

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 IX

### *Alerts on persons and objects for discreet checks, inquiry checks or specific checks*

#### *Article 36*

#### **Objectives and conditions for entering alerts**

1 Alerts on persons, on the objects referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 38(2) and on non-cash means of payment shall be entered in accordance with the national law of the issuing Member State, for the purposes of discreet checks, inquiry checks or specific checks in accordance with Article 37(3), (4) and (5).

2 When entering alerts for discreet checks, inquiry checks or specific checks and where the information sought by the issuing Member State is additional to that provided for in points (a) to (h) of Article 37(1), the issuing Member State shall add to the alert all the information that is sought. If that information relates to special categories of personal data referred to in Article 10 of Directive (EU) 2016/680, it shall only be sought if it is strictly necessary for the specific purpose of the alert and in relation to the criminal offence for which the alert has been entered.

3 Alerts on persons for discreet checks, inquiry checks or specific checks may be entered for the purposes of preventing, detecting, investigating or prosecuting criminal offences, executing a criminal sentence and preventing threats to public security in one or more of the following circumstances:

- a where there is a clear indication that a person intends to commit or is committing any of the offences referred to in Article 2(1) and (2) of the Framework Decision 2002/584/JHA;
- b where the information referred to in Article 37(1) is necessary for the execution of a custodial sentence or detention order regarding a person convicted of any of the offences referred to in Article 2(1) and (2) of the Framework Decision 2002/584/JHA;
- c where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to believe that that person may commit the offences referred to in Article 2(1) and 2(2) of the Framework Decision 2002/584/JHA in the future.

4 In addition, alerts on persons for discreet checks, inquiry checks or specific checks may be entered in accordance with national law at the request of the authorities responsible for national security where there is a concrete indication that the information referred to in Article 37(1) is necessary in order to prevent a serious threat posed by the person concerned or other serious threats to internal or external national security. The Member State which entered the alert in accordance with this paragraph shall inform the other Member States of such an alert. Each Member State shall determine to which authorities this information shall be transmitted. The information shall be transmitted through the SIRENE Bureaux.

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*Status: Point in time view as at 28/11/2018.*

*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)*

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5 Where there is a clear indication that the objects referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 38(2) or non-cash means of payment are connected with the serious crimes referred to in paragraph 3 of this Article or the serious threats referred to in paragraph 4 of this Article, alerts on those objects may be entered and linked to the alerts entered in accordance with paragraphs 3 and 4 of this Article.

6 The Commission shall adopt implementing acts to lay down and develop the technical rules necessary for entering, updating, deleting and searching the data referred to in paragraph 5 of this Article as well as the additional information referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 76(2).

### Article 37

#### Execution of the action based on an alert

1 For the purposes of discreet checks, inquiry checks or specific checks, the executing Member State shall collect and communicate to the issuing Member State all or some of the following information:

- a the fact that the person who is the subject of an alert has been located, or that objects referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 38(2) or non-cash means of payment which are the subject of an alert have been located;
- b the place, time and reason for the check;
- c the route of the journey and destination;
- d the persons accompanying the subject of the alert or the occupants of the vehicle, boat or aircraft, or the persons accompanying the holder of the blank official document or issued identity document who can reasonably be expected to be associated with the subject of the alert;
- e any identity revealed and any personal description of the person using the blank official document or issued identity document that is the subject of the alert;
- f the objects referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 38(2) or non-cash means of payment used;
- g objects carried, including travel documents;
- h the circumstances in which the person, the objects referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 38(2) or the non-cash means of payment were located;
- i any other information being sought by the issuing Member State in accordance with Article 36(2).

If the information referred to in point (i) of the first subparagraph of this paragraph relates to special categories of personal data referred to in Article 10 of Directive (EU) 2016/680, it shall be processed in accordance with the conditions set out in that Article and only if it supplements other personal data processed for the same purpose.

2 The executing Member State shall communicate the information referred to in paragraph 1 through the exchange of supplementary information.

3 A discreet check shall comprise the discreet collection of as much information described in paragraph 1 as possible during routine activities carried out by the national competent authorities of the executing Member State. The collection of this information shall not jeopardise the discreet nature of the checks and the subject of the alert shall in no way be made aware of the existence of the alert.

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4 An inquiry check shall comprise an interview of the person, including on the basis of information or specific questions added to the alert by the issuing Member State in accordance with Article 36(2). The interview shall be carried out in accordance with the national law of the executing Member State

5 During specific checks, persons, vehicles, boats, aircraft, containers and carried objects may be searched for the purposes referred to in Article 36. Searches shall be carried out in accordance with the national law of the executing Member State.

6 Where specific checks are not authorised by the national law of the executing Member State, they shall be replaced by inquiry checks in that Member State. Where inquiry checks are not authorised by the national law of the executing Member State, they shall be replaced by discreet checks in that Member State. Where Directive 2013/48/EU applies, Member States shall ensure that the right of suspects and accused persons to have access to a lawyer is respected under the conditions set out in that Directive.

7 Paragraph 6 is without prejudice to the obligation of Member States to make available to end-users information sought under Article 36(2).

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