

CITIZENS' RIGHTS IN THE FIELD OF THE SCHENGEN INFORMATION SYSTEM

1. General presentation of the Schengen Information System

The Schengen Information System (SIS) was implemented as a search system for persons and objects by the Convention implementing the Schengen Agreement of 19 June 1990. The SIS was designed as a compensatory measure to the lifting of internal border controls with the aim of ensuring a high level of security in the European Union's area of freedom, security and justice. The Council Decision 2007/533/JHA of 12 June 2007, as well as the European Regulation 1987/2006 of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System, laid the legal foundation for the second generation of the SIS (SIS II) and introducing several new functionalities. Thus, the system includes the following alerts:

On persons:

- for a refusal of entry or stay;
- wanted for arrest for surrender or extradition purposes;
- who are missing;
- sought for assistance with a judicial procedure;
- for discreet checks or specific checks.

On objects:

- for discreet checks or specific checks;
- for seizure or use as evidence in criminal proceedings.

2. Legal framework applicable to SIS II as well as to data protection

The SIS II has been established by the following legal instruments:

- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II),
- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates,
- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

These legal instruments set up the framework for the data processing carried out in the context of the SIS II as well as for the rules in the field of data protection, even after the entry into force of the Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (hereafter "the Law enforcement Directive") and the respective national transposition laws. Indeed, in the context of the SIS II which was launched on April 9th, 2013, article 60 of the Law enforcement Directive is applicable which provides as follows: "*The specific provisions for the protection of personal data in Union legal acts that entered into force on or before 6 May 2016 in the field of judicial cooperation in criminal matters and police cooperation, which regulate processing between Member States and the access of designated authorities of Member States to information systems established pursuant to the Treaties within the scope of this Directive, shall remain unaffected.*"

3. The data controller

In Luxembourg, the data controller for the data processing in the context of the SIS II is the Grand Ducal Police, represented by its General Director.

4. The rights of private persons

In accordance with articles 58 of the SIS II Decision and articles 41 and 42 of SIS II Regulation, private persons have the right to introduce:

- A request for access to their data,
- A request for correction of inaccurate data,
- A request for deletion of unlawfully stored data.

These requests may be submitted to any Member State of the European Union operating the system and any of the four Schengen Associated States (Switzerland, Norway, Liechtenstein and Island). The receiving Member State will process the request according to their own national procedures in place as well as according to European rules in force.

On the subject of deadlines for processing, it should be noted that in accordance with the previously mentioned articles,

- Access requests will have to be processed within a deadline of 60 days (article 41(6) of the SIS II Regulation and 58(6) of the SIS II Decision) and
- Requests for correction or deletion will have to be processed within a deadline of 90 days (article 41(7) of SIS II Regulation and article 58(7) of the SIS II Decision).

Regarding the form, Member States will have to strive to respect both the form (letter or email) of the requestor as well as the language used by them, this of course as far as possible. In general, the Grand Ducal Police processes access requests as well as correction or deletion requests if they are introduced in any of the administrative languages of the country (Luxembourgish, French, German) or in English.

Finally, in exceptional circumstances, a Member State may decide not to communicate data contained in the SIS II in accordance with articles 58(4) of the SIS II Decision and 41(4) and 42(2) of the SIS II Regulation, in particular where the third country national manifestly is in possession of the information or where national law allows for the right of information to be restricted, in particular in order to safeguard national security, defence, public security and the prevention, investigation, detection and prosecution of criminal offences.

5. Right to file a complaint

In case the reply which is provided by the Grand Ducal Police does not satisfy the requestor, they have the right to introduce a complaint to the national supervisory authority, namely the "Commission nationale pour la protection des données", in accordance with article 77 of the (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), respectively in accordance with article 44 of the Luxembourg law of the 1st August 2018 on the protection of natural persons with regard to processing of personal data in the field of criminal procedure as well as national security (transposing the Law enforcement Directive). The DPA may be contacted under the following contact details:

Commission nationale pour la protection des données (CNPD)
Service des réclamations
15, Boulevard du Jazz
L-4370 Belvaux
Luxembourg.