

Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

CHAPTER X

RIGHT TO ACCESS AND RETENTION OF ALERTS

Article 40

Authorities having a right to access alerts

1 Access to data entered in SIS II and the right to search such data directly or in a copy of SIS II data shall be reserved exclusively to the authorities responsible for:

- a border control, in accordance with Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁽¹⁾;
- b other police and customs checks carried out within the Member State concerned, the coordination of such checks by designated authorities.

2 However, the right to access data entered in SIS II and the right to search such data directly may also be exercised by national judicial authorities, including those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charge, in the performance of their tasks, as provided for in national legislation, and by their coordinating authorities.

3 The authorities referred to in this Article shall be included in the list referred to in Article 46(8).

Article 41

Access to SIS II data by Europol

1 The European Police Office (Europol) shall within its mandate have the right to access and search directly, data entered into SIS II in accordance with Articles 26, 36 and 38.

2 Where a search by Europol reveals the existence of an alert in SIS II, Europol shall inform, via the channels defined by the Europol Convention the Member State which issued the alert thereof.

3 Use of information obtained from a search in the SIS II is subject to the consent of the Member State concerned. If the Member State allows the use of such information, the handling thereof shall be governed by the Europol Convention. Europol may only communicate such information to third countries and third bodies with the consent of the Member State concerned.

4 Europol may request further information from the Member State concerned in accordance with the provisions of the Europol Convention.

5 Europol shall:

- a record every access and search made by it, in accordance with the provisions of Article 12;

- b without prejudice to paragraphs 3 and 4, not connect parts of SIS II nor transfer the data contained therein to which it has access to any computer system for data collection and processing operated by or at Europol nor download or otherwise copy any part of SIS II;
- c limit access to data entered in SIS II to specifically authorised staff of Europol;
- d adopt and apply measures provided for in Articles 10 and 11;
- e allow the Joint Supervisory Body, set up under Article 24 of the Europol Convention, to review the activities of Europol in the exercise of its right to access and search data entered in SIS II.

Article 42

Access to SIS II data by Eurojust

1 The national members of Eurojust and their assistants shall, within their mandate, have the right to access and search data entered in SIS II, in accordance with Articles 26, 32, 34 and 38.

2 Where a search by a national member of Eurojust reveals the existence of an alert in SIS II, he shall inform the Member State having issued the alert thereof. Any communication of information obtained from such a search may only be communicated to third countries and third bodies with the consent of the Member State which issued the alert.

3 Nothing in this Article shall be interpreted as affecting the provisions of Decision 2002/187/JHA concerning data protection and the liability for any unauthorised or incorrect processing of such data by national members of Eurojust or their assistants, or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

4 Every access and search made by a national member of Eurojust or an assistant shall be recorded in accordance with the provisions of Article 12 and every use made by them of data accessed by them shall be registered.

5 No parts of SIS II shall be connected nor shall the data contained therein to which the national members or their assistants have access be transferred to any computer system for data collection and processing operated by or at Eurojust nor shall any part of SIS II be downloaded.

6 Access to data entered in SIS II shall be limited to the national members and their assistants and shall not be extended to Eurojust staff.

7 Measures to ensure security and confidentiality as provided for in Articles 10 and 11 shall be adopted and applied.

Article 43

Scope of access

Users, including Europol, the national members of Eurojust and their assistants, may only access data which they require for the performance of their tasks.

Article 44

Retention period of alerts on persons

1 Alerts on persons entered in SIS II pursuant to this Decision shall be kept only for the time required to achieve the purposes for which they were entered.

2 A Member State issuing an alert shall, within three years of its entry into SIS II, review the need to keep it. The period shall be one year in the case of alerts on persons pursuant to Article 36.

3 Each Member State shall, where appropriate, set shorter review periods in accordance with its national law.

4 Within the review period, the Member State issuing the alert may, following a comprehensive individual assessment, which shall be recorded, decide to keep the alert longer, should this prove necessary for the purposes for which the alert was issued. In such a case paragraph 2 shall apply also to the extension. Any extension of an alert shall be communicated to CS-SIS.

5 Alerts shall automatically be erased after the review period referred to in paragraph 2 except where the Member State issuing the alert has communicated the extension of the alert to CS-SIS pursuant to paragraph 4. CS-SIS shall automatically inform the Member States of the scheduled deletion of data from the system four months in advance.

6 Member States shall keep statistics about the number of alerts the retention period of which has been extended in accordance with paragraph 4.

Article 45

Retention period of alerts on objects

1 Alerts on objects entered in SIS II pursuant to this Decision shall be kept only for the time required to achieve the purposes for which they were entered.

2 Alerts on objects entered in accordance with Article 36 shall be kept for a maximum of five years.

3 Alerts on objects entered in accordance with Article 38 shall be kept for a maximum of 10 years.

4 The retention periods referred to in paragraphs 2 and 3 may be extended should this prove necessary for the purposes for which the alert was issued. In such a case, paragraphs 2 and 3 shall apply also to the extension.

Status: *This is the original version (as it was originally adopted).*

- (1) [OJ L 105, 13.4.2006, p. 1.](#)