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NOTE

from: Presidency
to: Working Party for Schengen Matters (SIS/SIRENE) /Mixed Committee
(EU-Iceland/Norway and Switzerland/Liechtenstein)

Subject: Implementation of Article 102A of the Convention Implementing the Schengen Agreement during the year 2010
- Draft report to be submitted to the European Parliament in accordance with Art. 102A(4) of the Convention Implementing the Schengen Agreement (CISA)

I. GENERAL

According to Article 102A (4) CISA each year, after seeking the opinion of the Joint Supervisory Authority on the data protection rules, the Council must submit a report to the European Parliament on the implementation of Article 102A. The report shall include information and statistics on the use made of the provisions of this Article; the results obtained in their implementation and shall state how the data protection rules have been applied. This is the fifth report since the Regulation No 1160/2005 on the new Article 102A entered into application in January 2006.

Article 102A of the Schengen Convention introduces, for services in the Member States responsible for issuing registration certificates for vehicles, a right to have access to specific data in the Schengen Information System. This concerns data on motor vehicles, trailers and caravans which have been stolen, misappropriated or lost, and registration certificates for vehicles and number plates.

Pursuant to decision 2006/228/JHA, data on these certificates and number plates may be processed in the Schengen Information System since 31 March 2006.

II. DATA PROTECTION RULES

Pursuant to Article 101(1) of the CISA, access to data entered in the SIS and the right to search such data directly was reserved exclusively to the authorities responsible for border checks and other police and customs checks. Article 102(1) established the purpose limitation principle – the data provided may only be used for in Articles 95 to 100 only for the purposes laid down for each category of alert referred to in those Articles. Furthermore, Article 102(4) of the CISA laid down a general prohibition to use the data for administrative purposes. Regulation (EC) No 1160/2005¹ added a new Article 102A to the CISA by introducing a right to the services in the Member States responsible for issuing registration certificates for vehicles to have access to the specific data in the Schengen Information System (SIS).

This new provision was necessary in order that clearly identified services (other than police and customs) responsible for issuing registration certificates for vehicles would be granted a right of access to certain SIS data for the sole purpose of checking whether the vehicles presented to them for registration have been stolen, misappropriated or lost. The introduction of an exemption to Articles 92, 100, 101 and 102 has changed the purpose of the SIS allowing access to the data not only for law enforcement purposes but also for administrative purposes.

Article 102A contains certain conditions in order to ensure that the fundamental data protection principles would be respected. It specifically defines the services responsible for issuing registration certificates for vehicles, granting the access right for the sole purpose of checking whether the vehicles presented for registration have been stolen, misappropriated or lost.

The authorities performing the checks are authorities which performed such checks in the past, mostly police authorities. Considering that the use of Article 100 data for the purpose laid down in Article 102A is the use of data for another purpose (checking vehicles before registration), such use of the data (Article 100, Article 102A) must be properly logged.

¹ OJ L 191, 22.07.2005, p.18.

The difference between the purpose of Articles 100 and 102A should be clearly distinguished. Article 100 (1) provides that data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in the SIS. Article 102A(1) states that the services responsible for issuing registration certificates for vehicles shall have the right to access the data entered into the SIS (under Article 100) for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost. According to recital (6) of Regulation (EC) No 1160/2005 such use of the data foreseen in Article 102A will be for administrative purposes. Therefore, the conditions laid down in Article 102A shall be interpreted strictly.

The only article in the CISA providing for an obligation to record every transmission is Article 103. The reference to Article 103 – the recording of every transmission for purposes of checking whether the search is admissible or not – is interesting since these records may provide for the statistical information on the use of the data referred to in Article 102A. Article 103 also provides Member States with the possibility to ensure control of the data used according to Article 102A. Also Article 118 (e) stipulates that one of the necessary measures to be adopted by the Member States in relation to the SIS is to ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control). Hence a proper logging of the use by vehicle registration offices of certain data to establish whether a vehicle was stolen, misappropriated or lost is obligatory.

The recording of every transmission for the purpose of checking enables the appropriate authorities to check the lawfulness of the processing of the data in accordance with Article 102A and to comply with the obligation to ensure data access control (Article 118 (e)). Failure to ensure the proper control of the use of data may have negative implications for data protection, i.e. implementation of the data quality, proportionality principles and data security. The obligation to record the transmission of Article 102A data is of great importance not only to ensure proper use but also to have reliable statistics.

In accordance with Article 102A(1) in fine, the access to data referred to in this Article by the competent services is governed by the national law of each Member State.

The implementation and the use of Article 102A CISA was strictly subject to the same rules on data protection as those laid down in the appropriate CISA provisions, notably in Arts. 101, 102, and 103 to 118, like any other data processed in the SIS. The national Data Protection Agencies are the supervisory authorities under Articles 114 and 128 CISA.

Data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates.

National Regulations in place prohibit information to be retrieved by the authorized personnel unless they have an active investigation regarding the vehicle in question. The SIS can only be accessed from specific computers where a specific user has logged in. Every consultation has to be logged properly. The SIS has only been made available to a limited number of people and information retrieved is in the form hit/no-hit. A hit will always be reported to the police who will investigate the matter.

III. CURRENT USE AND RESULTS

1. LU has initiated a project to implement Article 102 A CISA. In IS Art. 102 A CISA has not yet been implemented and according to the most recent information available, access to SIS information according to Article 102 A CISA has not yet been implemented in NO.
2. Due to its national organization, FI does not gain any added value by granting access to the services for issuing registration certificates for vehicles, because its customs authority is responsible for the equivalent verifications regarding imported vehicles.
3. In most of the countries currently applying Article 102A CISA, the authorities performing the checks are authorities which performed such checks in the past, mostly police authorities.
4. So far, these services have been other than government services in only one Member State (AT). As provided for in the second paragraph of Article 102A(2), these services have no direct access to the SIS.

5. However, a few Member States were unable to provide any relevant figures for 2010 for unknown reasons (DK, EL). In SK no statistics are available on Art. 102 A CISA.
6. The Road Traffic Licensing Departments of the 26 cantons of CH have direct access to the SIS. The Road Traffic Departments are able to determine whether a licence plate has been misused. Such access is granted on a case-by-case basis rather than automatically. Furthermore, CH cannot provide statistics because in the event of a hit the information will be forwarded to a cantonal police force and the police force will send the information to the SIRENE Bureau. SIRENE has no direct contact with the Road Traffic Licensing Departments.
7. In FR Art. 102 A CISA has been fully implemented. National Regulations in place ensure the same rules on data protection as those laid down in the appropriate CISA provisions. The access to data referred to in this Article by the competent authorities is granted on a hit/no hit index. A hit will always be reported to the police who will investigate the matter. As a consequence of budgetary reasons, technical tools to collect statistics have not yet been developed.
8. Some Member States may be having difficulty providing statistics as there are no resources to finance technical functionalities to collect statistics at the car registration authorities.
9. The first table² shows the number of hits when registering vehicles (102A CISA).
10. Since 1 January 2010 AT has changed the way it counts the hits. Now the only hits counted are those which arise during the registration process.

² Chapter IV. "Statistics"

11. The number of hits recorded in 2010 (951) shows that attempts are still being made to register a large number of stolen vehicles in BE. The fact that this is no longer possible reduces the value of a stolen vehicle on the Belgian illegal market. BE considers that it would greatly benefit itself and the other Member States if all vehicle registration services within the Schengen area could also check the number of the registration certificate, since large quantities of those documents are used to create cloned vehicles (8000 stolen vehicles per annum, including not only clones of BE vehicles, but certainly also many foreign vehicles (usually those of the country of registration). In BE a bona fide buyer can keep his or her vehicle.
12. In BG the Unit for control of automobile transportation (CAT) within the Chief Directorate for Public order and Security in the Ministry of the Interior obtained access to the SIS on 7 December 2010. Within this short period BG has already counted 50 hits on motor vehicles, 3 on trailers and caravans, 1 on certificates and 9 on number plates, i.e. a total of 63 hits in 2010.
13. In CZ 35 % of all hits result during car registration. The number of hits in the table represents just some of the hits linked to the vehicle registration checks . Due to continuing difficulties with data collection by the car registration authorities, the statistics provided are incomplete.
14. In DE 69 % of hits on foreign alerts concerning vehicles result from a checks on the vehicles which had been registered. Because it is possible to check every vehicle before registration, police can take steps to prevent vehicles from being legalised in DE. This also ensures better protection for bona fide individuals in that they can take legal action at an earlier stage. Even before this measure was implemented, DE police carried out checks on vehicles after registration. This procedure will be maintained in the future. For technical reasons, no access to license plates or vehicle registration documents is possible at present. This situation will be rectified in the future. The implementation of this Article now also allows the vehicle registration authorities to carry out checks prior to registration on behalf of all of the 450 local authorities. Statistics on transmission cannot be provided because not all of the car registration authorities have developed technical tools to collect these statistics for budgetary reasons.

15. According to EE legislation, the vehicle should be registered with the Estonian Road Administration (ERA) after the sales contract is concluded. In the event of a hit in the Schengen Information System, the vehicle and its documentation will be seized. A person who has bought a stolen vehicle can apply to the civil courts for compensation for damages from the person who sold the vehicle. If the person who has sold the vehicle remains unidentified, the person who bought the stolen vehicle stays has no legal protection. The implementation of Article 102A does not extend to the protection of bona fide persons who have acquired a stolen vehicle. The total number of hits relates to vehicles, caravans, trailers and licence plates as the statistical tool does not permit division into different categories, although it is possible to specify the number of searches for each category (see the second table under the heading "Statistics").
16. In ES, access to the SIS by the authorities concerned is granted on a hit/no hit index based on the VIN number, as in the other Member States. All queries are logged as provided for in Art. 103 (as referred to above). In 2010 there were 20 hits (in 2009: 16 hits).
17. HU has registered 17 hits on motor vehicles, 1042 on trailers and caravans, 105 on certificates and 3541 on number plates, i.e. a total of 4705 hits in 2010. This shows a significant increase (40 %) in comparison to the number of hits reported in 2009 (3347).
18. In LT the vehicle registration authority received direct access on 16 September 2008. It has registered 3144 hits on motor vehicles, 129 on trailers and caravans, 46 on certificates and 35 on number plates, i.e. a total of 3354 hits in 2010. This represents an enormous increase - almost 13 times as many - in comparison to the number of hits reported in 2009 (270).
19. In LV there were 73 internal hits for vehicles, of which 7 were detected by the Road Traffic Safety Directorate.
20. In MT searches are still carried out solely after registration. The Malta Police Force receives the lists only after the vehicles have been registered. The whole process is time-consuming.

21. In SE an increase in the number of hits has been noted since the implementation of Article 102A CISA. This increase is due mainly to the new automatic and routine SIS checks, which are now performed on all vehicles that are to be registered in SE. In 2009 there were 7 hits and in 2010 there were almost four times as many (a total of 27).
22. SI reports that the number of hits increased between the time Art. 102 A was implemented in December 2007 and the beginning of 2009. In comparison, the number of hits regarding Art. 102 A would be very low nowadays due to the implementation of Art. 102 A.
23. The second table shows that some Member States (HU, LT, LV, NL, PL) may have fully implemented the requirement to collect statistics, thus allowing them to provide statistics mostly for searches of each category including the number for each category of hits. The statistical tool in EE allows only the total number of hits to be shown, divided into the number of searches for each category. Several Member States (BE, CZ, IT, MT) are able to provide statistics besides the hits on the total number of searches, as shown by table 3.
24. In BE, BG, CZ, DE, EE, ES, HU, LT, LV, PL, RO, SE, SK, SI, searches carried out by car registration authorities are recorded separately in the N.SIS in order to comply with the relevant Schengen Convention data protection rules regarding Art. 103 CISA.

In conclusion, in 2010 Article 102A CISA was totally or partially implemented in the following countries participating in the Schengen Information System: AT, BE, BG, CZ, DE, DK, EE, EL, ES, FR, HU, IT, LT, LV, MT, NL, SE, SI, SK, PL, RO and CH.

IV. STATISTICS

Implementation of Article 102A CISA during 2010.

	AT	BE	BG	CZ	DE	DK	EE	ES	EL	FR	HU	IT	LT	LV	MT	NL	PL	RO	SE	SI	SK	CH
Government authority	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Direct access	NO	YES	YES	YES	YES	NO	NO	YES	NO	YES	YES	NO	YES	YES			NO	YES	NO	YES	YES	YES
Indirect access	YES		YES		NO	YES										YES		YES		YES	YES	NO
A search is always automatically performed when registering vehicles	YES	YES	YES	YES	NO		YES	NO	NO	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES	NO
Items of Article 102A implemented:																						
a) motor vehicles	X	X	X	X	X		X			X	X		X		X	X	X	X	X	X	X	X
b) trailers and caravans	X	X	X		X		X			X	X		X		partial	X	X	X	X	X	X	X
c) (i) certificates			X				X				X						X	X			X	
c) (ii) number plates	X		X				X				X		X		X		X		X		X	X
Hits occurred when registering vehicles	23	951	63	75	1282	n/a	15	20	n/a	n/a	4705	444	3354	7	1	212	200	16	27	4	n/a	n/a

	HITS motor vehicles	Searches motor vehicles	HITS trailers and caravans	Searches trailers and caravans	HITS certificates	Searches certificates	HITS Number plates	Searches on number plates	TOTAL HITS	TOTAL SEARCHES
EE³		723524				506			15	724030
HU	17	11140	1042	18718	105	187024	3541	150667	4705	367549
LT	3144	1565442	129		46	279004	35	54719		
LV	6	48747		4108	1	30606			7	83461
MT	1	7016						7016	1	21048
NL	212	617		185					212	802
PL	83	83381	2		11	7161	104		200	90542

	TOTAL HITS	TOTAL SEARCHES
BE	951	1.199.550
CZ	75 ⁴	1.269.186
IT	444	222.368
SI	4	4

³ see Chapter III. "Current use and result", point 14.

⁴ see Chapter III. "Current use and result", point 12.

V. CONCLUSIONS

- a) According to Annex I to Council Decision 2007/471/EC, the provisions of Article 64 and Articles 92 to 119 CISA, as well as Regulation (EC) No 1160/2005, are applicable to the new Schengen States as from 1 September 2007. As already reported in the report on the Implementation of Article 102A of the Convention Implementing the Schengen Agreement, in the course of 2009 almost all of the "new" Member States have implemented Article 102A CISA either fully or partly on time or with short delays.
- b) Hence in 2010 Article 102A CISA had been totally or partially implemented in the following Member States: AT, BE, BG, CZ, DE, DK, EE, EL, ES, FR, HU, LT, LV, MT, NL, SE, SK, SL, PL, RO and CH.
- c) In most of the countries currently applying Article 102A CISA, the authorities performing the checks are authorities which performed such checks in the past, mostly police authorities.
- d) In the majority of the countries, the checks foreseen in Art. 102A were already performed before the implementation of this Article, by means of cooperation between the vehicle registration authorities and the law enforcement authorities, which had access to the SIS. This may explain why the results obtained in the initial years of implementation are not as visible as might have been expected in some Member States.
- e) Nevertheless most of the Member States have already realised an added value in the implementation of Article 102A CISA as described above. Member States in which Art. 102A has recently been implemented have already stated a remarkable increase in registering hit results (e.g. BG, HU, LT).
- f) Article 102A is regarded as an important tool in combating organised vehicle crime and helps to protect the bona fide customers of imported stolen used cars.
- g) It was also observed that Article 102A may be having an influence on the changed modus operandi of organised crime, which could require further measures.

- h) Even though that the implementation of Article 102 A CISA is assessed as positive, some Member States analysed that further efforts are necessary to reinforce the impact of that Article, namely physical qualified checks on vehicle identifiers (e.g. VIN) when registering the car, repeated checks during car registration in order to be able to react to delayed reports of car thefts, harmonised rules in the EU for stolen car seizure and repatriation procedures.
- i) As far as reported, data protection rules have been applied according to the CISA provisions. Data used under Article 102A CISA are alerts on vehicles, trailers and caravans, registration certificates for vehicles and number plates.
- j) The services responsible for issuing registration certificates for vehicles are entitled to have access to the relevant SIS data, in accordance with Art. 102A (1), for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost.
- k) The content of the searches (where the data were entered or could be entered in the system), which is made up of alerts on stolen, misappropriated or lost motor vehicles, trailers, caravans and vehicle licence plates, may contain the following data: make, vehicle identification number, registration number, colour, nationality and related remark. Alerts on stolen, misappropriated, lost or invalidated registration certificates for vehicles may contain the following data: document number(s) (a second document number may also be inserted, if available, when the alert concerns a document which has already been issued, and the minimum and maximum numbers when the alert concerns a blank document), category, nationality, surname, date of birth, date of loss. Both types of alert contain the Schengen reference number, the reason for request, the action to be taken, the insertion date and the expiry date.
- l) National data protection authorities generally consider registration certificates and number plates to constitute personal data, unless the circumstances of processing do not provide any possibility of identifying the holder, or require an unreasonable amount of effort to do so. Data are generally processed on a hit/no hit basis and via the VIN number.

- m) Article 102A(3) stipulates that the communication by the vehicle registration authority to the police or judicial authorities of information brought to light by a search of the SIS which gives rise to suspicion of a criminal offence shall be governed by national law, which is the case in the Member States.
- n) The hit in the SIS will be confirmed following the exchange of supplementary information between the SIRENE Bureau of the Member State that has registered the hit and the SIRENE Bureau that has issued the SIS alert. The action of seizure on the basis of the alert will be taken by police authorities. Hence an official employed by a service responsible for issuing vehicle registration certificates is not required to further process personal data retrieved from the SIS. Once the official has achieved a hit following a search in the SIS on the data categories which he or she is authorised to search, the national SIRENE Bureau will be contacted.
- o) Several Member States do not compile records in relation to Article 102 A CISA and some are still developing an effective tool for the relevant statistics despite the fact that proper log-keeping is ensured. In some Member States budgetary problems make it difficult to implement related technical functionalities to collect statistics from the car registration authorities.
- p) Member States have to provide full and up-to-date statistics for the 2011 review of the implementation of Article 102A.

VI. NEXT STEPS

After having been examined by the Working Party for Schengen Matters (SIS/SIRENE) on 14 September 2011 this report will be forwarded to the Joint Supervisory Authority (JSA) for an opinion. After the JSA has delivered its observations, the report will be finalised by the Working Party for Schengen Matters (SIS/SIRENE). Then the draft report will be submitted to COREPER and Council to be forwarded to the European Parliament in accordance with Art. 102 A (4) of the Convention Implementing the Schengen Agreement.