

Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU

CHAPTER XVIII

Final provisions

Article 77

Amendments to Decision 2007/533/JHA

Decision 2007/533/JHA is amended as follows:

- (1) Article 6 is replaced by the following:

Article 6

National Systems

- 1 Each Member State shall be responsible for setting up, operating, maintaining and further developing its N.SIS II and connecting it to NI-SIS.
- 2 Each Member State shall be responsible for ensuring the uninterrupted availability of SIS II data to end-users.;
- (2) Article 11 is replaced by the following:

Article 11

Confidentiality — Member States

- 1 Each Member State shall apply its rules of professional secrecy or other equivalent duties of confidentiality to all persons and bodies required to work with SIS II data and supplementary information, in accordance with its national legislation. This obligation shall also apply after those people leave office or employment or after the termination of the activities of those bodies.
- 2 Where a Member State cooperates with external contractors in any SIS II-related tasks, it shall closely monitor the activities of the contractor to ensure compliance with all provisions of this Decision, in particular on security, confidentiality and data protection.
- 3 The operational management of N.SIS II or of any technical copies shall not be entrusted to private companies or private organisations.;
- (3) Article 15 is amended as follows:

Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2018/1862 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(a) the following paragraph is inserted:

3a. The Management Authority shall develop and maintain a mechanism and procedures for carrying out quality checks on the data in CS-SIS. It shall provide regular reports to the Member States in this regard.

The Management Authority shall provide a regular report to the Commission covering the issues encountered and the Member States concerned.

The Commission shall provide the European Parliament and the Council with a regular report on data quality issues that are encountered.;

(b) paragraph 8 is replaced by the following:

8. The operational management of Central SIS II shall consist of all the tasks necessary to keep Central SIS II functioning 24 hours a day, 7 days a week in accordance with this Decision, in particular the maintenance work and technical developments necessary for the smooth running of the system. Those tasks shall also include the coordination, management and support of testing activities for Central SIS II and the N.SIS II that ensure that Central SIS II and the N.SIS II operate in accordance with the requirements for technical compliance set out in Article 9.;

(4) in Article 17, the following paragraphs are added:

3. Where the Management Authority cooperates with external contractors in any SIS II-related tasks, it shall closely monitor the activities of the contractor to ensure compliance with all provisions of this Decision, in particular on security, confidentiality and data protection.

4. The operational management of CS-SIS shall not be entrusted to private companies or private organisations.;

(5) in Article 21, the following paragraph is added:

Where a person or an object is sought under an alert related to a terrorist offence, the case shall be considered adequate, relevant and important enough to warrant an alert in SIS II. For public or national security reasons, Member States may exceptionally refrain from entering an alert when it is likely to obstruct official or legal inquiries, investigations or procedures.;

(6) Article 22 is replaced by the following:

Article 22

Specific rules for entering, verification or search with photographs and fingerprints

1. Photographs and fingerprints shall only be entered following a special quality check to ascertain whether they fulfil minimum data quality standards. The specification of the special quality check shall be established in accordance with the procedure referred to in Article 67.

2. Where photographs and fingerprint data are available in an alert in SIS II, such photographs and fingerprint data shall be used to confirm the identity of a person who has been located as a result of an alphanumeric search made in SIS II.

Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2018/1862 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

3 Fingerprint data may be searched in all cases to identify a person. However, fingerprint data shall be searched to identify a person where the identity of the person cannot be ascertained by other means. For that purpose, the Central SIS II shall contain an Automated Fingerprint Identification System (AFIS).

4 Fingerprint data in SIS II in relation to alerts entered in accordance with Articles 26, 32 and 36 may also be searched using complete or incomplete sets of fingerprints discovered at the scenes of serious crimes or terrorist offences under investigation, where it can be established to a high degree of probability that those sets of prints belong to a perpetrator of the offence and provided that the search is carried out simultaneously in the Member State's relevant national fingerprints databases.;

(7) Article 41 is replaced by the following:

Article 41

Access to data in SIS II by Europol

1 The European Union Agency for Law Enforcement Cooperation (Europol), established by Regulation (EU) 2016/794 of the European Parliament and of the Council⁽¹⁾, shall, where necessary to fulfil its mandate, have the right to access and search data in SIS II. Europol may also exchange and further request supplementary information in accordance with the provisions of the SIRENE Manual.

2 Where a search by Europol reveals the existence of an alert in SIS II, Europol shall inform the issuing Member State through the exchange of supplementary information by means of the Communication Infrastructure and in accordance with the provisions set out in the SIRENE Manual. Until Europol is able to use the functionalities intended for the exchange of supplementary information, it shall inform issuing Member States through the channels defined by Regulation (EU) 2016/794.

3 Europol may process the supplementary information that has been provided to it by Member States for the purposes of comparing it with its databases and operational analysis projects, aimed at identifying connections or other relevant links and for the strategic, thematic or operational analyses referred to in points (a), (b) and (c) of Article 18(2) of Regulation (EU) 2016/794. Any processing by Europol of supplementary information for the purpose of this Article shall be carried out in accordance with that Regulation.

4 Europol's use of information obtained from a search in SIS II or from the processing of supplementary information shall be subject to the consent of the issuing Member State. If the Member State allows the use of such information, its handling by Europol shall be governed by Regulation (EU) 2016/794. Europol shall only communicate such information to third countries and third bodies with the consent of the issuing Member State and in full compliance with Union law on data protection.

5 Europol shall:

- a without prejudice to paragraphs 4 and 6, not connect parts of SIS II nor transfer the data contained in it to which it has access to any system for data collection and processing operated by or at Europol, nor download or otherwise copy any part of SIS II;
- b notwithstanding Article 31(1) of Regulation (EU) 2016/794, delete supplementary information containing personal data at the latest one year

Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2018/1862 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

after the related alert has been deleted. By way of derogation, where Europol has information in its databases or operational analysis projects on a case to which the supplementary information is related, in order for Europol to perform its tasks, Europol may exceptionally continue to store the supplementary information when necessary. Europol shall inform the issuing and the executing Member State of the continued storage of such supplementary information and present a justification for it;

- c limit access to data in SIS II, including supplementary information, to specifically authorised staff of Europol who require access to such data for the performance of their tasks;
- d adopt and apply measures to ensure security, confidentiality and self-monitoring in accordance with Articles 10, 11 and 13;
- e ensure that its staff who are authorised to process SIS II data receive appropriate training and information in accordance with Article 14; and
- f without prejudice to Regulation (EU) 2016/794, allow the European Data Protection Supervisor to monitor and review the activities of Europol in the exercise of its right to access and search data in SIS II and in the exchange and processing of supplementary information.

6 Europol shall only copy data from SIS II for technical purposes where such copying is necessary in order for duly authorised Europol staff to carry out a direct search. This Decision shall apply to such copies. The technical copy shall only be used for the purpose of storing SIS II data whilst those data are searched. Once the data have been searched they shall be deleted. Such uses shall not be considered to be unlawful downloading or copying of SIS II data. Europol shall not copy alert data or additional data issued by Member States or from CS-SIS II into other Europol systems.

7 For the purpose of verifying the lawfulness of data processing, self-monitoring and ensuring proper data security and integrity, Europol shall keep logs of every access to and search in SIS II in accordance with the provisions of Article 12. Such logs and documentation shall not be considered to be unlawful downloading or copying of part of SIS II.

8 Member States shall inform Europol through the exchange of supplementary information of any hit on alerts related to terrorist offences. Member States may exceptionally not inform Europol if doing so would jeopardise current investigations, the safety of an individual or be contrary to essential interests of the security of the issuing Member State.

9 Paragraph 8 shall apply from the date that Europol is able to receive supplementary information in accordance with paragraph 1.;

(8) the following Article is inserted:

Article 42a

Access to data in SIS II by the European Border and Coast Guard teams, teams of staff involved in return-related tasks, and members of the migration management support teams

1 In accordance with Article 40(8) of Regulation (EU) 2016/1624 of the European Parliament and of the Council⁽²⁾, the members of the teams referred to in points (8) and (9) of Article 2 of that Regulation shall, within their mandate and

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2018/1862 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

provided that they are authorised to carry out checks in accordance with Article 40(1) of this Decision and have received the required training in accordance with Article 14 of this Decision, have the right to access and search data in SIS II insofar it is necessary for the performance of their task and as required by the operational plan for a specific operation. Access to data in SIS II shall not be extended to any other team members.

2 Members of the teams referred to in paragraph 1 shall exercise the right to access and search data in SIS II in accordance with paragraph 1 through a technical interface. The technical interface shall be set up and maintained by the European Border and Coast Guard Agency and shall allow direct connection to Central SIS II.

3 Where a search by a member of the teams referred to in paragraph 1 of this Article reveals the existence of an alert in SIS II, the issuing Member State shall be informed thereof. In accordance with Article 40 of Regulation (EU) 2016/1624, members of the teams shall only act in response to an alert in SIS II under instructions from and, as a general rule, in the presence of border guards or staff involved in return-related tasks of the host Member State in which they are operating. The host Member State may authorise members of the teams to act on its behalf.

4 For the purpose of verifying the lawfulness of data processing, self-monitoring and ensuring proper data security and integrity, the European Border and Coast Guard Agency shall keep logs of every access to and search in SIS II in accordance with the provisions of Article 12.

5 The European Border and Coast Guard Agency shall adopt and apply measures to ensure security, confidentiality and self-monitoring in accordance with Articles 10, 11 and 13 and shall ensure that the teams referred to in paragraph 1 of this Article apply those measures.

6 Nothing in this Article shall be interpreted as affecting the provisions of Regulation (EU) 2016/1624 concerning data protection or the European Border and Coast Guard Agency's liability for any unauthorised or incorrect processing of data by it.

7 Without prejudice to paragraph 2, no parts of SIS II shall be connected to any system for data collection and processing operated by the teams referred to in paragraph 1 or by the European Border and Coast Guard Agency, nor shall the data in SIS II to which those teams have access be transferred to such a system. No part of SIS II shall be downloaded or copied. The logging of access and searches shall not be considered to be unlawful downloading or copying of SIS II data.

8 The European Border and Coast Guard Agency shall allow the European Data Protection Supervisor to monitor and review the activities of the teams referred to in this Article in the exercise of their right to access and search data in SIS II. This shall be without prejudice to the further provisions of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁽⁹⁾.

Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2018/1862 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (1) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).’;
- (2) 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, 16.9.2016, p. 1).
- (3) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).’.

Changes to legislation:

There are outstanding changes not yet made to Regulation (EU) 2018/1862 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulation revoked in part by S.I. 2019/742, reg. 119(2)(h) (as inserted) by [S.I. 2020/1408 reg. 35\(b\)](#)