



EUROPEAN COMMISSION

*Brussels, 16.6.2021
C(2021) 4484 final*

Dear President,

The Commission would like to thank the Senat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU)2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol {COM (2020) 791 final}.

The Commission's proposal to enable Europol to enter alerts in the Schengen Information System was put forward to address potential security gaps that represent a threat to the internal security of the European Union. In line with the Opinion expressed by the Senat, the proposal respects the principles of subsidiarity and proportionality. Moreover, the proposal has been designed to include appropriate procedural and substantive safeguards to ensure the protection of fundamental rights in general and data protection rights in particular.

In response to the particular questions and remarks raised by the Senat, the Commission would like to refer to the attached annex.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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Vice-President*

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Member of the Commission*

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Annex

The Commission has carefully considered each of the issues raised by the Senat in its Opinion and is pleased to offer the following clarifications.

- On the responsibility of Europol concerning the new type of alerts, the proposal includes additional amendments to Regulation (EU) 2018/1862¹ to align its provisions concerning liability with Regulation (EU) 2016/794² and Regulation (EU) 2018/1725³. Liability rules are similar to those of Member States when it comes to Schengen Information System alerts. Europol is liable for any damage caused as a result of any act by Europol which is incompatible with Regulation (EU) 2018/1862, and the Court of Justice of the European Union has jurisdiction in disputes relating to compensation for damage.

- The proposed action to be taken in case of a hit on an alert entered by Europol fully respects both the mandate of Europol based on the Treaties as well as the sovereignty of Member States. The action to be taken upon a hit (new Article 37b in the proposal) is a non-coercive action, similar to the action to be taken in the case of a discreet check albeit with less information to be collected. It concerns information about the date and place of the check that resulted in a hit on the alert entered by Europol. The possibility to take further measures on the basis of national law is the same as for all of the other alert categories. For example, in case of a specific check, if the subject of the alert is found to carry illicit goods, the executing Member State will take action on the basis of its national law. If the action to be taken was carried out according to Regulation (EU) 2018/1862 and applicable national rules, then there is no issue with determining the liability. If the executing Member State causes unlawful damage then they are responsible, as in the case of all other alerts (confirmed by the Court of Justice of the European Union⁴).

- On the added value of the alert entered by Europol, compared to the state of play where only Member States enter alerts in the Schengen Information System, it is important to highlight the following elements:

¹ 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 (OJ L 312, 7.12.2018, p. 56).

² 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).

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals 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).

⁴ Judgment of the Court (Grand Chamber) of 31 January 2006; C-503/03; ECLI:EU:C:2006:74.

(i) An alert entered by Europol will serve to fill the gap, when there is a common agreement on the need to detect the person concerned on the EU territory, but no Member State is able or willing to enter an alert in the Schengen Information System (e.g. when there is no link between the person concerned and their territory). Currently, this information is not entered in the Schengen Information System and, as a consequence, persons representing a threat may enter in and move within the EU undetected.

(ii) The establishment of a joint process to verify third-country sourced information (new Article 37a (3) in the proposal), undertaken by Europol in cooperation with Member States, has a clear operational added value, including on the resources needed, over the current approach where Member States on a voluntary basis verify information and decide to enter an alert in the Schengen Information System for the purpose of the general EU interest. The current approach has several shortcomings, as it does not ensure that all persons representing a threat would be entered in the Schengen Information System on the one hand, and on the other hand it can lead to duplication (several Member States entering the same information).

(iii) The decision on the entry of an alert by Europol would only be taken at the end of the verification process, when no Member State would be willing or able to enter an alert and when there is no objection on the entry of the alert by Europol (new Article 37a (3) d) in the proposal). The entry of the alert by Europol would therefore by no means conflict with the competences of Member States in the entry of alerts but would be a “last resort” measure that opens up additional possibilities for Member States.

(iv) In the case of an alert entered by Europol, information about the hit would be directly sent to Europol, and Europol could serve as a bridge in the cooperation between the executing Member State and the third country that provided the information if the executing Member State so wishes (Article 48, new paragraph (4) in the proposal). It is important to point out that in case of alerts entered by Member States, Member States cannot provide information on the person to the third country due to the prohibition of international data transfer when it comes to data processed in the Schengen Information System and the related supplementary information (Article 65 of Regulation (EU) 2018/1862). Only Europol has an exception from this rule (Article 48(4) of Regulation (EU) 2018/1862).

- On the budgetary impact, the changes required for establishing this new alert category by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice will require a global amount of EUR 1,820,000 for the period 2021-2022. The proposal will also have an impact on the Member States requiring them to update their national systems, to be able to display the Europol alert to their end-users. These expenses are to be covered by the resources available to the Member States under the new Multiannual Financial Framework 2021-2027 for the development and maintenance of the Schengen Information System. The proposal will also require Europol to set up a technical interface for entering, updating and deleting data in the Schengen Information System. The parallel proposal to

amend the Europol Regulation⁵ covers the expenses related to the set-up of this interface by Europol.

⁵ COM(2020) 796