member States with a view to achieving these objectives and that other mechanisms, all of them hereafter specified, the implementation of which is compulsory, may be implemented more or less extensively by the Member States; this is particularly true of the use of certain mobile consultation functions offered by the European information systems

- offers the possibility to execute alerts on persons and objects for inquiry checks or specific checks,
- offers the possibility of consulting the CIR with biometric data, and in exceptional cases, alphanumeric data,
- makes it compulsory to enter available data in the SIS,
- empowers Member States to use dactyloscopic data and photographs stored in the SIS to identify a person and
- offers the possibility to border and immigration authorities to carry out searches using fingerprint data in combination with the facial image for identification of any third-country national,

Recalling that all of these mechanisms, including querying the EU information systems using mobile solutions, are subjected to a more or less extensive implementation by the Member States;

10. Noting therefore, after evaluation of the way in which the Member States make a use of these mechanisms or aspire to make use of them, that the Member States express a determination to implement the European legal framework establishing European EU information systems and their interoperability and show a willingness to strive for an ambitious implementation of the possibilities and arrangements referred to in paragraph 9, in the longer term;

THE COUNCIL OF THE EUROPEAN UNION,

11. UNDERLINES the importance of an ambitious implementation by the Member States of ~~all~~ the functionalities of the ~~European~~ **EU** information systems in order to allow for efficient operational cooperation between Member States' authorities responsible for the prevention, detection, investigation or prosecution of criminal offences or execution of criminal penalties, border management and immigration, **as far as they are made available;**
12. ~~RECOMMENDS to~~ **INVITES** Member States to consider whether their national laws allow the use of the ~~optional mechanisms~~ **implementation possibilities** ~~proposed by these systems~~ **and arrangements referred to in paragraph 9,** in order to ~~allow~~ **facilitate** the most efficient operational cooperation between Member States' authorities responsible for the prevention, ~~and~~ detection, **investigation or prosecution** of criminal offences, border management and immigration;

CONCERNING THE POSSIBILITY OF CONSULTING THE CIR,

13. EMPHASISES that the consultation of **the** CIR **makes** it possible to contribute to the fight against identity fraud ~~and to access the systems for the purposes of preventing and detecting terrorist offences or other serious criminal offences, as well as for the management of the Union's external borders and the fight against illegal immigration~~ **where a Member State authority is unable to identify a person due to the lack of a travel document or another credible document proving that person's identity, or where there are doubts about the identity data provided by that person or as the authenticity of the travel documents or the identity of its holder, or in case of a natural disaster, accident or terrorist attack where the person is unable or refuses to cooperate or to identify unidentified human remains;**

14. ~~RECOMMENDS~~ **INVITES** Member States to consider whether their national law allow their police services to query the CIR with the biometric data of a person taken live during an identity check **initiated in their presence** for the purpose of identifying that person, when applicable, as well as to ~~ensure that~~ **consider whether** the querying of the CIR with biometric data ~~is~~ **could** be performed in the six cases where the Regulation provides for this possibility;

CONCERNING THE CARRYING OUT OF INQUIRY CHECKS AND SPECIFIC CHECKS
FOLLOWING ALERTS IN THE SIS,

15. RECALLS that inquiry checks include a **questioning** ~~hearing~~ of the person, in particular on the basis of specific information or questions added to the alert by the issuing Member State, and that the ~~hearing~~ **questioning** is conducted in accordance with the national law of the executing Member State; that during specific checks persons, vehicles, boats, aircraft, containers and objects carried may be searched and that searches are conducted in accordance with the national law of the executing Member State;
16. CONSIDERS that it should be possible to carry out inquiry and specific checks even when the person concerned is not the subject of a national procedure **in the executing Member State where such checks are authorised by national law**;
17. RECALLS that if specific checks are not allowed under the national law of the executing Member State, they are replaced by inquiry checks in that Member State, and that if inquiry checks are not allowed under the national law of the executing Member State, they are replaced by discreet checks;
18. **EMPHASISES that the possibility to resort to discreet check instead of inquiry or specific checks should be implemented without prejudice to the obligation for Member States to make available to end-users the additionally sought information by issuing authorities related to the inquiry check or the specific check as appropriate**;

19. ~~CONSIDERS~~ NOTES that ~~the replacement of inquiry checks and specific checks with discreet checks reduces~~ **the use of inquiry and specific checks extends** the added value provided by the SIS in the operational cooperation between Member States' authorities responsible for the prevention, detection, investigation or prosecution of criminal offences or execution of criminal penalties, border management and immigration;
20. ~~RECOMMENDS~~ INVITES therefore ~~to~~ Member States to ~~consider whether their national law allow to carry out specific checks,~~ **make full use of discreet checks, inquiry checks and specific checks in line with their national legislation and procedures**, even when the person concerned is not the subject of a national procedure;

CONCERNING THE ENTRY OF DATA FROM NATIONAL FILES INTO THE SIS,

21. RECALLS that the Regulations provide that certain alphanumeric data must be entered in an alert and also biometric data, when they are available;
22. EMPHASISES that such available data may come from relevant national databases, according to national legislation;
23. CONSIDERS that the effective introduction of all available data is a prerequisite for efficient operational cooperation between Member States' authorities responsible for the prevention, ~~and~~ detection, **investigation or prosecution** of criminal offences, border management and migration;
24. INVITES ~~RECOMMENDS~~ Member States to ~~consider~~ **ensure that their national law provides for** ~~whether their national law allow~~ the integration into the SIS of any data contained in the national databases which are used by authorities using the SIS have access and relevant to police, judicial, border or migration matters;

CONCERNING THE ~~MOBILE CONSULTATION~~ **BIOMETRIC QUERIES** OF THE SIS ON THE GROUND IN THE CONTEXT OF PUBLIC SECURITY MISSIONS OR THE FIGHT AGAINST ILLEGAL IMMIGRATION,

25. RECALLS that the SIS Regulation **empowers Member States** ~~makes it compulsory query~~ the SIS with fingerprints or photographs for the purpose of confirming an identity and to carry out biometric searches of the SIS for identification purposes, when, **firstly, to use dactyloscopic data, facial images and photographs stored in the SIS to confirm a hit, and secondly, to carry out, dactyloscopic queries in the SIS to establish whether the person is subject to an alert in SIS under a different identity, whilst obliging to carry out** ~~fingerprint searches~~ **dactyloscopic queries in case** the identity of a person cannot be established by other means;
26. CONSIDERS that it is desirable that such ~~confirmation of identity or identification~~ **biometric queries** should take place as soon as possible in order **to ensure effective performance of the tasks of the end-user, whilst safeguarding a** satisfactory balance between the objectives of the Regulation and the protection of fundamental rights and freedoms;
27. RECALLS that officials of the Member States responsible for public security and combating illegal immigration ~~may have~~ **are expected** to carry out a **biometric query** ~~dactyloscopic search of the SIS for the purpose of confirming identity or for identification purposes, where the identity of a person being checked cannot be established by other means~~ **for the purposes mentioned above;**
28. CONSIDERS that in such cases it is desirable that this biometric search be carried out on the spot and without delay by using relevant mobile devices, if available;

29. ~~INVITES RECOMMENDS~~ **INVITES** Member States to consider whether their national law allow biometric searches of the SIS to be carried out on the move for the purpose of confirming identity or for identification purposes in the context of public security missions and fighting illegal immigration, where the identity of a person cannot be established by others means;

CONCERNING THE ~~MOBILE CONSULTATION~~ **BIOMETRIC QUERIES** OF THE EES IN MOBILITY ON THE GROUND IN THE CONTEXT OF THE FIGHT AGAINST ILLEGAL IMMIGRATION,

30. RECALLS that the Regulation authorises border and immigration authorities to carry out searches using, **as applicable, either** fingerprint data or ~~in combination with~~ the facial image **or both in combination**, for the sole purpose of identifying any third-country national who may have been previously registered in the EES under a different identity or who does not or no longer fulfils the conditions for entry into or residence on the territory of the Member States;

31. CONSIDERS it desirable that such searches be carried out as soon as possible in order to ensure **effective performance of the tasks of the end-user whilst safeguarding** a satisfactory balance between the objectives of the Regulation and the protection of fundamental rights and freedoms;

32. RECALLS that Member States' officials responsible for fighting illegal immigration are likely to have to identify third-country nationals in the course of their duties on the ground;

33. CONSIDERS that, in such cases, it is desirable that the search of the EES using fingerprint data, the facial image or fingerprint data in combination with the facial image should be carried out on the spot and without delay **by using relevant mobile devices, if available;**

34. ~~INVITES RECOMMENDS~~ that Member States ~~ensure that~~ **to consider whether** their national laws allow border and immigration authorities to carry out mobile searches using fingerprint, facial image or fingerprint data in the combination with the facial image, for the sole purpose of identifying any third-country national who may have been previously registered in the EES under a different identity or who does not or no longer fulfils the conditions for entry or residence on the territory of the Member States on the ground and without delay.
