

COMMISSION IMPLEMENTING DECISION (EU) 2022/2206**of 11 November 2022****laying down the template for Member States' annual reports to the European Committee for data protection on the exercise of data subjects' rights in relation to the Schengen Information System**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1861 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 border checks, amending the Convention implementing the Schengen Agreement and amending and repealing Regulation (EC) No 1987/2006 (¹), and in particular Article 54(3) thereof,

Having regard to 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 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 (²), and in particular Article 68(3) thereof,

Considering the following:

- (1) Regulations (EU) 2018/1861 and (EU) 2018/1862 contain the new rules for the establishment, operation and use of the Schengen Information System. They increase the effectiveness, promote the technical and operational efficiency of the Schengen Information System and extend its use by introducing new categories of alerts and functions. In addition, Regulation (EU) 2018/1860 of the European Parliament and of the Council (³) established a new type of alert on the return of third-country nationals.
- (2) Regulation (EU) 2018/1861 constitutes the legal basis for the Schengen Information System in respect of matters falling within the scope of Part Three, Title V, Chapter 2 of the Treaty on the Functioning of the European Union (TFEU), and Regulation (EU) 2018/1862 constitutes the legal basis for the Schengen Information System with regard to matters falling within the scope of Part Three, Title V, Chapters 4 and 5 TFEU. The fact that separate instruments have been adopted as a legal basis for the Schengen Information System is without prejudice to the principle that the Schengen Information System constitutes a single comprehensive information system, which should function as such.
- (3) Directive (EU) 2016/680 of the European Parliament and of the Council (⁴) and Regulation (EU) 2016/679 of the European Parliament and of the Council (⁵), in conjunction with Regulations (EU) 2018/1861 and (EU) 2018/1862, describe the rights data subjects have in relation to the processing of their personal data in relation to the use of the Schengen Information System by national competent authorities, as well as the procedures for the exercise of those rights.
- (4) The national independent supervisory authorities referred to in Directive (EU) 2016/680 and Regulation (EU) 2016/679 shall ensure that Member States lawfully process personal data under this Regulation in relation to their use of the Schengen Information System.

(1) OJ L 312, 7.12.2018, p. 14.

(2) OJ L 312, 7.12.2018, p. 56.

(3) Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

(4) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

(5) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(6) In accordance with Regulations (EU) 2018/1861 and (EU) 2018/1862, Member States are to report annually to the European Data Protection Board on the exercise of data subjects' rights in accordance with a model to be developed by the Commission.

- (7) In order to ensure that Member States' annual reports provide a consistent overview of the functioning of the remedies available to data subjects, the template should include the data to be collected pursuant to Regulations (EU) 2018/1861 and (EU) 2018/1862 on the exercise of the right to access, rectification and erasure of their personal data, and on remedies before national courts and the mutual recognition of judicial decisions.
- (8) Pursuant to Article 19 of Regulation (EU) 2018/1860, Article 54(3) of Regulation (EU) 2018/1861 also applies to alerts on the return of third-country nationals. Therefore, Member States should include in their annual reports to the European Data Protection Board data on the exercise of the rights of data subjects in that category of alerts.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark has not taken part in the adoption of Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 and is not bound by it or subject to its application. However, as Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 build on the Schengen acquis, Denmark notified its decision on 26 April 2019 in accordance with Article 4 of that Protocol that it will transpose Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 into its national law. Denmark is therefore obliged under international law to implement this Decision.
- (10) In so far as this Decision concerns Regulation (EU) 2018/1862, Ireland is taking part in it in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC ⁽⁶⁾ in conjunction with Council Implementing Decision (EU) 2020/1745 ⁽⁷⁾.
- (11) As regards Iceland and Norway, this Decision 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 ⁽⁸⁾ which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC ⁽⁹⁾.
- (12) As regards Switzerland, this Decision 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 ⁽¹⁰⁾ 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 2008/146/EC ⁽¹¹⁾ and Article 3 of Council Decision 2008/149/JHA ⁽¹²⁾.
- (6) 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).
- (7) Council Implementing Decision (EU) 2020/1745 of 18 November 2020 on the putting into force of the provisions of the Schengen acquis on data protection and the provisional application of certain provisions of the Schengen acquis in Ireland (OJ L 393, 23.11.2020, p. 3).
- (8) OJ L 176, 10.7.1999, p. 36.
- (9) 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).
- (10) OJ L 53, 27.2.2008, p. 52.
- (11) Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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. 1).
- (12) 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).
- (13) As regards Liechtenstein, this Decision 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 ⁽¹³⁾ 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 2011/350/EU ⁽¹⁴⁾ and Article 3 of Council Decision 2011/349/EU ⁽¹⁵⁾.
- (14) As regards Bulgaria and Romania, this Decision constitutes an act building upon or otherwise related 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 ⁽¹⁶⁾ and (EU) 2018/934 ⁽¹⁷⁾.

- (15) As regards Croatia, this Decision constitutes an act building upon or otherwise related 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⁽¹⁸⁾.
- (16) As regards Cyprus, this Decision constitutes an act building upon or otherwise related to the Schengen acquis within the meaning of Article 3(2) of the 2003 Act of Accession.
- (17) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁽¹⁹⁾ and delivered an opinion on 11 July 2022,

ADOPTED THE FOLLOWING DECISION:

Article 1

The information referred to in Article 54(3) of Regulation (EU) 2018/1861 and Article 68(3) of Regulation (EU) 2018/1862 should be provided in accordance with the model set out in the Annex to this Decision.

(13) OJ L 160, 18.6.2011, p. 21.

(14) Council Decision 2011/350/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 on the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(15) 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, in particular on judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

(16) 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).

(17) Council Decision (EU) 2018/934 of 25 June 2018 on the putting into force 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).

(18) 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).

(19) 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).

Article 2

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

Done at Brussels, 11 November 2022.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

**TEMPLATE FOR THE ANNUAL REPORT TO THE EUROPEAN DATA BOARD —
SCREENING AS REFERRED TO IN ARTICLE 54(3) OF REGULATION (EU) 2018/1861 AND
ARTICLE 68(3) OF REGULATION (EU) 2018/1862**

Shall be submitted by each Member State by 31 March of the year following the reporting year.

The data must be entered in a table with the following structure and fields.

ANNUAL REPORT
To the European Data Protection Supervisor in accordance with
Article 54(3) of Regulation (EU) 2018/1861 and Article 68(3) of Regulation (EU) 2018/1862

Member State:

Reporting period by calendar year:

| Number of completed access requests ⁽¹⁾ | | Alert under Regulation (EU) 2018/1860 | Alert under Regulation (EU) 2018/1861 | Alert under Regulation (EU) 2018/1862 | No alert in the Schengen Information-System (SIS) |
|---|--|---------------------------------------|---------------------------------------|---------------------------------------|---|
| 1a. | Number of requests for access made by the processing Responsibility has been submitted | 129 | 1178 | 66 | 1513 |
| 1b. | Number of cases in which access to the data has been given ⁽²⁾ | 129 | 1178 | 59 | 1513 |
| 2a. | Number of access requests submitted by the supervisory authority ⁽³⁾ | N/A | N/A | N/A | |
| 2b. | Number of cases in which access to the data has been given ⁽⁴⁾ | N/A | N/A | N/A | |
| Number of completed rectification requests ⁽⁵⁾ | | Alert under Regulation (EU) 2018/1860 | Alert under Regulation (EU) 2018/1861 | Alert under Regulation (EU) 2018/1862 | No alert in SIS |
| 3a. | Number of requests for rectification of incorrect data submitted to the controller's reply | 7 | 18 | 0 | 13 |
| 3b. | Number of cases where the data have been rectified | 0 | 0 | 0 | |
| 4a. | Number of requests for rectification of incorrect data submitted to the supervisory authority ⁽⁶⁾ | N/A | N/A | N/A | |

| | | | | | |
|---|--|--|--|--|------------------------|
| 4b. | Number of cases in which the g data have been rectified(<i>Facultation f (7)</i>) | | | | |
| Number of completed erasure requests (8) | | Alert under Regulation (EU) 2018/1860 | Alert under Regulation (EU) 2018/1861 | Alert under Regulation (EU) 2018/1862 | No alert in SIS |
| 5a. | Number of requests for erasure of unlawfully stored data submitted to the controller's reply | 49 | 98 | 4 | 85 |
| 5b. | Number of cases where the data was erased | 0 | 0 | 0 | |
| 6a. | Number of requests for erasure of unlawfully stored data submitted to the supervisory authority (9) | N/A | N/A | N/A | |
| 6b. | Number of cases where the gdata have been erased(<i>Facultation f (10)</i>) | | | | |
| Closed lawsuits (11) | | | | | |
| | | Alert under Regulation (EU) 2018/1860 | Alert under Regulation (EU) 2018/1861 | Alert under Regulation (EU) 2018/1862 | |
| 7a. | Number of lawsuits brought | | 1 | | |
| 7b. | Number of cases in which the court upheld the applicant | | N.T.B | | |

Please include any comments on cases where an alert entered by the issuing Member State has been adopted by a court or authority of other Member States which has been mutually recognised (Add as many rows as necessary)

| Article 54(3) of Regulation (EU) 2018/1861 | Article 68(3) of Regulation (EU) 2018/1862 |
|---|---|
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |

(1) Only indicate the cases in which a final decision has been taken during the calendar year concerned, even if the request was made in a previous year.

(2) Indicate the total number of cases in which full or partial inspection has been granted and, where appropriate, indicate the number of cases of partial access in brackets. The latter is optional.

(3) Requests for access in accordance with Article 17 of Directive (EU) 2016/680.

(4) Indicate the total number of cases in which full or partial inspection has been granted and, where appropriate, indicate the number of cases of partial access in brackets. The latter is optional.

(5) Only indicate the cases in which a final decision has been taken during the calendar year concerned, even if the request was made in a previous year.

(6) Requests for access in accordance with Article 17 of Directive (EU) 2016/680.

(7) Fields marked as "optional" are not mandatory as they are not data to be reported to the European Data Protection Board pursuant to Article 54(3) of Regulation (EU) 2018/1861 or Article 68(3) of Regulation (EU) 2018/1862.

(8) Only indicate the cases in which a final decision has been taken during the calendar year concerned, even if the request was made in a previous year.

(9) Requests for access in accordance with Article 17 of Directive (EU) 2016/680

(10) Fields marked as "optional" are not mandatory as they are not data to be reported to the European Data Protection Board pursuant to Article 54(3) of Regulation (EU) 2018/1861 or Article 68(3) of Regulation (EU) 2018/1862.

(11) Only indicate the cases in which a final decision has been taken during the calendar year concerned, even if the request was made in a previous year.