



SIS II SCG

## SIS II SUPERVISION COORDINATION GROUP

Dear Mr President,

As representatives of national data protection authorities (“DPAs”) supervising the Schengen Information System of second generation (“SIS II”), we are writing to you as regards the lack of financial and human resources given out to our authorities to adequately perform their tasks in accordance with the legal framework.

Supervision over the N.SIS II is allocated to the DPAs in the respective Member State while the Management Authority (eu-LISA), responsible for the operational management of the Central SIS II, is supervised by the European Data Protection Supervisor (EDPS). To ensure coordinated supervision, representatives of the national DPAs and the EDPS meet at least twice a year within the SIS II supervision coordination group (“SCG”).

Article 44 of the SIS II Regulation<sup>1</sup> and Article 60 of the SIS II Decision<sup>2</sup> provide that the DPAs are responsible for monitoring the lawfulness of the processing of personal data and for conducting an audit to the N.SIS II data processing operations using international auditing standards at least every four years. In order to enable the DPAs to fulfil these tasks, the legislator has included in these two provisions the obligation for the Member States to provide DPAs with sufficient resources. The ongoing proposed legislative package repealing the current legal basis of SIS II also includes this obligation<sup>3</sup>.

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<sup>1</sup> 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)

<sup>2</sup> Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

<sup>3</sup> See Article 50.3 of the Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006, COM(2016) 882 final and Article 67.3 of the Proposal for a Regulation of the European Parliament and of the Council 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 Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU, COM(2016) 883 final.



However, in general this legal obligation is not being complied with. As a result many DPAs are facing major problems in the fulfilment of their tasks related to the supervision of the SIS II, due to several restraints to the means at their disposal at national level.

In this context, we would like to highlight that besides the SIS II, there are others EU large-scale IT systems that DPAs shall supervise at national level, what includes existing systems such as the Visa Information System<sup>4</sup> and the Eurodac system<sup>5</sup> but also new envisaged ones such as the European Travel Information and Authorisation System<sup>6</sup> and the Entry-Exit System<sup>7</sup>, where there is a similar provision in relation to the need to grant enough means and resources to DPAs.

In addition to the enlarged universe of information systems and the subsequent supervision tasks, it is noteworthy the Commission's intention towards interoperability<sup>8</sup> among all of them, which will make the supervision of these systems even more complex and demanding. In the coming months, the role and responsibilities of DPAs will thus be far broader in scope and scale, both at national and European level.

It is then of the utmost relevancy to be able to efficiently perform data protection supervisory tasks in this evolved framework, what will require a holistic approach, hence without having to sacrifice certain areas of intervention. Actually, the necessary funds to carry out this legal

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<sup>4</sup> Article 41 of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short stays visa ("VIS Regulation"), JOCE, 13.8.2008, L. 218/60 Article

<sup>5</sup> Articles 30.1 and 31.2 of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

<sup>6</sup> Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624, COM(2016) 731 final. (The "ETIAS proposal").

<sup>7</sup> Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011, COM(2016) 194 final (The "EES proposal").

<sup>8</sup> See the high-level expert group report on information systems and interoperability, available at: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=32600&no=1>



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obligation at Member State level should mirror the EU extra funds assigned to the development and enlargement of EU large-scale information systems, both at EU and national level.

Moreover, EU information systems in the area of justice and home affairs have a huge impact on the individuals' freedoms, rights and guarantees in particular on their right to data protection, enshrined in article 8 of the EU Charter of Fundamental Rights, and requiring thus a solid and permanent control by DPAs. This can only be achieved if DPAs are properly provided with adequate means and resources to duly perform their supervisory role, as already ruled by the Court of Justice of the European Union.

Therefore we urgently call upon EU institutions to ensure, to the best of their ability, that Union Law is fully and successfully complied with and DPAs are granted the necessary financial and human resources to allow a consistent, effective and independent supervision of the SIS II, as well as of other large-scale information systems in the JHA area.

Yours sincerely,

On behalf of the SIS II Supervision Coordination Group

Clara Guerra

Chair