

ARTICLE 99 INSPECTION

Report of the Schengen Joint Supervisory Authority on an inspection of the use of
Article 99 alerts in the Schengen Information System

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Executive Summary.

One of the main characteristic features of the Schengen Information System is sharing responsibility for using this system in accordance with the provisions set out in the Schengen Convention and in national laws.

A survey of the Schengen Joint Supervisory Authority to the use of the Article 99 alerts in the Schengen Information System provided much information about the actual use of these alerts.

Although the Schengen Convention does not intend to harmonize national practices in law enforcement, the results of this survey demonstrate that there is a clear need for further harmonization. Especially the basic principle that Article 99 data are accurate, up to date and lawful should be better ensured by developing formal and written procedures on a national level.

The Schengen Joint Supervisory Authority proposes in this report several recommendations concerning the use of Article 99 and an improved compliance with the provisions of the Schengen Convention. The findings of this survey will also be valuable for the introduction of the Second generation of the Schengen Information System.

I. Introduction

In June 2006, the Schengen Joint Supervisory Authority (JSA) requested the national data protection authorities to inspect the Article 99 alerts entered in the Schengen Information System (SIS) by their competent authorities.

This is the second survey the JSA initiated on the use of a specific article of the Schengen Convention (*e.g. concerning article 96 in the year 2005*). Based on previous experiences, these surveys can provide insight and knowledge on how Schengen States¹ implement and use those articles of the Schengen Convention and any practical problems that may occur. Often the results indicate various differences between the Schengen States enabling the JSA to draw conclusions and to recommend the necessary measures. This system of surveys provides significant help with the harmonization of the implementation of Schengen Convention and the use of the SIS.

This report presents the findings on the use of Article 99 alerts by the Schengen States. The final report was adopted in the meeting of the JSA on 18 December 2007.

II. Data Protection Supervision

Pursuant to the provisions of the Schengen Convention², personal data are processed in the SIS by the participating states (the Schengen States). The Schengen Convention divides the data protection supervision on the content and the functioning of the SIS between national data protection authorities and the JSA. A Schengen State entering data in the system is responsible for the processing of these data in the SIS, supervised by the national data protection authority. The JSA has the overall task to supervise the technical support function of the SIS, which is distributing the SIS-data to all Schengen States.

Article 115 of the Schengen Convention describes the tasks of the JSA. Apart from checking the technical support function of the SIS, the JSA is charged with examining any difficulties of application or interpretation that may arise during the operation of the SIS, as well as drawing up harmonized proposals for joint solutions to existing problems. This forms the legal basis for initiating a systematic set of surveys on the implementation of a specific article of the Schengen

¹ Every country participating in the Schengen Information System

² The Convention implementing the Schengen Agreement of 14 June 1985, OJ.L 239, 22/09/2000

Convention. The JSA selects the object of inspection based on the identification of particular problems revealed by the sharing experiences among delegations in the JSA.

III. Reason for inspection

During the JSA meeting on 2 March 2006, some concerns were raised about Article 99 alerts. It was noted that the number of alerts entered in SIS under this article demonstrated huge differences between the Schengen States (*see the table below*). This was a strong indication that the Schengen States might use this article in a different manner.

For example, it was noted that Iceland and Greece until then had not used this article at all, while other countries (i.e. *Italy, France*) have entered thousands of alerts. Only five (5) Schengen States then used article 99(2) dealing with specific checks.

Based on the figures of 19 January 2006, the SIS contained the following numbers of Article 99 alerts:

	Country								
	AT	BE	DE	DK	ES	FI	FR	GR	IS
<i>Art. 99.2 (Observation)</i>	642	46	1104	251	14	35	9240	0	0
<i>Art. 99.2 (Check)</i>	0	62	0	0	1888	0	5945	0	0
	Country								
	IT	LU	NL	NO	PT	SE			
<i>Art. 99.2 (Observation)</i>	10629	18	0	53	22	292			
<i>Art. 99.2 (Check)</i>	100	0	672	0	0	0			

According to later statistics (*middle year of 2006- see table below*) more information on the use of Article 99 was available. Denmark was the first Schengen State entering alerts under Article 99(3): alerts from authorities responsible for State Security and Greece entered its first alert under Article 99(2). A fluctuation in the numbers of alerts was also detected: Austria entered 72 alerts under Article 99(2), Belgium doubled those alerts (from 46 alerts now 96), while Germany reduced its numbers (from 1104 to 790 alerts).

Based on the figures of 1 October 2006, the SIS contained the following numbers of Article 99 alerts:

	Country								
	AT	BE	DE	DK	ES	FI	FR	GR	IS
<i>Art. 99.2 (Observation)</i>	714	96	790	196	15	58	9615	1	0
<i>Art. 99.2 (Check)</i>	0	80	0	0	2141	0	6493	0	0
	Country								
	IT	LU	NL	NO	PT	SE			
<i>Art. 99.2 (Observation)</i>	11604	33	3	58	14	394			
<i>Art. 99.2 (Check)</i>	100	0	1135	0	0	0			

These figures justify the purpose of the inspection: whether the variations in the number of Article 99 alerts entered by the different Schengen States indicate that the article is applied in a different manner by the Schengen States. In view of exploring whether this is the case and if so, which circumstances play a significant role, the JSA requested the national data protection authorities to explore the actual implementation of Article 99. In its meeting of 2 March 2006, the JSA decided to request the national data protection supervisors to inspect the national SIS in a joint action.

The JSA is well aware that the Council Decision on the Establishment, Operation and Use of the Second Generation Schengen Information System (SIS II) will in the near future replace the present legal basis for Article 99 alerts, the Schengen Convention. However, that Council Decision also defines alerts (as currently in Article 99) on persons and objects for discreet checks and specific checks in a similar way as in the Schengen Convention. In view of this, the results of the present inspection will also be valuable when the new legal basis of SIS II enters into force.

IV. Scope and method of inspection

The objective of the inspection was to ensure that Article 99 data are processed in accordance with Article 99 and the data protection principles in the Schengen Convention, the SIRENE Manual and the applicable national legislation. The method of the inspection should also make it possible for the JSA to assess whether interpretation problems exist on the use of Article 99.

For that purpose, the JSA developed a simple method of inspection to be used equally by all national data protection authorities. The use of this model would enable the JSA to compare results and evaluate the differences.

A comprehensive questionnaire (see annexes) was developed. The questionnaire aimed to get an overview of the relevant national law in the Schengen States and to check all necessary procedures to fulfill the data protection requirements by authorities responsible for the alerts. It also contained specific questions for checking whether the alerts were in accordance with the provisions of Article 99 and whether they were maintained in the SIS in accordance with the provisions laid down in the Schengen Convention.

V. Reactions received

Sixteen (16) data protection authorities have participated in this inspection. Authorities from: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden.

VI. Results

The results of the national inspections along with an assessment are referred to in this report. In the presentation of its assessment, the JSA emphasizes some guiding principles for the use of Article 99 alerts. It is stressed that although the national data protection authorities used the same model of inspection in some cases there were differences in the way the results were reported.

A. Decision of Article 99 Alert

1. Competent Authorities that may decide on an Article 99 alert.

This question could reveal any differences in the structure of the national systems determining the authorities that have the competence to decide to use an Article 99 alert. Based on the answers received, it is clear that police authorities obviously play a major role in the decisions leading to an Article 99 alert. In eight (8) Schengen States, judicial authorities can also decide to enter an Article 99 alert. Those authorities are the Federal Ministry of the Interior, Intelligence Services, District Administrative Directorates, Federal Police Services and Directorates (including Customs, Aliens Service and Border/Coast Guard), Judicial Authorities, Public Security Division (Ministry of Public Order), Public Prosecution Office. The answers to this question reveal that the use of Article 99 is governed by a variety of laws and is administered by a number of different authorities in the different Schengen States.

2. A specific procedure has been established for Article 99 alerts.

Ten from the fifteen Schengen States have answered **yes** to this question. The rest five (5) Schengen States (Belgium, France, Iceland, Spain and Portugal) answered that no specific procedure is developed for this kind of alerts³. Two Schengen States (Finland and Italy) referred to the procedure as foreseen in the national SIRENE Manual. In Austria, Germany, Greece, Norway and Sweden, specific provisions (also) apply to Article 99 alerts.

3. A prerequisite for such alerts is the prosecution of criminal offences and the prevention of threats to public security (Article 99 par. 2).

All answers confirm the use of this prerequisite. However, when the questionnaire was developed it did not include the question on how this prerequisite is applied in practice, for example who will assess a potential threat to public security. Finland provided further explanation stating that the prerequisite for such request is that a person is suspected to commit serious crimes based on past criminal offences or evidence by the information received by the crime intelligence.

4. Statistics of article 99 Alerts.

According to Article 99, an alert may be issued when there is clear evidence that a) the person concerned intends to commit or is committing numerous and extremely serious criminal offences and / or b) when an overall assessment of the person concerned, in particular on the basis of past criminal offences, gives reason to suppose that person will also commit extremely serious criminal offences in the future. One of the questions in the inspection was whether statistics are available concerning the used grounds (intention to commit or committing, or overall assessment) for the Article 99 alerts. Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Norway, Spain and Sweden reported that no statistics were available.

Luxembourg reported that the majority of the issued alerts concerns cases in which the intention to commit crimes was the basis for alerting. In Portugal however, all alerts are limited to those cases where there was a clear evidence of committing numerous and extremely serious criminal offences. Italy and the Netherlands mostly use those cases where the overall assessment of the person concerned plays an important role. Since most Schengen States do not have statistics on the grounds for using Article 99 alerts, a conclusion cannot be drawn. However, the statistics reported to the JSA indicate that the option of Article 99 (2, under b) plays a dominant role in the number of alerts.

³ Hungary, also answered no but is not a Schengen State yet.

5. Categories of criminal offences that fall under article 99.

This question produced a variety of answers, indicating the differences between the Schengen States. The Schengen Convention does not define the term "*serious criminal offence*". As a result, the method for selecting criminal offences leading to an Article 99 alert varies between the States. Most of them declare that the decision depends on the type of measure and type of crime. A clear distinction for specific crimes (like drugs trafficking, terrorism, homicide, hooliganism, kidnapping etc) is reported (Belgium, Greece, Iceland, Italy, and Norway). In Sweden and Hungary, offences punishable with respectively more than four and five years of imprisonment will be regarded as serious criminal offences. Austria applies both options. In Denmark, Germany, Netherlands, Spain and Portugal no specification exists on the category of criminal offences that may lead to an Article 99 alert as any type of crime can be used.

6. Are the criminal offences categories defined by specific law?

In Belgium, Denmark, Greece, Iceland, Luxembourg, Netherlands, Norway and Portugal no specific law define those criminal offences. In Belgium, there is no specific legal text (law or royal decree) regarding alerts based on Article 99. However, the Minister of Justice and the Minister of Home Affairs instructed that each alert based on Article 99 must be issued in accordance with the Schengen Convention without any misuse of purpose and must be preceded by a national alert (measure to be taken by the police against the person). Moreover, the Belgian SIRENE manual, which is part of a codex set up by the Minister of Justice and the Minister of Home Affairs, provides for a list of the offences that may lead to an alert based on Article 99. Evaluation takes place on a case-by-case basis.

Other Schengen States (Austria, Finland, France, Hungary, Germany, Italy, Spain and Sweden) have included specific categories of crime that may play a role in the Article 99 alerts in their criminal and/or police law. For other categories, a case-by-case basis will be applied (reported by Italy).

7. Basic criteria to decide between the purpose of discrete surveillance or of specific check

The results of the inspection indicate that various Schengen States do not permit or exercise specific checks. Austria, Hungary, Luxembourg, Sweden, Portugal reported that there is no legal basis for executing specific checks. Belgium, Denmark, France and Italy, having entered alerts in both categories reported that the authority entering the alert must choose the type of alert based on the available information and according to the specifics of the case. For specific checks, a court order is required in Norway. This would also be the case for Iceland although no alerts are entered yet. Other Schengen States have not yet entered alerts for specific checks (Finland, Germany, and Greece). Based on these results, it can be concluded that Schengen States where both purposes of

the alert (discreet surveillance or a specific check) may be used, the specifics of the particular case will guide the decision. However, it is also clear that those Schengen States where both types of alerts are possible do not always use this possibility. In some Schengen States, there is no legal basis for an alert requiring a specific check.

8. Additional national laws

Only seven (7) Schengen States (Austria, Finland, France, Germany, Italy, Norway and Sweden) reported the additional legal instruments used in the procedure for deciding on the purpose of the Article 99 alerts such as: *the Penal Code, Data Protection Act, Police Laws, Criminal Law, national SIS Act, legislation for Wanted Persons* are listed by the Schengen States.

VII. Content

B. Content of the Alert

In this check, national data protection authorities checked the content of the alert and the file supporting the alert. It should again be stressed that the results only present an indication whether the checked Article 99 alerts fulfill all the conditions set out in Article 99 and the applicable national laws. In the Schengen States with many alerts, a reasonable sample was examined.

1. Is the content in conformity with Article 99 alert?

All the answers received were in general positive. However, the German data protection authority noted discrepancies between the national law and the regulation pursuant to Article 99 of the Schengen Convention. They raised the question whether the concept regarding the seriousness of the crime pursuant to each national law (criminal offences that are considerably serious) is congruent with the text of Article 99(2) (extremely serious crime).

Furthermore, Germany noted a discrepancy between national law and Article 99. When according to national law contacts of the accused person or of the suspect might also be subject of a police investigation method, Article 99 does not provide for the possibility to enter data on these contacts in the SIS. In Italy in some cases the request was made to erase alerts that – although entered at the instance of judicial authorities – did not appear to meet the “serious facts or crimes” requirement set out in article 99 (e.g. alerts related to the failure to fulfill maintenance obligations). In the Netherlands, from fourteen alerts that have been checked, three alerts that concerned the suspicion of being involved in terrorism, were not in conformity with Article 99, as the data produced by the alerting authority at the inspection proved to be insufficient to comply with the relevant provisions. In Spain, the inspection revealed two types of mistakes: an alert entered in Article 99 instead of 96 and one case of not transmitting of a judicial decision to police authorities. In Denmark, corrections

to alerts were introduced shortly before the visit of the DPA. It was explained that the alerts had been rectified before the visit because they were not entered according to the right Schengen article, in these cases Article 99(3).

2. Is there a file at the SIRENE bureau?

Most of the answers indicate that in case of an Article 99 alert, a file will be available in the SIRENE bureau. In Germany, Italy, Netherlands and Austria such a file is only available in a case of a match/hit. In Spain, there is no file at the SIRENE bureau.

3. Are there any requests of the authorities responsible for state security (Art.99 par.3)?

All the answers received except Denmark and Norway were negative, as to any requests received from authorities responsible for state security.

4. Do these authorities responsible for state security have access to Article 99 alerts?

Belgium, Germany, Hungary, Italy, Luxembourg, Netherlands, and Portugal do not provide that access while all the others do. Iceland allows the access according to article 101 of the Convention.

5. Results of the checks:

All answers indicated that data were accurate, up to date, lawfully processed, retained within the applicable time limits, that the alerts were still necessary and that any transmission of data is recorded. In one case, the Portuguese data protection authority found a fictitious alert that was immediately deleted, and a reference to race (in manual files) which was illegal. In Denmark, the data protection authority found some alerts in which the spelling of the names in SIS differed from the spelling used in the national file. There also seemed to be a possible inconsistency in the entering of first and last names respectively. The representatives of the National Commissioner of Police informed the Danish data protection authority that the alerts will be checked for possible inaccuracies and corrected if necessary. In the Netherlands, terrorism related alerts were found and the alerting authority was unable to provide sufficient data to enable the DPA to verify whether the alerts were up to date, lawfully or unlawfully processed, retained within applicable time limits and still necessary. In Italy the general results were positive although it was noted that for an in-depth investigation, inspections at all police offices and criminal courts competent to enter alerts and access to the relevant paper files is required.

VIII. Considerations and recommendations

One of the characteristic features of the SIS, is the shared responsibility for using such a system in accordance with the provisions set out in the Schengen Convention and national laws. This Convention is also the first common legal instrument establishing a joint system with specific data protection provisions on the use of the SIS.

The inspection provided for an overview on the followed approaches of the use of Article 99 alerts by the Schengen States.

Police authorities obviously play a major role in the process leading to an Article 99 alert. It is clear that the differences in national interpretation of what is a serious criminal offence and national perceptions on how to investigate crimes or to use pro-active methods of investigation seems to be the most critical factor for using an Article 99 alert. These differences might explain the differences in numbers of issued alerts. The differences in national laws also play an important role in the choice using an alert for discreet observation or specific check.

Although the Schengen Convention does not intend to harmonize police strategies and the concept of extremely serious criminal offences, some of the remarks received refer to differences of interpretation between national laws and the Schengen Convention. In this respect, it should be noted that the new legal basis for SIS II does not use this term anymore but refers to serious criminal offences.

Although the inspection provided for a comprehensive overview of the use of Article 99 alerts, it did not present a definitive answer on why such differences in amounts of alerts exist between the Schengen States. However, a point of some concern is the procedure used in the Schengen States for entering an Article 99 alert. The variety of sorts of procedures, sometimes only referring to a formal law or to the SIRENE Manual, both not providing for clear rules on alerting persons and the further control on the need for maintaining the alert, do not provide for a solid procedure for alerting and controlling the alert. In some cases the inspections even made clear that it was difficult to find an authority who is responsible for the alert. In other cases, further investigations could not be executed and consequently, the Data Protection Authorities are not able to conclude on the lawfulness of the alerts issued under Article 99 for state security.

Another result of this inspection is that it seems that Article 99(2) is used by some intelligence services instead of Article 99(3). In France, since the entry into force of a law decree on May 15,

2007, the files of the "DST" (Counter-espionage Services) are withdrawn from the general capacity of supervision of the CNIL (Article 44.4 of the modified Act of January 6, 1978).

The joint effort of the national data protection authorities to check the national Article 99 contributions to the SIS in a certain period and using the same model for inspection, once more, emphasizes a joint concern for the proper use of the SIS. This second joint action is again a milestone in cooperation between national data protection authorities in the European Union and underlines the need to invest in establishing a framework for data protection inspections in those areas where cooperation between Schengen States leads to the processing of personal data. At the same time, this inspection helped the national data protection authorities to determine in which way their country is using the Article 99 alerts that will no doubt have a positive effect for the future activities of these authorities.

In view of the findings of the Article 99 inspection, the JSA adopted the following recommendations:

- * Authorities responsible for Article 99 alerts should develop formal and written structured procedures to ensure that Article 99 data are accurate, up to date and lawful.**
- * There is a need for a clear definition of the types of crimes that can lead to an Article 99 alert. Although the new legal basis for SIS II contains the general term "serious criminal offences ", it is suggested to agree on a European level to a uniform interpretation of the term "serious crime". The list of serious crimes for which Europol is competent or the Council Framework Decision on the European Arrest Warrant can be used for this purpose.**
- * The appropriate national authorities responsible for Article 99 alerts should better control and inspect these alerts every six months. Additional guidelines should be set out.**
- * The list of Authorities (including also the national security services) that have access to Article 99 alerts should be harmonized in all EU Member States.**
- * Where different authorities are responsible for the quality and integrity of data it should be ensured that these different responsibilities are organized and interlinked in such a way that data are kept accurate, up to date and lawful, and that the control of these data is guaranteed.**
- * An alert concerning contact persons is not permissible in view of the wording of Article 99(2).**
- * National data protection authorities should inspect the Article 99 alerts periodically.**

Annexes

I. Article 99 Inspection

The model for inspection seeks to ensure that Article 99 data are processed in accordance with the privacy related legal norms and the data protection principles in the Schengen Convention, the SIRENE Manual and the national legislation.

The Module is developed as a guideline for the national data protection authorities to check the content of the Article 99 alerts in order to establish if they were alerted in accordance with the provisions of Article 99 and if they are maintained in the SIS in accordance with the provisions in the Schengen Convention.

II. Module

Check all procedures necessary to fulfil the data protection requirements at the authorities responsible for alerting individuals according to article 99.

Before an article 99 alert may be processed in the SIS, the following conditions should be complied with:

1. The specific alert concerns the prosecution of a criminal offence and the prevention of threats to public security
2. It is justified upon a clear evidence that the person concerned, intends to commit or is committing numerous and extremely serious criminal offences or there is an overall assessment for this person based on information concerning past criminal offences giving reasons to believe that the person will commit similar offences in the future
3. It may be issued in accordance with national law at the request of the authorities responsible for national security
4. It will only be used for the purposes of discreet surveillance or specific checks
5. According to article 105 it should be ensured that these data are accurate up-to-date and lawful.
6. The storage of article 99 alerts concerning persons should be reviewed annually (article 112)
7. According to article 126, (3c) the accuracy should be ensured and in case of inaccuracies, the recipients of these data should be informed.

The purpose of this module is to provide guidelines for checking the content of Article 99 data in the National Schengen Information System.

It is left to the national supervisors to select the data that will be subject of a check.

This module distinguishes the following steps:

A. DECISION OF ARTICLE 99 ALERT

1. Which competent authorities may decide for an article 99 alert.

2. Is there a specific procedure established for this category of alerts?

Yes ☐ No ☐

If the answer is yes, please describe the procedure:

3. Is the purpose of prosecuting criminal offences and of prevention of threats to public security a prerequisite for such requests?

Yes ☐ No ☐

4. In your country, how many Article 99 alerts have been issued for each of the above cases:

(a) when there is a clear evidence that the person concerned intends to commit numerous and extremely serious criminal offences
☐ 0 % - 15 % ☐ 15 % - 30 % ☐ 30 % - 45 % ☐ 45 % - 60 % ☐ 60 % - 75 % ☐ 75 % - 100 %

(b) when there is a clear evidence that the person concerned is committing numerous and extremely serious criminal offences
☐ 0 % - 15 % ☐ 15 % - 30 % ☐ 30 % - 45 % ☐ 45 % - 60 % ☐ 60 % - 75 % ☐ 75 % - 100 %

(c) when an overall assessment of the person concerned, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit extremely serious criminal offences in the future.
☐ 0 % - 15 % ☐ 15 % - 30 % ☐ 30 % - 45 % ☐ 45 % - 60 % ☐ 60 % - 75 % ☐ 75 % - 100 %

5. What are the categories of criminal offences that falls under article 99 in your country?

6. Are those categories defined by specific law?

Yes ☐ No ☐

If the answer is yes, please explain:

7. Which are the basic criteria to decide between the purpose of discrete surveillance or of specific check

8. Are any additional national laws applicable to the above procedure

Yes ☐ No ☐

If the answer is yes, please explain:

B. CONTENT OF THE ALERT

1. Is the content in conformity with article 99

Yes ☐ No ☐

C. CONTENT OF THE FILE

1. Is there a file at the SIRENE bureau

Yes ☐ No ☐

1a. Check the content of the file.

1b. Are any requests of the authorities responsible for State security (article 99 par. 3)

Yes ☐ No ☐

1c. Do these authorities responsible for State security have access to SIS article 99?

Yes ☐ No ☐

D. RESULTS

1. Does the check under A and B demonstrate that

a. The data are accurate.

Yes ☐ No ☐

b. The data are up to date.

Yes ☐ No ☐

c. The data are lawfully processed.

Yes ☐ No ☐

d. The data are retained within the applicable (national) time limits.

Yes ☐ No ☐

e. The transmission of data is recorded.

Yes ☐ No ☐

f. The alert is still necessary.

Yes ☐ No ☐

2. Are any additional procedures that are applied concerning the checking of the data under article 99 alerts?

Yes ☐ No ☐

ANNEX

Article 99

1. Data on persons or vehicles shall be entered in accordance with the national law of the Contracting Party issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5.

2. Such an alert may be issued for the purposes of prosecuting criminal offences and for the prevention of threats to public security:

(a) where there is clear evidence that the person concerned intends to commit or is committing numerous and extremely serious criminal offences; or

(b) where an overall assessment of the person concerned, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit extremely serious criminal offences in the future.

3. In addition, the alert may be issued in accordance with national law, at the request of the authorities responsible for national security, where there is clear evidence that the information referred to in paragraph 4 is necessary in order to prevent a serious threat by the person concerned or other serious threats to internal or external national security. The Contracting Party issuing the alert shall be obliged to consult the other Contracting Parties beforehand.

4. For the purposes of discreet surveillance, all or some of the following information may be collected and communicated to the authority issuing the alert when border checks or other police and customs checks are carried out within the country:

(a) the fact that the person for whom or the vehicle for which an alert has been issued has been found;

(b) the place, time or reason for the check;

(c) the route and destination of the journey;

(d) persons accompanying the person concerned or occupants of the vehicle;

(e) the vehicle used;

(f) objects carried;

(g) the circumstances under which the person or the vehicle was found.

During the collection of this information steps must be taken not to jeopardise the discreet nature of the surveillance.

5. During the specific checks referred to in paragraph 1, persons, vehicles and objects carried may be searched in accordance with national law for the purposes referred to in paragraphs 2 and 3. If the specific check is not authorised under the law of a Contracting Party, it shall automatically be replaced, for that Contracting Party, by discreet surveillance.

6. A requested Contracting Party may add to the alert in the data file of its national section of the Schengen Information System a flag prohibiting, until the flag is deleted, performance of the action to be taken on the basis of the alert for the purposes of discreet surveillance or specific checks. The flag must be deleted no later than 24 hours after the alert has been entered unless the Contracting

Party refuses to take the action requested on legal grounds or for special reasons of expediency. Without prejudice to a flag or a refusal, the other Contracting Parties may carry out the action requested in the alert.

Article 105

The Contracting Party issuing the alert shall be responsible for ensuring that the data entered into the Schengen Information System is accurate, up-to-date and lawful.

Article 112

1. Personal data entered into the Schengen Information System for the purposes of tracing persons shall be kept only for the time required to meet the purposes for which they were supplied. The Contracting Party which issued the alert must review the need for continued storage of such data not later than three years after they were entered. The period shall be one year in the case of the alerts referred to in Article 99.

2. Each Contracting Party shall, where appropriate, set shorter review periods in accordance with its national law.

3. The technical support function of the Schengen Information System shall automatically inform the Contracting Parties of scheduled deletion of data from the system one month in advance.

4. The Contracting Party issuing the alert may, within the review period, decide to keep the alert should this prove necessary for the purposes for which the alert was issued. Any extension of the alert must be communicated to the technical support function. The provisions of paragraph 1 shall apply to the extended alert.

Article 126

1. -

2. -

3. In addition, the following provisions shall apply to the automatic processing of personal data communicated pursuant to this Convention:

(a)

(b)

(c) the Contracting Party communicating such data shall be obliged to ensure the accuracy thereof; should it establish, either on its own initiative or further to a request by the data subject, that data have been provided that are inaccurate or should not have been communicated, the recipient Contracting Party or Parties must be immediately informed thereof; the latter Party or Parties shall be obliged to correct or destroy the data, or to indicate that the data are inaccurate or were unlawfully communicated;

d) -

(e) the transmission and receipt of personal data must be recorded both in the source data file and in the data file in which they are entered;

f)

4. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II and Title IV. Paragraph 3 shall not apply to the communication of data provided for under Chapters 2 to 5 of Title III.

Answers

A. DECISION OF ARTICLE 99 ALERT

1. Which competent authorities may decide for an article 99 alert .

Austria	Officers of b/m law enforcement authorities and services: •Federal Ministry of the Interior, General Directorate for Public Security and subordinate organisational units (in particular Criminal Intelligence Service Austria and Federal Agency for State Security and Counterterrorism) •Security Directorates •District Administration Authorities •Federal Police Directorates •Federal Police Services
Belgium	Every police and judicial authorities that have a permanent service (24h/24h)
Denmark	All police districts and the National Commissioner of Police may request that a person or a vehicle is entered into SIS.
Finland	Competent authorities are police, customs and border guard. The decision can be made by an officer who is entitled to decide about the detention of a person. Persons entitled to make these decisions are senior officers of police, customs or border guard in charge of crime-investigations.
France	Various authorities can require that a French alert be registered in article 99 of the Schengen Convention : -Police force authorities, including the services of the Central Department of Intelligence Services ("DCRG") - and the Counter-espionage Services ("DST") – as well as the Borders Police Force. -Judicial authorities -Prefectorial authorities -A specific Division of the French Ministry for the Interior (Division of Public Liberties and Legal Affairs ("DLPAJ") - (2e bureau) Indeed the various authorities listed above register the alert in the Searched Persons Database (the French "FPR" data base), and when the "Schengen box" is ticked on the form (the box is ticked off by default), the alert goes up in the SIS without any human intervention.

Germany	Preventive alerts can be decided by all police authorities. The competent judicial authorities decide on the suspension of repressive alerts (Article 163e StPO). ⁴
Greece	The Public Security Division and the State Security Division of the Ministry of Public Order
Hungary	-police authorities -custom authorities
Iceland	The National Commissioner of Police, upon request from the competent authority.
Italy	The authorities competent for requesting an alert to be entered into the N-SIS are the authorities competent for the protection of public order and for preventing, detecting and countering criminal offences – including judicial authorities. Only the entities that have been officially notified to Community institutions are competent for entering alerts. Whenever other bodies are to enter alerts, they have to apply to the competent bodies. Most alerts are entered by local police authorities (State police, Carabinieri, Finance Police, Customs Police, Prison Police) Where the decision for entering an alert does not rely on a request coming from judicial authorities, it is made at administrative level by the officials appropriately empowered thereto – either centrally or locally depending on which office holds the relevant information. Since alerts are entered directly by the competent offices, the SIRENE bureau is not aware of them and only becomes apprised of the information in case of a hit.
Luxembourg	Public prosecution office (Procureur d'Etat)
Netherlands	Public prosecutors and public prosecutors of the Criminal Intelligence Units.
Norway	The police districts, represented by a prosecuting police attorney, may decide on an Article 99 report in SIS. Kripos (the National Bureau of Crime Investigation) may, after it acquired independent prosecuting authority, also enter reports.
Portugal	All authorities with competence to do criminal investigation may decide for a 99 alert, but usually only the Criminal Police and the Borders and Aliens Service decide so. For 99.3 alerts, the service of information and security (intelligence service) may also decide for the introduction of such alert.
Spain	Law enforcement authorities (police and judicial authorities) with competence to fight against criminal offences and to prevent menaces for the public security. Also authorities responsible for the Security of the State are competent in order to prevent menaces for the internal or external security of the State.
Sweden	The offices of the public prosecutor, The Swedish Police Service, the Swedish Customs Service and the Swedish Coast Guard.

2. Is there a specific procedure established for this category of alerts? If the answer is yes, please describe the procedure:

Austria	YES. In Austria, authorization to initiate alerts under Article 99 is regulated by a separate provision, known as "Fahndungs- und Informationsvorschrift – FIV 2005" (Provision on Wanted Persons-Databases and Information). Apart from making an entry into the national Police Information System (known as EKIS), officers of the authorities and services listed in 1. have to initiate an entry in the SIS, if the conditions of Article 99, paragraph 2 of the Schengen Convention are met, therefore a "major criminal offence" must be involved. The term "major criminal offence" is further explained under 5. Pursuant to FIV 2005, law enforcement authorities and services are obliged to verify correctness of the data and make sure entering the data in the database is legal. Should the data turn out to be incorrect or incomplete, they have to be rectified or supplemented. Six months before the expiry date of an entry, at the very latest, the authorities and services have to check whether the preconditions for an entry are still in force and the period of storing the entry is to be extended. FIV 2005 furthermore stipulates that incorrect and illegal entries have to be deleted ex officio. It has to be remarked that FIV 2005 is only a general internal instruction issued by the Federal Ministry of Home Affairs. It is addressed to the authorities and services mentioned in question 1 so they are compelled to observe this provision. But since the FIV is not a law or a regulation data subjects cannot invoke the FIV. Contrariwise an alert cannot be justified by the FIV towards a data subject.
Belgium	NO. In Belgium, the authority willing to issue an alert sends its request (using a standard form) to the SIRENE office. SIRENE will check if a national alert (measure to be taken against the person: e.g. frisk, hearing, ...) exists. However SIRENE will not check which offence caused the measure to be taken (e.g.: drugs, forgery, etc.). If no national measure is to be taken against the person, SIRENE will ask the authority why such an alert is requested and if the police has got the person on their files before launching the alert. One month before the expiry date of the alert, SIRENE contacts the authority to check whether the alert period has to be extended. In Belgium, there is no specific legal text (law or royal decree) regarding alerts based on Article 99. However, instructions given by the minister of Justice and the minister of Home Affairs mention that each alert based on Article 99 must be issued in accordance with the Schengen Convention without any misuse of purpose and must be preceded by a national alert (measure to be taken by the police against the person). Moreover, the Belgian SIRENE manual, which is part of a codex set up by the minister of Justice and the minister of Home Affairs, makes a list of the offences that may lead to an alert based on Article 99.
Denmark	YES. The alert is entered by the Danish SIRENE bureau. Before entering information into the SIS, the SIRENE bureau carefully assesses whether the conditions for entering information into the SIS according to article 99 of the Schengen Convention are fulfilled and validation is done
Finland	YES. The procedure is established in the national SIRENE-manual. Before the alert is put into SIS, the alert is

⁴ Preliminary note: In Germany, the alert for covert registration pursuant to Article 99 of the Schengen Convention is used for police observation and it is regulated by the code of criminal procedure (German abbreviation StPO) for repressive purposes. Moreover, it is regulated by all federal and Länder police laws for preventive purposes.

	checked and accepted by a senior officer of the SIRENE-office.
France	NO. No, all the article 99 alerts are registered according to the same procedure as the alerts relative to the other categories
Germany	YES. - the conditions, formalities, the procedure and the period of validity are governed by Article 163e StPO and by a police service regulation.
Greece	<p>YES. Procedure for entering into SIS data on persons and vehicles for the purposes of discreet surveillance or of specific checks</p> <p>According to a Decision of the Minister of Public Order, the Public Security Division and the State Security Division of the Ministry Of Public Order are the competent authorities for entering into SIS the administrative measures under Article 99. Under the existing framework which is in the process of being amended, the State Security Division issues these measures for public security reasons only.</p> <p>a. PUBLIC SECURITY DIVISION competence issues</p> <p>When the Public Security Division (PSD) receives adequate information from subordinate or co-competent authorities regarding the involvement of a country's nationals or aliens in drug cases, homicides, kidnappings, stolen vehicles cases, illicit trade in antiquities and other serious offences, and after it deems necessary to submit the aforementioned persons to the administrative measures of discreet surveillance or specific checks on a case-by-case basis in order to reveal or further investigate the particular cases, it sends a request regarding the imposition-modification-deletion (removal) of the proposed administrative measure to a specific department of the State Security Division (SSD/II), which is then responsible for imposing-deleting the said measures and for implementing the said decision on the part of the Police Authorities.</p> <p>If national registration meets the real and formal criteria for registration to SIS, the public security division will indicate on the document that it will send to SSD/II for the imposition of the administrative measure of discreet surveillance or specific checks the following: "To be entered into SIS". The above mentioned department will subsequently proceed to entering the measure in the respective file according to the request.</p> <p>After each imposition, modification or deletion (removal) of a registration for discreet surveillance or specific checks, the IT Department of the Ministry will print the corresponding document, which will be subsequently checked by the head of department for the verification of the accuracy of the data entered. The said officer will then sign it and it will be added to the personal file of the individual.</p> <p>b.STATE SECURITY DIVISION competence issues</p> <p>When SSD/II receives adequate information from subordinate or co-competent authorities regarding the involvement of a country's nationals or aliens in the illegal trafficking of arms/ammunition, explosives, nuclear chemical substances and fireworks and after it deems necessary to submit the aforementioned persons to the administrative measures of discreet surveillance or specific checks in order to further investigate the particular cases, the administrative measure is imposed electronically on a case-by-case basis.</p> <p>In order to facilitate the aim above, the subordinate Authorities of the Hellenic Police, at the level of Police Stations and above, submit to the SSD/II a report with all the necessary information.</p> <p>The Director of the above Department decides which of the registrations above that are entered into the national records in order to pursue discreet surveillance or specific checks meet the aforementioned real and formal criteria of the Schengen Convention in order to be entered into SIS. His decision is implemented by adding the indication "To be entered into SIS" on the draft of the relevant note or the special electronic form in use, which is signed by him and then approved by the Director of SSD/II. The same procedure shall be followed in the case of modification or deletion of an existing registration.</p> <p>For each entry, modification or removal of a measure of specific checks or discreet surveillance, the IT Department of the Ministry will print the corresponding document, which will be subsequently checked by the Director of SSD/II for the verification of the accuracy of the data entered. The Director will then sign it and it will be added to the personal file of the individual.</p> <p>If the imposition of the measure of specific checks or discreet surveillance has to do with vehicles that are suspected for carrying arms-explosives, the reports of the subordinate Authorities of the Hellenic Police, at the level of Police Stations and above, are submitted to the aforementioned department SSD/II based on the standard sample. The department imposes the measure and carries out the electronic registration using the existing workstations. For each entry, modification or removal of a measure of specific checks or discreet surveillance, the IT Department will print the corresponding document, which will be subsequently checked by the Director of SSD/II for the verification of the accuracy of the data entered. The Director of SSD/II will then sign it and it will be kept in the Department's records in a special file specific to the particular registration.</p>
Hungary	NO
Iceland	NO
Italy	Yes. The procedure is the common procedure set out in the SIRENE manual for SIRENE bureaux as well as in the Schengen User Manual. Prior to being included in the SIS, an alert must be entered in the police (law enforcement) information system. A correspondence table as for SDI/SIS categories has been prepared by the SIRENE bureau and allows matching the alerts contained in the SDI with the corresponding articles in the Schengen Convention.
Luxembourg	YES. Written order in closed (secured) envelopes from the procurer's office to the head of the Sirene office
Netherlands	YES. A public prosecutor authorizes the alert. A RIC (a regional centre where alerts are being inserted into the SIS) activates the alert. SIRENE NL does not authorize this alert, it goes directly to CSIS.
Norway	YES. The Police Directorate has, in cooperation with Kripas, laid down instructions for the police. In addition, a routine description has been prepared at the SIRENE office (which is located at Kripas).
Portugal	NO. There is not any written procedure for this category of alerts. However, 99.2 alerts are only introduced whenever there is an inquiry going on. Therefore, the request to introduce the alert has to be grounded (and the purpose specified) and it is checked by the SIRENE Bureau in the police database the number of the inquiry/investigation. Additional information may be required to the authority requesting for the introduction of the alert.

	Portugal does not carry out specific checks (PT has made a reservation when adhered the Convention). So, there is neither decision involving specific checks, just discreet surveillance.
Spain	NO
Sweden	YES. An art 99 alert is entered into SIS through the use of a special form. On this form is stated the competent authority and the conditions fulfilled in accordance with art 99. The alert is checked by the SIRENE bureau before being entered into SIS.

3. Is the purpose of prosecuting criminal offences and of prevention of threats to public security a prerequisite for such requests?

	YES	NO
Austria	x	
Belgium	x	
Denmark	x	
Finland ⁵	x	
France	x	
Germany ⁶	x	
Greece	x	
Hungary	x	
Iceland	x	
Italy	x	
Luxembourg	x	
Netherlands	x	
Norway	x	
Portugal	x	
Spain	x	
Sweden	x	

4. In your country, how many Article 99 alerts have been issued for each of the above cases:

	(a) when there is a clear evidence that the person concerned intends to commit numerous and extremely serious criminal offences	(b) when there is a clear evidence that the person concerned is committing numerous and extremely serious criminal offences	(c) when an overall assessment of the person concerned, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit extremely serious criminal offences in the future.
Austria ⁷	-	-	-
Belgium	-	-	-
Denmark ⁸	-	-	-
Finland ⁹	-	-	-
France ¹⁰	-	-	-
Hungary	-	-	-
Germany ¹¹	-	-	-
Greece	no entries	no entries	no entries
Iceland	no entries	no entries	no entries
Italy ¹²	30 %- 45%	15 %- 30%	45%- 60%
Luxembourg	60% - 75%	0 % -15 %	0 % -15 %

⁵ Finland: The prerequisite for such request is that a person is suspected to commit serious crimes on the basis of past criminal offences or evidence by the information received by the crime intelligence.

⁶ Germany: details can be found in Article 163e StPO and in the above mentioned police service regulation.

⁷ Because of the high number of authorities and services who are authorized to enter an Article 99 alert a percentage-wise breakdown cannot be made. Alerts are not selectable according to their reasons. There are no central statistics for the entries of the category Art. 99, particularly such statistic data are not at the disposal of the Austrian SIRENE Bureau.

⁸ N/A The National Commissioner of Police does not have statistical information to answer this question.

⁹ There are no statistic available based on these categories.

¹⁰ France: The Ministry of the interior answered that they currently do not have any statistical tool allowing them to know how much alerts are recorded for each of the three options (a, b, c) ; only the daily statistics of the state of the C-SIS data base enable them to know at one precise time, the number of art. 99 alerts.

To illustrate it with updated data on September 5th, 2006, there were registered in the SIS on behalf of France:

- 9445 people registered in art. 99.2 (observation)
- 6517 people registered in art. 99.2 (specific control)
- 745 vehicles registered in art. 99.2 (observation)

¹¹ This question cannot be answered as specific details concerning the reasons for the alert are not indicated in the police information systems

¹² Italy Total active alerts included in the SIS at Italy's request: 10,451 for discreet surveillance; 891 for specific checks. (as per November 30, 2006)

Netherlands	0 % -15 %	0 % -15 %	75% - 100 %
Norway ¹³	-	-	-
Portugal	0%	100%	0%
Spain ¹⁴	-	-	-
Sweden ¹⁵	-	-	-

5. What are the categories of criminal offences that falls under article 99 in your country?

Austria	All types of criminal offences, irrespective of the nature of the crime, are involved (see also item 2.). "Major criminal offences" within the meaning of the relevant legislation (FIV 2005) would be violations of the penal law to be tried in a court for criminal matters, which are presenting a "general danger" and which, due to the surrounding circumstances, such as modus operandi, significance of the victimised interest, if damage or loss caused exceeds € 40,000, or if committed repeatedly, are not only of regional significance.
Belgium	-Blackmail, extortion, deceit -Fraud: breach of trust, imitation or counterfeit, swindling, forgery, counterfeit money -Arson -Robbery, robbery with aggravating circumstances, receiving -Homicide -Hostage-taking, kidnapping, hijacking -Hooliganism -Debauchery, organized prostitution -Terrorism -Sex case -Traffic: traffic/possession/ transport/making/use of drugs, imitation/counterfeit, weapon (of war), explosive device, counterfeit money, forbidden weapons, means of transport, defense weapons.
Denmark	In principle, any violations of the penal code may serve as a basis for entering information into the SIS according to article 99 of the Schengen Convention. However, the criminal offence must be characterized as extremely serious.
Finland	The Schengen Convention does not define serious criminal offences. According to the definition of policy in Finland the criminal offences in question are limited to crimes, which can consequence an extradition of the criminal offender. Therefore the alert can be made when a maximum imprisonment that can be sentenced of the crime in question is at least one year.
France	Crimes and offences (an appendix "actions requested" is available by CNIL)
Germany	A repressive alert pursuant to Art. 99 Schengen Convent has to be based on the suspicion of a criminal offence of considerable seriousness, thus on criminal offences or crimes listed in the penal code. With regard to preventive alerts, the regulations on the concept of threats by the various police laws apply.
Greece	Drugs trafficking, homicides, kidnappings, stolen vehicles cases, illicit trade in antiquities, illegal trafficking of arms/ammunition, explosives, nuclear chemical substances and fireworks and other serious offences. The modified framework for the new procedures is expected to define the offences that fall under article 99 by reference to the offences in the EAW.
Hungary	Offences which can be punished with a deprivation of liberty of 5 years or more than 5 years
Iceland	Serious offences, such as terrorist acts, serious bodily harm, serious narcotic/drug offences, and threats to public security.
Italy	The grounds underlying an alert at domestic level that are such as to also justify a SIS alert are set out in terms of general categories – i.e. by type of measure and type of alert. Although there is no definition of "extremely serious facts or crimes" under domestic law, article 99 alerts usually relate to non-negligent offences carrying custodial penalties – corresponding to those that may give rise to alerts under Article 95 – which may be associated with security measures or else measures ordered by the court if there is a risk that the person may fail to comply with the penalties at issue: e.g. probation; house arrest/custody; placement with a prison farm/penal colony; ban on leaving the country; paroling; obligation to live where directed; community supervision. The alerts additionally relate to serious offences, such as terrorist acts, serious bodily harm, serious drug-related offences, and threats to public security (including the following measures: arresting and escorting the offender to border; search performed by customs officers; tracking; reporting for supervision).
Luxembourg	There are no specific criteria
Netherlands	There are no specific criteria and no categories have been defined. The Minister of Justice who is responsible for the NSIS and the national policy regarding the performance of the national Schengen tasks and competences has not defined any categories or conditions. It states that it is left to the assessment of the public prosecutor in what cases an alert will be issued. An Instruction on the use of NSIS issued by the Office of the Prosecutor General only describes the operational procedures. As to a category of alerts issued on the basis of an agreement between the State and four airline companies refusing access to direct flights to the Caribbean Area to passengers who have been caught trafficking cocaine and have been placed on a black list -which constitutes the vast majority of the alerts- the Dutch DPA has agreed to allow these alerts (on certain conditions).

¹³ As per 24 October 2006, 63 reports have been registered pursuant to Article 99. The reports are related to discrete surveillance.

¹⁴ Spain: Total of alerts: 2.089, Specific checks: 2.078, Discreet surveillance: 11, Distribution: National Police: 2059 (9 discreet surveillance), Civil Guard: 9 (1 discreet surveillance), Mossos (Catalonia) : 30 (1 discreet surveillance)

¹⁵ Since they do not have a need for this information the SIRENE bureau has not produced any statistics regarding this

Norway	<p>The starting point is "particularly serious criminal offences", and competence to decide registration lies with the prosecuting authority. The sentencing framework will be a natural starting point in the determination of what is a "particularly serious criminal offence", but also other circumstances and aspects must be included in such an assessment.</p> <p>The categories registered are related to:</p> <ul style="list-style-type: none"> - Serious drug offences - Serious violent crimes - MC criminals - People smuggling - Child abductions <p>Types of crimes with a sentencing framework of less than six years (such as child abductions) may be registered if the offence is a particularly heavy burden on the aggrieved party and registration in SIS is considered as an appropriate instrument.</p>
Portugal	Any category of criminal offence, once there are no coercive measures involved, under the terms of the Convention.
Spain	Any offence which is subjected to an investigation by a police unit or could be a menace for the public security
Sweden	An art 99 alert may be registered regarding crimes with four years imprisonment included in the range of penalty according to Swedish criminal law.

6. Are those categories defined by specific law?

If the answer is yes, please explain:

Austria	<p>YES. As regards the term "general danger", FIV 2005 refers to the Austrian Code of Police Practice (Federal Law Gazette No. 566/1991) regulating responsibilities and powers of the law enforcement authorities." General danger" would be caused by a "dangerous assault", or, if three or more individuals conspire with the intention to repeatedly commit criminal offences (criminal association).</p> <p>"Dangerous assault" means a threat against a legal interest by taking illegal action in form of a criminal offence committed with intent. A dangerous assault could also be a behaviour suitable for and aiming at preparing such a threat provided there is a coincidence in time with the intended realisation of the threat.</p>
Belgium	NO.
Denmark	NO.
Finland	YES. The categories of crimes and terms of imprisonments are defined in the criminal law.
France	YES. French law : the Criminal Code
Germany	YES, see answer to question 5.
Greece	NO.
Hungary	YES. The Criminal Code defines offences which can be punished with a deprivation of liberty of 5 years or more.
Iceland	NO.
Italy	Yes. Both the Criminal Code and specific criminal laws set out the individual cases in which a judge may decide that security measures are to be applied. For the remainder, the assessment is performed on a case by case basis by the competent office.
Luxembourg	NO.
Netherlands	NO.
Norway	NO.
Portugal	NO. The question is that there is no legal definition, of "extremely serious" facts or crimes to precise/to enumerate the category of criminal offences that fall under article 99.2 and 99.3. This evaluation is done on a case-by-case basis and is naturally subjective. Indeed, there are some legal dispositions, which contain references to "organised crime", "high criminality", "extremely complex criminality", but the concepts are used indistinctively, though one can identify some criminal offences as tending to be considered serious, but no exact hierarchy is made.
Spain	Yes. All of them are defined in the Penal Code.
Sweden	YES. The Penal Code and special legislation concerning aliens, narcotics and smuggling.

7. Which are the basic criteria to decide between the purpose of discrete surveillance or of specific check

Austria	In Austria, there is no legal basis for performing "specific checks". Therefore, such measures, as foreseen in Article 99, paragraph 5, are automatically transformed in "discreet surveillance".
Belgium	The choice between the discrete surveillance and the specific check is left to the appreciation of the authority willing to issue the alert. When there is a precise and concrete suspicion that a person has got on him/her exhibits or elements of evidence or that regarding his/her past of criminal offences, he/she may commit new offences, the authority will choose the specific check (e.g. as regards drugs, thefts, fraud or kidnapping). On the other hand, the authority issuing the alert will choose the discrete surveillance when they want to collect information (e.g. as regards financing of terrorism) or track somebody in order, for instance, to arrest him/her when he/she is back on the Belgian territory.
Denmark	An individual assessment is made in each case.
Finland	All the alerts at the moment are made for the purpose of discrete surveillance.
France	The basic criteria are the needs for the investigating services because of the purpose of the action or the investigation in progress
Germany	Up to now, in Germany, no alerts for a specific check have been issued.
Greece	It depends on the facts of each case
Hungary	According to our national legislation, only discreet surveillance can be used.

Iceland	The difference between a discrete surveillance and a specific check is that according to the Icelandic Code of Criminal Procedure n° 19/1991, the police would need a court order for the request of a specific check, and therefore a more well-founded suspicion of illegal activities. Discrete surveillance can be decided upon by the police.
Italy	The decision is made by the local police department entering the alert, on the basis of the specific information that is available.
Luxembourg	No specific check is allowed
Netherlands	There are no specific criteria. The choice between the discrete surveillance and the specific check is left to the appreciation of the public prosecutor willing to issue the alert.
Norway	Only reports of discrete surveillance have been registered. Specific checks have not been reported as there will be no additional information in the report, and a court decision is required if, for example, a search is to be made. It is therefore not considered as relevant to enter reports under this item in the Convention. With regard to aliens Article 99 [sic] with an action card of "specific check", the action card will contain the same procedures as for "discrete surveillance", but the action in the report will be "specific check". The reason is that, as a rule, there is no additional information on the grounds for registration, and consequently no authority for implementing coercive measures only on the basis of the report in SIS.
Portugal	Portugal, as mentioned above, does not introduce alerts for specific checks. In general, the requesting authority defines the ambit of the intervention in terms of police work.
Spain	The criteria vary depending on the concrete objective followed by the police unit competent for the investigation.
Sweden	According to Swedish legislation a registration in the SIS has not the legal value to serve as a basis for a specific check. These registrations are converted into requests for discrete surveillance.

8. Are any additional national laws applicable to the above procedure

If the answer is yes, please explain:

Austria	YES. - Austrian Penal Code (Federal Law Gazette No. 60/1974) - Austrian Data Protection Act (Federal Law Gazette I No. 165/1999).
Belgium	NO.
Denmark	NO.
Finland	YES. The procedure of surveillance is defined in the Coercive means law.
France	YES. Penal/ criminal code
Germany	YES. Article 163e StPO concerning repressive alerts and the various Länder police laws regarding preventive alerts.
Greece	NO.
Hungary	NO.
Iceland	NO.
Italy	Yes. The decision to enter an alert in the SIS for the purpose of discreet surveillance/specific check is taken immediately a similar alert is entered in the domestic police information system. The domestic data protection legislation is applicable. Article 99 alerts correspond to the alerts entered in the national SDI in terms of the respective categories as specified in the reply to question 2. As already mentioned, both the criminal code and all the laws/regulations setting out specific rules in respect of judicial police activities are also applicable.
Luxembourg	NO.
Netherlands	NO.
Norway	YES. The Act relating to the Schengen Information System and the preparatory works to the Act.
Portugal	NO.
Spain	NO
Sweden	YES. Swedish legislation concerning a national system for wanted persons by the police. Every international detain order must first be registered in this system.

B. CONTENT OF THE ALERT

1. Is the content in conformity with article 99

Austria	YES.
Belgium	YES.
Denmark	YES. When checking, the DPA did however find that corrections to alerts had been made shortly before the visit of the DPA. The explanation was that the alerts had been rectified before the visit because they had not been entered according to the right article, which in the cases in question was article 99(3).
Finland	YES.
France	YES.
Germany	In principle YES. When checking the alerts, in some cases, discrepancies between the national law and the regulation pursuant to Article 99 (Sch Conv.) were recognized. Therefore, the question is raised, in how far the concept regarding the seriousness of the crime pursuant to the German law (criminal offences which are considerably serious) is congruent with the text of Article 99(2) (extremely serious crime). The binding wording of Article 99(2) indicates that this question should be answered in the negative. Therefore, a covert registration which is admissible according to national law cannot result in every case in an admission into the SIS pursuant to Article 99(2). However, in practice, this happens quite often. Also on the basis of Article 99(1), an acceptance of all national alerts for covert registration should no be admissible in view of the

	<p>indication the article comprises concerning the 'national law'.</p> <p>A further discrepancy between the national law and Article 99 emerged insofar, as pursuant to national law, also contact persons of the accused person or of the suspect might be the object of this police investigation method while, however, an admission of the alert concerning the contact person into de SIS should no be permissible in view of the wording of Article 99(2).</p> <p>In my opinion, these problems have to be discussed intensively by the JSB Schengen.</p>
Greece	N/A There is no issued alert
Hungary	YES.
Iceland	N/A - Iceland has not issued any Art. 99 alerts. The reason is that there hasn't been an occasion for it.
Italy	<p>YES. The on-site controls did not point out flaws as for the keeping of the files.</p> <p>In some cases the request was made to forthwith erase alerts that – although entered at the instance of judicial authorities – did not appear to meet the “serious facts or crimes” requirement set out in article 99 (e.g. alerts related to the failure to fulfill maintenance obligations).</p>
Luxembourg	YES.
Netherlands	As no national criteria for categories of criminal offences regarding Article 99 are available, the checking for this part was performed according to a reasonable interpretation of Article 99 for the national alerts. In that view the investigated alerts 1 to 11 are in conformity with Article 99. The investigated alerts 12 to 14, all concerning the suspicion of being involved in terrorism, were not in conformity with Article 99, as the data produced by the alerting authority at the inspection proved to be insufficient to comply with the provisions of Article 99 Schengen Convention.
Norway	YES.
Portugal	YES.
Spain	<p>YES. After an inspection made on the basis of 1% of the alerts we have detected two types of mistakes:</p> <p>a. Incorrect legal basis: the use of article 99, being the correct legal basis article 96.</p> <p>b. Data not up to date: this being the case of not transmission of judicial decision to police authorities.</p>
Sweden	YES.

C. CONTENT OF THE FILE

1. Is there a file at the SIRENE bureau

Austria	There is only a file when there has been a hit for either - an Austrian alert or - another alert but the subject of the alert appeared in Austria.
Belgium	YES.
Denmark	YES.
Finland	YES. Mainly in the electronic document handling system.
France	YES.
Germany	NO. The alert is not documented by SIRENE, only in case of a match (both at home and abroad), a file will be compiled.
Greece	YES.
Hungary	YES.
Iceland	NO.
Italy	SIRENE is only in charge of forwarding additional items in case of a hit, based on the SIRENE manual, as for judicial police activities that are carried out abroad at the request of the Italian authorities, and vice versa.
Luxembourg	YES.
Netherlands	No. There is only a file at SIRENE if a hit is reported.
Norway	YES. A copy of additional information is stored in a file at the SIRENE office. The information is not searchable for others
Portugal	YES.
Spain	NO.
Sweden	YES.

1a. Check the content of the file.

1b Are any requests of the authorities responsible for State security (article 99 par. 3)

Austria ¹⁶	NO. <i>Comment: This question is not completely clear: It was answered in the sense that there is no alert based on Art. 99 paragraph 3</i>
Belgium	NO.
Denmark	YES. The Danish Security Intelligence Service may request for an Article 99 alert. When the DPA did checks, a number of the alerts examined were entered on request of the Danish Security Intelligence Service and the DPA therefore could not do a thorough assessment of the legal basis for the alerts.
Finland	NO.
France	<p>NO. France does not register any 99.3 alert</p> <p><i>Comment:</i> this answer is not satisfactory as the DPA inspection service identified some files corresponding to alerts issued by the competent authorities for national security purposes under art 99.3; The French DPA at the end of the inspection process is making contact again to the original police force services having answered to the questionnaire to have this contradictory position clarified”. Another result of this inspection is that it seems that</p>

¹⁶ The checked files contained the information of the alert and the information collected when the alerted subject was met. All data are within the limits of article 94, paragraph 3 and Article 99 paragraph 4. The reasons for the alert (i. e. description of the serious crime the subject is suspected of) are given more precisely in the file than in the alert.

	Article 99(2) is used by some intelligence services instead of Article 99(3).
Germany ¹⁷	NO.
Greece	NO.
Hungary	NO.
Iceland	N/A - there is no file
Italy	NO.
Luxembourg	NO.
Netherlands	NO.
Norway	YES.
Portugal	NO.
Spain	NO.
Sweden	NO.

1c Do these authorities responsible for State security have access to SIS article99?

Austria	YES.
Belgium	NO.
Denmark	YES. The Danish Security Intelligence Service, being a part of the Danish Police, also has access to the SIS.
Finland	YES.
France	YES. Like all the police force services, the "DCRG" and the "DST" have access to this information
Germany	NO.
Greece	YES.
Hungary	NO.
Iceland	YES. The police is responsible for State Security and has access to SIS in accordance with Art. 101 of Schengen Convention.
Italy	NO. As said, alerts may only be entered by notified entities, which do not include State security bodies. See Answer no. 1 in this connection.
Luxembourg	NO.
Netherlands	NO.
Norway	YES.
Portugal	NO.
Spain	YES. In Spain the Police forces are responsible for the State Security. No access by secret services
Sweden	YES.

D. RESULTS

1. Does the check under A and B demonstrate that

a. The data are accurate.

Austria	YES.
Belgium	YES.
Denmark	YES. The DPA did however find a couple of cases where the spelling of the names in SIS differed from the spelling used in the national file. There also seemed to be a possible inconsistency in the entering of first and last names respectively. The representatives of the National Commissioner of Police informed the DPA that alerts would be checked for possible inaccuracies and corrected if necessary.
Finland	YES.
France	YES.
Germany	YES.
Greece	N/A
Hungary	YES.
Iceland	N/A
Italy	YES.
Luxembourg	YES.
Netherlands	YES.
Norway	YES.
Portugal	YES.
Spain	YES.
Sweden	YES.

b. The data are up to date.

Austria	YES.
Belgium	YES.
Denmark	YES.
Finland	YES.
France	YES.
Germany	YES.
Greece	N/A
Hungary	YES.
Iceland	N/A
Italy	YES.

¹⁷ The SIRENE file contains notifications about the matches and the information which was transferred in this context, and also about its further transmission.

Luxembourg	YES.
Netherlands	YES. (cases 1 to 11); With respect to the cases 12 to 14, concerning the suspicion of being involved in terrorism, the Dutch DPA has not been able to verify whether the data were up to date due to the fact that the alerting authority proved unable to provide sufficient data.
Norway	YES.
Portugal	YES.
Spain	YES. ¹⁸
Sweden	YES.

c. The data are lawfully processed.

Austria	YES.
Belgium	YES.
Denmark	YES.
Finland	YES.
France	YES.
Germany	YES.
Greece	N/A
Hungary	YES.
Iceland	N/A
Italy	YES.
Luxembourg	YES.
Netherlands	YES (cases 1 to 11); With respect to the cases 12 to 14, concerning the suspicion of being involved in terrorism, the Dutch DPA has not been able to verify whether the data were either lawfully or unlawfully processed due to the fact that the alerting authority proved unable to provide sufficient data.
Norway	YES.
Portugal	YES. <i>in 1 case, the manual file contained a reference to the race, which is illegal according to national legislation.</i>
Spain	YES.
Sweden	YES.

d. The data are retained within the applicable (national) time limits.

Austria	YES.
Belgium	YES.
Denmark	YES. The SIRENE bureau receives a notification 3 and 1 months respectively before the time limit for an alert that expires.
Finland	YES.
France ¹⁹	YES.
Germany	YES.
Greece	N/A
Hungary	YES.
Iceland	N/A
Italy	YES.
Luxembourg	YES.
Netherlands	YES. (cases 1 to 11); With respect to the cases 12 to 14, concerning the suspicion of being involved in terrorism, the Dutch DPA has not been able to verify whether the data were retained within the applicable time limits, due to the fact that the alerting authority proved unable to provide sufficient data.
Norway	YES, but the report is kept in an intermediate storage data base (former and present reports) to which the Norwegian police have access. Only Norwegian, deleted reports are kept in the intermediate storage data base. See also the answer under f
Portugal	YES.
Spain	YES.
Sweden	YES.

e. The transmission of data is recorded.

Austria	YES.
Belgium	YES.
Denmark	YES.
Finland	YES.
France	YES. With a registration number.
Germany	YES.
Greece	N/A
Hungary	YES.
Iceland	N/A

¹⁸ From the small amount of data not up to date we cannot conclude that it is a general situation

¹⁹ it appeared that currently, no comparison of the managed bases, one by the national police force, the other by the national gendarmerie, are operated in a regular way. As a matter of fact, the french "FPR" data base (search persons database) whose alerts goes up in the SIS if ticked off by default, is managed from 2 distinct bases. This solution from a purely technical point of view, would require that the update of the data, which must be carried out "au fil de l'eau", is periodically checked. This procedure of an automatic and regular comparison of the 2 data files should be implemented by the end of the year 2007 within the framework of a "quality process" (biannual comparison by surveys).

Italy	YES.
Luxembourg	YES.
Netherlands	YES.
Norway	YES.
Portugal	YES.
Spain	YES.
Sweden	YES.

f. The alert is still necessary.

Austria	YES.
Belgium	YES.
Denmark	YES.
Finland	YES.
France ²⁰	YES.
Germany	YES.
Greece	N/A
Hungary	YES.
Iceland	N/A
Italy	See preceding answer.
Luxembourg	YES.
Netherlands	Yes (cases 1 to 11); in one case the alert had already been cancelled at the moment of the inspection, as the alert was not deemed necessary anymore by the alerting authority; With respect to the cases 12 to 14, concerning the suspicion of being involved in terrorism, the Dutch DPA has not been able to verify whether the alert was still necessary, due to the fact that the alerting authority proved unable to provide sufficient data.
Norway	YES. The point of departure is that the report may be retained if the registered person is still being investigated. However, there is no procedure at the SIRENE office for examining whether the requirement to necessity has been met. Examples were found where reports were renewed year after year without any assessment of the necessity for this being made. When the report has been in SIS for 11 months, the police district is notified that it will be deleted unless a new assessment of necessity is made. This assessment is made locally by personnel with prosecution authority.
Portugal	YES. <i>The DPA detected a fictitious alert, with a birth date of 1900, introduced by the Borders and Aliens Service. This situation should only exist in a test database and not in a production DB. The alert was then immediately deleted.</i>
Spain	YES.
Sweden	YES.

2. Are any additional procedures that are applied concerning the checking of the data under article 99 alerts?

Austria	NO.
Belgium	NO.
Denmark	YES. Data are checked before any prolongation of an Article 99 alert
Finland	YES.
France ²¹	YES.
Germany	NO.
Greece	N/A
Hungary	NO
Iceland	NO
Italy	In order to provide a detailed reply to the above question, an in-depth investigation including inspections at local police offices and criminal courts so as to access the relevant paper files is required.
Luxembourg	NO.
Netherlands	NO.
Norway	YES. See answer under item A
Portugal	NO.
Spain	NO.
Sweden	NO.

²⁰ Since the entry into force of a law decree on May 15, 2007, the files of the "DST" (Counter-espionage Services) are withdrawn from the general capacity of supervision of the CNIL (article 44.4 of the modified Act of January 6, 1978).

²¹ by the end of the year 2007 within the framework of a "quality process" as announced by the law enforcement authorities, additional procedures of controls should be carried out under art 99 alert, namely