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From:	Presidency
To:	Delegations
Subject:	Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals - draft compromise text

Delegations will find in the Annex a draft consolidated compromise version of the above-mentioned Regulation for meeting of the JHA Counsellors scheduled for 20 October 2017.

Changes to the original Commission proposal are marked as follows: new or modified text is in **bold underlined**. Deletions are in ~~striketrough~~.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the use of the Schengen Information System for the return of illegally staying third-
country nationals

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2)(c) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The return of third-country nationals who do not fulfil or no longer fulfil the conditions for entry, stay or residence in the Member States, in full respect of fundamental rights and in particular the principle of non-refoulement, and in accordance with Directive 2008/115/EC of the European Parliament and of the Council, is an essential part of the comprehensive efforts to tackle irregular migration and increase the rate of return of irregular migrants.
- (2) It is necessary to increase the effectiveness of the European system to return illegally staying third-country nationals. This is essential for maintaining public trust in the Union migration and asylum policy and providing support to persons in need of international protection.
- (3) Member States should take all necessary measures to return illegally staying third-country nationals in an effective and proportionate manner, in accordance with the provisions of Directive 2008/115/EC.

- (4) A ~~Union-wide~~ system for sharing information between Member States on return decisions issued in respect of third-country nationals staying illegally on the territory of the Member States ~~in accordance with provisions respecting Directive 2008/115/EC~~ and for monitoring whether third-country nationals subject to those decisions have left the territory of the Member States should be established.

(4a) This regulation does not affect the rights and obligations of the third country nationals laid down in directive 2008/115 (return directive). The alert in the SIS for the purpose of return does not, in itself, constitute a determination of the status of the third country national on the territory of Member States, especially in Member States other than the alert issuing Member State.

- (5) Regulation (EU) 2018/xxx [border checks]¹ and Regulation (EU) 2018/xxx [police and judicial cooperation]² lay down the conditions for the establishment, operation and use of the Schengen Information System (SIS).
- (6) SIS alerts on return and the exchange of supplementary information on these alerts should support competent authorities to take the necessary measures to enforce return decisions ~~issued in accordance with provisions respecting Directive 2008/115/EC~~. SIS should contribute to the identification and the information sharing between Member States on third-country nationals who are the subject of such return decision, who have absconded and are apprehended in another Member State. These measures should help prevent and deter ~~irregular~~ **illegal immigration, secondary movements**, and enhance cooperation between Member States' authorities.

¹ Regulation (EU) 2018/... on the establishment, use and operation of the Schengen Information System for the purposes of border checks (OJ L ...).

² Regulation (EU) 2018/... on the establishment, use and operation of the Schengen Information System for the purposes of police and judicial cooperation in criminal matters (OJ L...).

- (7) To ensure the effectiveness of return and increase the added value of alerts on return, Member States should enter alerts in SIS in relation to all return decisions they issue to illegally staying third-country nationals in accordance with provisions respecting Directive 2008/115/EC. For this purpose, Member States should enter an alert in SIS also when decisions imposing or stating an obligation to return are issued in the situations described in Article 2(2) of that Directive, notably to third-country nationals who are subject to a refusal of entry in accordance with the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State, and to third-country nationals who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures. **In certain circumstances, where the risk of the return decision not being complied with is low, namely during any period of detention or when the return decision is issued at the external border and is executed immediately, Member States may refrain from entering alerts on third-country nationals.**
- (8) This Regulation should set out common rules for entering alerts related to return in SIS as soon as the underlying return decisions ~~in accordance with provisions respecting Directive 2008/115/EC~~ are issued. The alert should indicate whether a period for voluntary departure has been granted to the third-country national concerned, ~~including whether such period has been extended taking into account the specific circumstances of the individual case, and whether the decision has been suspended or the removal has been postponed.~~

- (9) It is necessary to specify the categories of data that can be entered in SIS in respect of third-country nationals who are the subject of a return decision ~~issued in accordance with provisions respecting Directive 2008/115/EC~~. Alerts on return should contain only those data that are required in order to identify the data subjects, to allow the competent authorities to take informed decisions without losing time and to ensure, where necessary, their protection in relation to persons who are armed, violent, have escaped or are involved in an activity as referred to in ~~Articles 1, 2, 3 and 4 of Council Framework Decision 2002/475/JHA~~**Directive 2017/541** on combating terrorism³. Furthermore, in order to facilitate identification and detect multiple identities, the alert should include also a reference to the personal identification document and a copy of such document, if available. **Dactyloscopic data should always be entered into the system when available.**
- (10) Each Member State should designate an authority responsible for the exchange of supplementary information in connection to alerts on return in order to ensure efficient and swift cooperation among the Member States. **The exchange of supplementary information, provided by the competent national authorities, should always be carried out through the SIRENE channel using the SIRENE Bureau as point of contact.**
- (11) Procedures should be established to enable Member States to verify that the obligation to return has been complied with and to confirm the departure of the third-country national concerned to the Member State that issued the alert on return. This information should contribute to a more comprehensive follow-up of the compliance with return decisions ~~in accordance with provisions respecting Directive 2008/115/EC~~.

³ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

- (12) Alerts on return should be deleted **without delay following** ~~as soon as~~ the Member State or competent authority that issued the return decision ~~in accordance with provisions respecting Directive 2008/115/EC has been~~ **being** informed that the return has taken place. Where a return decision is accompanied by an entry ban, the latter should be entered in SIS in accordance with Article 24(3) of Regulation (EU) 2018/xxx [border checks]. In such cases Member States should take all necessary measures to ensure that no time-gap exist between the moment in which the third-country national leaves the Schengen area, **or if there is sufficient and convincing evidence that the third-country national has left the EU territory,** and the activation of the alert on the entry ban in SIS. **If the data of SIS shows that the return decision is accompanied by an entry ban, the enforceability of that entry ban should be ascertained.**
- (13) SIS should contain a mechanism for notifying the Member States about the non-compliance of third-country nationals with an obligation to return within a given period of voluntary departure. The mechanism should support the Member States in fulfilling their obligations in accordance with Article 8(1) of Directive 2008/115/EC with regard to third-country nationals who have not complied with an obligation to return.
- (14) This Regulation should establish mandatory rules for the consultation between national authorities to solve possible conflicting instructions. Consultations should be carried out where third-country nationals who hold, or are being granted, a valid residence permit or ~~other authorisation or right to stay~~ **a long-stay visa** by a Member State are subject to an alert on return issued by another Member State if the return decision is accompanied by a refusal of entry and stay, or cases where conflicting situations may arise at entry in the territories of the Member States.
- (15) Alerts should be kept in SIS only for the time required to fulfil the purposes for which they were entered. In accordance with Article 34 of Regulation (EU) 2018/xxx [border checks] the review period for alerts on third-country nationals is five years.

- (16) Data processed in SIS or transferred through the exchange of supplementary information may provide to the enforcing Member State information that is useful for the rapid identification and re-documentation of illegally staying third-country nationals, in view of their return to a third country. In individual cases, it should be possible to share such data and information with a third country for this purpose. Sharing of any personal data should be subject to clear conditions, should be carried out in accordance with the provisions of Regulation (EU) 2016/679 and be conducted with the agreement of the Member State that issued the alert.
- (17) National authorities responsible for return may differ significantly among Member States, and such authorities may also vary within a Member State depending on the reasons for illegal stay. Judicial authorities may also issue return ~~decisions in accordance with provisions respecting Directive 2008/115/EC~~, for instance as result of appeals against a refusal of granting an authorisation or right to stay, or as a criminal sanction. All national authorities in charge of issuing and enforcing return decisions in accordance with Directive 2008/115/EC should be entitled to access SIS in order to enter, update, delete and search alerts on return.
- (18) Access to alerts on return should be granted to national authorities referred to in ~~points (a), (b), (c) and (d)~~ of Article 29(1) and in Article 29(2) of Regulation (EU) 2018/xxx [border checks] for the purpose of identification and return of third-country nationals.
- (19) Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement cooperation (Europol Regulation) provides that Europol supports and strengthens actions carried out by the competent authorities of Member States and their cooperation in combating terrorism and serious crime and provides analysis and threat assessments. In order to facilitate Europol in carrying out its tasks, in particular within the European Migrant Smuggling Centre, it is appropriate to allow Europol access to the alert category defined in this Regulation.

- (20) Regulation (EU) 2016/1624 provides that the host Member State shall authorise the members of the European Border and Coast Guard teams or teams of staff involved in return-related tasks, deployed by the European Border and Coast Gard Agency, to consult European databases, where this consultation is necessary for fulfilling operational aims specified in the operational plan on border checks, border surveillance and return. The objective of the deployment of the European Border and Coast Guard teams, teams of staff involved in return-related tasks and the migration management support teams is to provide for technical and operational reinforcement to the requesting Member States, especially to those facing disproportionate migratory challenges. Fulfilling the tasks assigned to the European Border and Coast Guard teams, teams of staff involved in return-related tasks and to the migration management support teams, necessitates access to alerts on return SIS via a technical interface of European Border and Coast Gard Agency connecting to Central SIS.
- (21) The provisions on responsibilities of the Member States and the European Agency on the operational management of large-scale IT systems in the area of freedom, security and justice, the entry and processing of alerts, the conditions to access and retention of alerts, data processing, data protection, liability and monitoring and statistics as included in Regulation (EU) 2018/xxx [Border checks] should also apply to data entered and processed in SIS in accordance with this Regulation.
- (22) 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 is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds, ~~to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399 of the European Parliament and of the Council⁴,~~ upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

⁴ ~~Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).~~

(23)⁵ **This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC⁶; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.** To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, this Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC⁷; the United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Moreover, in accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by or subject to its application.

⁵ UK entered a scrutiny reservation on this recital.

⁶ OJ L 131, 1.6.2000, p. 43.

⁷ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

- (24)⁸ **This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC⁹; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.** ~~To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399, this Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹⁰; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Moreover, in accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by or subject to its application.~~
- (25) As regards Iceland and Norway, this Regulation constitutes, ~~to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399,~~ a development of the 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 latters' association with the implementation, application and development of the Schengen *acquis*¹¹, which fall within the area referred to in Article 1, point C of Council Decision 1999/437/EC¹².

⁸ IE entered a scrutiny reservation on this recital.

⁹ OJ L 64, 7.3.2002, p.20.

¹⁰ 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).

¹¹ OJ L 176, 10.7.1999, p. 36.

¹² 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).

- (26) As regards Switzerland, this Regulation constitutes, ~~to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399~~, 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*¹³, which fall within the area referred to in Article 1, point C of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁴.
- (27) As regards Liechtenstein, this Regulation constitutes, ~~to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with Regulation (EU) 2016/399~~, 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*¹⁵, which fall within the area referred to in Article 1, point C of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁶.

¹³ OJ L 53, 27.2.2008, p. 52.

¹⁴ 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).

¹⁵ OJ L 160, 18.6.2011, p. 21.

¹⁶ 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(27a) As regards Bulgaria and Romania, and Croatia this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively the meaning of Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2011 Act of Accession, and should be read in conjunction with, respectively, Council Decision 2010/365/EU on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania¹⁷ and Council Decision 2017/733 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Croatia¹⁸.

(27b) Concerning Cyprus this Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.

(28) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on [...],

HAVE ADOPTED THIS REGULATION:

Article 1¹⁹

Subject matter and scope

This Regulation lays down the conditions and procedures for the entry and processing in the Schengen Information System (SIS), as established by Regulation (EU) 2018/xxx [border checks], of alerts in respect of third-country nationals subject to return decisions issued by the Member States ~~in accordance with procedures respecting Directive 2008/115/EC~~, as well as for exchanging supplementary information on such alerts.

¹⁷ OJ L 166, 1.7.2010, p. 17.

¹⁸ OJ L 108, 26.4.2017, p. 31

¹⁹ IE entered a scrutiny reservation on this Article.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘return’ means return as defined in Article 3(3) of Directive 2008/115/EC;
- (b) ‘third-country national’ means third-country nationals as defined in Article 3(1) of Directive 2008/115/EC;
- (c) ~~‘return decision’ means a return decision as defined in Article 3(4) of Directive 2008/115/EC;~~
- (d) ~~‘return decision issued in accordance with provisions respecting Directive 2008/115/EC’ means a return decision within the meaning of point (c) and an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return, issued under the conditions of Article 2(2) of~~ **that respects** Directive 2008/115/EC;²⁰
- (da) ‘alert’ means a set of data, including, where applicable, biometric data, entered in SIS allowing the competent authorities to identify a person with a view to taking specific action;**²¹
- (db) ‘supplementary information’ means information not forming part of the alert data stored in SIS, but connected to SIS alerts, which is to be exchanged via the SIRENE Bureaux:**
- (i) in order to allow Member States to consult or inform each other when entering an alert;**

²⁰ In line with the definition as in Article 2(12) of the Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, p. 11.

²¹ Definition similar to that in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(a) both in 9593/17 and 9594/17).

(ii) following a hit in order to allow the appropriate action to be taken;

(iii) when the required action cannot be taken;

(iv) when dealing with the quality of SIS data;

(v) when dealing with the compatibility and priority of alerts;

(vi) when dealing with rights of access;²²

(dc) 'removal' means removal as defined in Article 3(5) of Directive 2008/115/EC;²³

(e) 'voluntary departure' means voluntary departure as defined in Article 43(8) of Directive 2008/115/EC;

(ea) 'issuing Member State' means the Member State which entered the alert in SIS²⁴;

(eb) 'granting Member State' means the Member State which considers granting or extending or has granted or extended a residency permit or long stay visa and is involved in the consultation procedure;

(ec) 'personal data' means any information relating to an identified or identifiable natural person ('data subject')²⁵;

(ed)"executing Member State" means the Member State which takes or has taken the required actions following a hit;

²² Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(b) both in 9593/17 and 9594/17).

²³ Same definition as in Directive 2008/115/EC.

²⁴ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(i) both in 9593/17 and 9594/17).

²⁵ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(e) and Art. 3(1)(d) in 9593/17 and 9594/17, respectively).

- (f) 'CS-SIS' means the technical support function of the Central SIS as referred to in Article 4(1)(a) of Regulation (EU) 2018/xxx [border checks];²⁶
- (g) 'residence permit' means residence permit as defined in Article 2(16) of Regulation (EU) 2016/399);**
- (h) 'long-stay visa' means long-stay visa as defined in Article 1(1) of the Regulation (EU) No 265/2010^{27 28}.**
- (i) a 'match' means the occurrence of the following steps:**
- (1) a search is conducted by an end-user;**
- (2) the search reveals an alert entered by another Member State in SIS;**
- (3) data concerning the alert in SIS match the search data;**
- (ia) a 'hit' means any match which fulfils the following criteria:**
- (a) it has been confirmed:**
- (i) by the end-user; or**
- (ii) where the match concerned was based on the comparison of biometric data by the competent authority in accordance with national procedures;**
- and**
- (b) further actions are requested;²⁹**

²⁶ See 9593/17.

²⁷ **Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010. p. 1).**

²⁸ Same definition as in the proposal on Border Checks (see Art. 3(1)(r) in 9593/17).

²⁹ Same definition as in the proposals on Border Checks and on Law Enforcement (see Art. 3(1)(h) and Art. 3(1)(g) in 9593/17 and 9594/17, respectively).

(j) 'end-users' mean competent authorities directly searching CS-SIS, N.SIS or a technical copy thereof.

(k) 'threat to public health' means to public health as defined in Article 2(21) of Regulation (EU) 2016/399;

(l) 'external borders' means external borders as defined in Article 2(2) of Regulation (EU) 2016/399.

Article 3³⁰

Entry of data in SIS

1. ~~Data on third-country nationals subject to a return decision issued in accordance with provisions respecting Directive 2008/115/EC shall be entered in SIS for the purpose of verifying that the obligation to return has been complied with and for supporting the enforcement of the decision. An alert shall be entered in SIS without delay when the return decision is issued in accordance with provisions respecting Directive 2008/115/EC.~~

1a Member States may refrain from entering data in SIS on third-country nationals subject to a return decision when that decision concerns third-country nationals who are detained pending removal. When the third-country nationals concerned are released from detention without being removed, data on the third-country nationals subject to a return decision shall be entered in SIS without delay.

1b Member States may also refrain from entering data on third-country nationals subject to a return decision in SIS when the decision is issued at the external border of a Member State and is executed immediately.

³⁰ NL entered a scrutiny reservation on this Article.

2.³¹ The period for voluntary departure³² granted to third country nationals subject to a return decision issued in accordance with provisions respecting Directive 2008/115/EC in accordance with Article 7 of Directive 2008/115/EC, and its prolongation, shall be immediately recorded in the alert without delay.

~~3. The suspension and the postponement of the enforcement of the return decision issued in accordance with provisions respecting Directive 2008/115/EC shall be immediately recorded in the alert.~~³³

Article 4³⁴

~~Data e~~Categories of data

Data entered in SIS in accordance with Article 3 of this Regulation shall contain only the following:

- (a) surname(s);
- (b) forename(s);
- (c) name(s) at birth;
- (d) previously used names and aliases;
- (e) any specific, objective, physical characteristics not subject to change;
- (f) place of birth;
- (g) date of birth;
- (h) ~~sex~~gender;
- (i) nationality / nationalities;

³¹ LU and PT entered a scrutiny reservation on this Paragraph.

³² The indication of a period for voluntary departure might be problematic for end users, as it might be understood as the day on which the subject should not be any longer in the Schengen territory. For this reason, Article 4 has been redrafted (new points (va) and (wa) were added and point (w) was reworded) for the sake of clarity.

³³ A recital will be added regarding the possible postponement of the enforcement of the return decision.

³⁴ AT, LU and FR entered a reservation on this Article.

- (j) whether the person concerned
 - i. is armed;
 - ii. **is** violent;
 - iii. has **absconded or** escaped;
 - iv. **poses a risk of suicide;**
 - v. **poses a threat to public health;** or
 - vi. is involved in an **terrorism-related** activity ~~as referred to in Articles 1, 2, 3 and 4 of Council Framework Decision 2002/475/JHA on combating terrorism;~~
- (k) reason for the alert;
- (l) authority issuing the alert;
- (m) a reference to the decision giving rise to the alert;
- (n) action to be taken;
- (o) link(s) to other alerts issued in SIS;
- (oa) whether the return decision is issued in relation to a third-country national who poses a threat to public policy, public security or national security;**
- (ob) type of offence;**
 - (p) the category of the person's identification document(s);
 - (q) the country of issue of the person's identification document(s);
 - (r) the number(s) of the person's identification document(s);

- (s) the date of issue of the person's identification document~~(s)~~;
- (t) photographs and facial images;
- (u) dactylographies~~ies~~ **scopic** data;
- (v) a colour copy, **whenever possible in colour,** of the identity~~ification~~ **fication** document~~(s)~~;
- (w) **last date of the** period for voluntary departure, **if granted**;
- ~~(x) whether the return decision issued in accordance with provisions respecting Directive 2008/115/EC has been suspended or the enforcement of the decision has been postponed;~~
- (v) whether the return decision is accompanied by an entry ban constituting the basis for an alert for refusal of entry and stay pursuant to Article 24(3) of Regulation xxx [Border Checks].**

All data listed above shall be entered, where available. An alert may not be entered without the data referred to in (a), (g), (k), (m);**and** (n) and (w). ~~When available, all other data listed above shall also be entered.~~

Article 5³⁵³⁶

Authority responsible for the exchange of supplementary information

Each Member State shall designate an authority responsible for the exchange of supplementary information on third-country nationals subject to return **(the SIRENE Bureau)** in accordance with the provisions of the SIRENE Manual laid down in Article 8 of Regulation (EU) 2018/xxx [Border checks].

³⁵ SE entered a scrutiny reservation on this Article.

³⁶ Several delegations (AT, CZ, DE, NL and SK) expressed concerns and indicated the need for more clarity.

Hits at the external borders at exit - Confirmation of return

1. ~~Where a third-country national who is the subject of an alert on return is identified when~~ **In the event of a hit on an alert on return concerning a third country national who is** exiting **the territory of the Member States** through the external borders of a Member State, the **executing** Member State ~~that identified the third-country national concerned~~ shall communicate the following information to the issuing Member State through the exchange of supplementary information:
 - (a) the fact that the third-country national has been identified;
 - (b) the location and time of the check;
 - (c) ~~whether~~ **the fact that** the third-country national has left the territory of the Member States;
 - (d) ~~whether the return was a voluntary compliance with an obligation to return or was enforced;~~
 - (e) the third-country of **first** destination.

Where a third-country national, who is the subject of an alert on return, exits **the territory of the Member States** through the external border of the issuing Member State, the confirmation of return shall be ~~communicated~~ **sent** to the competent authority **of that Member State** in accordance with national law **procedures**.

2. The issuing Member State shall ~~immediately~~ delete the alert **without delay** following the receipt of the confirmation of return. **Where applicable, an alert for refusal of entry or stay shall be issued pursuant to Article 24(3) of Regulation (EU) 2018/xxx [border checks].**

³⁷ BE entered a scrutiny reservation on this Article.

- 3.³⁸ The Member States shall provide on a ~~monthly~~ **quarterly** basis statistics to the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council³⁹ ('the Agency') on the number of confirmed returns, ~~on whether the return was carried out in voluntary compliance with an obligation to return or was enforced, and on the third countries of destination.~~ Those statistics shall not contain personal data.

Article 7

Non-compliance with return decisions ~~issued in accordance with provisions respecting~~ Directive 2008/115/EC

1. CS-SIS shall notify the **issuing** Member States about their alerts on return for which the period for voluntary departure has expired.
2. ~~Where a third-country national who is subject of an alert on return is identified by a competent authority and it has been ascertained by the same authority that the obligation to return has not been complied with, that authority~~ **Without prejudice to the procedure referred to in Article 6(1) and 8A, in the event of a hit on an alert on return the executing Member State** shall ~~immediately~~ consult the issuing Member State through the exchange of supplementary information in order to determine ~~without delay~~ the action measures to be taken **in accordance with national law implementing Directive 2008/115/EC.**

³⁸ FR entered a scrutiny reservation on this paragraph.

³⁹ Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p.1).

~~Article 8⁴⁰~~

~~Consultation procedure~~

- ~~1. Where a Member State considers granting a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an alert on return entered by another Member State, the former shall first consult, through the exchange of supplementary information, the Member State that entered the alert. The Member State that entered the alert shall reply within seven days. If the Member State considering granting a residence permit or other authorisation offering a right to stay decides to grant it, the alert on return shall be deleted.⁴¹~~
- ~~2. Where a Member State considers entering an alert for return concerning a third-country national who is the holder of a valid residence permit or other authorisation offering a right to stay issued by another Member State, it shall inform through the exchange of supplementary information the Member State that issued the permit in order to allow that Member State to decide whether there are reasons justifying its withdrawal. The Member State that issued the permit shall provide a definite reply within seven days.⁴²~~
- ~~3. In the event of a hit on an alert on return concerning a third-country national who is the holder of a valid residence permit or other authorisation offering a right to stay, the Member State that identified the third-country national concerned shall consult immediately the involved Member States, through the exchange of supplementary information, in order to determine the action to be taken.⁴³~~

⁴⁰ CZ, IT and LU entered a scrutiny reservation on this Article.

⁴¹ Paragraph moved to new Article 8B.

⁴² Paragraph moved to new Article 8C.

⁴³ Paragraph moved to new Article 8E.

4. ~~Where a third-country national who is the subject of an alert on return is identified when entering through the external borders, the Member State that identified the third-country national concerned shall immediately inform, through the exchange of supplementary information, the issuing Member State in order to delete the alert.~~⁴⁴
5. ~~Member States shall provide on an annual basis statistics to the Agency about the consultations carried out in accordance with paragraphs 1, 2, 3 and 4.~~⁴⁵

*Article 8A*⁴⁶

Hits at the external borders at entry

In the event of a hit on an alert on return concerning ~~Where a third-country national who is the subject of an alert on return is identified when~~ **entering the territory of the Member States** through the external borders **the following procedure shall apply;**

- (a) **Where the return decision is accompanied by an entry ban,** the **executing** Member State that identified the third-country national concerned shall immediately **consult without delay** ~~inform~~ **the issuing Member State,** through the exchange of supplementary information, **in order to determine the measures to be taken. The issuing Member State shall delete the alert on return and issue a refusal of entry and stay alert pursuant to Article 24(3) of Regulation xxx [Border Checks];**
- (b) **Where the return decision is not accompanied by an entry ban, the executing Member State shall inform** the issuing Member State, **through the exchange of supplementary information,** in order to **delete the alert on return.**

The decision on the entry of the third-country national shall be taken by the executing Member State in accordance with the Schengen Borders Code.

⁴⁴ Paragraph moved to new Article 8A

⁴⁵ Paragraph moved to new Article 8F.

⁴⁶ ES entered a scrutiny reservation on this Article.

Consultation procedure when granting or extending a residence permit or long-stay visa

1. Where a Member State considers granting **or extending** a residence permit or ~~other~~ ~~authorisation offering a right to stay~~ **long-stay visa** to a third-country national who is the subject of an alert on return, **accompanied by an entry ban**, entered by another Member State, the Member States involved shall **consult each other, through the exchange of supplementary information**, according to the following rules:
 - a) **the granting Member State shall consult the issuing Member State prior to granting or extending the residence permit or long-stay visa;**
 - b) **the issuing Member State shall reply to the consultation request within fourteen calendar days;**
 - c) **the absence of a reply by the deadline referred to in point b) shall mean that the issuing Member State does not object to the granting or extending of the residence permit or long-stay visa;**⁴⁸
 - d) **when making the relevant decision, the granting Member State shall take into account the reasons for the decision of the issuing Member State and shall consider, in accordance with national law, any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose;**
 - e) **the granting Member State shall notify the issuing Member State about its decision; and**
 - f) **where the granting Member State notifies the issuing Member State that it decides to grant or extend the residence permit or long-stay visa, the issuing Member State shall delete the alert on return.**

⁴⁷ PL entered a scrutiny reservation on this Article.

⁴⁸ LU entered a scrutiny reservation on this indent.

2. Where a Member State considers granting or extending a residence permit or long-stay visa to a third-country national who is the subject of an alert on return, which is not accompanied by an entry ban, entered by another Member State, the granting Member State shall inform the issuing Member State that it intends to grant or has granted a residence permit or a long-stay visa. The issuing Member State shall without delay delete the alert on return.

Article 8C⁴⁹

Consultation procedure when issuing a return decision concerning a third country national holding a valid residence permit or long-stay visa

Where a Member State **has issued a return decision and it** considers entering an alert for return concerning a third-country national who is the holder of a valid residence permit or ~~other~~ ~~authorisation offering a right to stay~~ **a long-stay visa issued granted** by another Member State, the involved Member States shall **exchange supplementary information** according to the following rules:

- a) the Member State that has taken the return decision shall inform the granting Member State about the decision;**
- b) the exchange of information referred to in point a) shall contain sufficient information about the reasons for the return decision;**
- c) the granting Member State shall consider on the basis of the information provided by the Member State that has taken the return decision whether there are reasons for withdrawing the residence permit or long-stay visa;**

⁴⁹ PL entered a scrutiny reservation on this Article.

- d) when making the relevant decision, the granting Member State shall take into account the reasons for the decision of the Member State that has taken the return decision and shall consider, in accordance with national law, any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose; and
- e) the granting Member State shall notify the Member State that has taken the return decision within fourteen calendar days after the receipt of the information request about its decision; the deadline may be extended upon the reasoned request of the granting Member State.

Article 8D⁵⁰

A posteriori consultation procedure after entering an alert on return

Where it emerges that an alert on return has been issued for a third-country national who holds a valid residence permit or long-stay visa granted by another Member State, the issuing Member State may decide to withdraw the return decision. In the case of such withdrawal it shall immediately delete the alert on return. However, where the issuing Member State decides to maintain the return decision, the Member States in question shall exchange supplementary information according to the following rules:

- a) the issuing Member State shall inform the granting Member State about the return decision;
- b) the exchange of information referred to in point a) shall contain sufficient information about the reasons for the alert on return;
- c) the granting Member State shall consider on the basis of the information provided by the issuing Member State whether there are reasons for withdrawing the residence permit or long-stay visa;

⁵⁰ PL entered a scrutiny reservation on this Article.

- d) when making the relevant decision, the granting Member State shall take into account the reasons for the decision of the issuing Member State and shall consider, in accordance with national law, any threat to public policy or public security which the presence of the third country national in question on the territory of the Member States may pose; and
- e) the granting Member State shall notify the issuing Member State within fourteen calendar days after the receipt of the information request about its decision; the deadline may be extended upon the reasoned request of the granting Member State.

Article 8E⁵¹

Consultation procedure in case of a hit concerning a third country national holding a valid residence permit or a long-stay visa

1. Where a Member State encounters a hit on an alert on return entered by a Member State in respect of a third-country national who is the holder of a valid residence permit or long-stay visa granted by another Member State, the involved Member States shall exchange supplementary information, according to the following rules:
 - a) the executing Member State shall inform the issuing Member State about the situation and the issuing Member State shall initiate the procedure laid down in Article 8D;
 - b) the issuing Member State shall notify the executing Member State about the final outcome of the exchange of information.
2. Where a Member State has encountered a hit on an alert on return, at the external border, the decision on the entry of the third-country national shall be taken by the executing Member State in accordance with the Schengen Borders Code.

⁵¹ PL entered a scrutiny reservation on this Article.

Article 8F

Statistics

Member States shall provide on an annual basis statistics to the Agency about the consultations carried out in accordance with Articles **8B(1), 8C** and ~~to~~ **8D and the instances in which the consultation deadline was not met.**

Article 9

Deletion of alerts

1. Without prejudice to Articles 6 and 8, alerts on return shall be deleted when the decision upon which the alert was based has been withdrawn or annulled by the competent authority. Alerts on return shall also be deleted when the third-country national concerned can demonstrate that they have left the territory of the Member States in compliance with a return decision issued in accordance with provisions respecting Directive 2008/115/EC.
2. Alerts on return entered in respect of a person who has acquired citizenship of a Member State or of any State whose nationals are beneficiaries of the right of free movement ~~within~~**under** the Union **law** shall be deleted as soon as the issuing Member State becomes aware, or is informed pursuant to Article 39 of Regulation (EU) 2018/xxx [border checks], that the person in question has acquired such citizenship.

Article 10

Transfer of personal data to third countries for the purpose of return

Data processed in SIS and the related supplementary information pursuant to this Regulation may be transferred or made available to a third-country in accordance with Chapter V of Regulation (EU) 2016/679 with the authorisation of the issuing Member State, only for the purpose of identification of and issuance of an identification or travel document to an illegally staying-third country national in view of return.

Article 11

Statistics

Without prejudice to the provisions on statistics in Article 54 of Regulation (EU) 2018/xxx [Border checks], the Agency shall produce daily, ~~monthly~~**quarterly** and annual statistics, both in total number and per each Member State on the number of alerts on return entered in SIS, ~~including on the data referred to in Article 4(x) of this Regulation,~~ on the notifications referred to in Article 7(1) of this Regulation and the number of alerts on return deleted ~~due to compliance with an obligation to return.~~ ~~The Agency shall produce monthly and annual statistics about the data provided by the Member States in accordance with Article 6(3) and Article 8(5) of this Regulation.~~⁵² Those statistics shall not contain personal data.

Article 12

Right to access data in SIS

1. Access to data entered in SIS and the right to search such data shall be reserved to the national authorities referred to in ~~points (a), (b), (c) and (d) of~~ Article 29(1) and in Article 29(2) of Regulation (EU) 2018/ xxx [Border checks] ~~for the purpose of identification and return of third-country nationals.~~
2. Europol shall have within their mandate the right to access and search data entered in SIS for the purpose of supporting and strengthening action by the competent authorities of the Member States and their mutual cooperation in preventing and combating migrant smuggling and facilitation of irregular migration in accordance with the conditions laid down in Article 30 of Regulation (EU) 2018/ xxx [Border checks] **and Article 46 of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters].**

⁵² Deleted to align with Article 6(3).

3. Members of the European Border and Coast Guard teams or teams of staff involved in return-related tasks as well as the members of the migration management support teams shall have within their mandate the right to access and search data entered in SIS for the purpose of carrying out border checks, border surveillance and return operations via the technical interface set up and maintained by the European Border and Coast Guard Agency as referred to and in accordance with the conditions laid down in Articles 31 and Article 32(2) of Regulation (EU) 2018/ xxx [Border checks] **and Articles 48 and 49(1) of Regulation (EU) 2018/xxx [police cooperation and judicial cooperation in criminal matters]**.

Article 13

Applicability of the provisions of Regulation (EU) 2018/xxx [Border checks]

As far as not established in this Regulation, the provisions on responsibilities of the Member States and the Agency, the entry and processing of alerts, the conditions to access and retention of alerts, data processing, data protection, liability and monitoring and statistics laid down in Articles 6 to 19, Article 20(3)-(4) as well as in Articles 21, 22, 28, 29(4) and 33 to 54 of Regulation (EU) 2018/ xxx [Border checks] shall apply to data entered and processed in SIS in accordance with this Regulation.

Article 14

Entry into force

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

It shall apply from the date fixed by the Commission in accordance with Article 58(2) of Regulation (EU) 2018/xxx [border checks].

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President