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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 2011
- 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 is to include information and statistics on the use made of the provisions of this Article as well as the results obtained in their implementation, and should state how the data protection rules have been applied. This is the fifth report since Regulation No 1160/2005 establishing the new Article 102A entered into force in January 2006.

Article 102A of the Schengen Convention entitles services in the Member States responsible for issuing registration certificates for vehicles to 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, since 31 March 2006 data on these certificates and number plates may be processed in the Schengen Information System.

II. DATA PROTECTION RULES

Pursuant to Article 101(1) CISA, access to data entered in the SIS and the right to search such data directly was reserved exclusively for the authorities responsible for border checks and other police and customs checks. Article 102(1) established the purpose limitation principle – the data provided for in Articles 95 to 100 may be used only for the purposes laid down for each category of alert referred to in those Articles. Furthermore, Article 102(4) CISA laid down a general ban on using the data for administrative purposes. Regulation (EC) No 1160/2005¹ added a new Article 102A to the CISA, thereby introducing the right for 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 to grant clearly identified services (other than police and customs) responsible for issuing registration certificates for vehicles 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 fundamental data protection principles are 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 the 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, 22.7.2005, 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 must be entered in the SIS. Article 102A(1) states that the services responsible for issuing registration certificates for vehicles 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 referred to in Article 102A will be for administrative purposes. Therefore, the conditions laid down in Article 102A are to be interpreted strictly.

The only CISA article providing for an obligation to record every transmission is Article 103. The reference to Article 103 – the recording of every transmission for the purposes of checking whether the search is admissible or not – is interesting since these records may provide 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). That is why proper logging of the use by vehicle registration offices of certain data to establish whether a vehicle was stolen, misappropriated or lost is mandatory.

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 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 Articles 101, 102, and 103 to 118, like any other data processed in the SIS. The national Data Protection Agencies act as 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 being retrieved by authorised personnel unless they are conducting 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. In **Germany**, in 2011, 68% of the hits on foreign alerts concerning vehicles resulted in checks on registered vehicles, however it is not possible to ascertain if the increase is due to the implementation of this article. Nonetheless, now it is possible to check every vehicle before registration, allowing police to prevent the legalisation of vehicles and to initiate early the legal measures deemed necessary. It ensures better protection for bona fide individuals, and is also a measure to assist prevention and the fight against vehicle-related crime.

Owing to technical reasons, it is currently not possible to have access to licence plates and vehicle registration documents, however this situation will be rectified in the future.

DE policy requires a systematic check on vehicles prior to registration, a procedure that will be maintained in the future, also on behalf of the 450 local authorities.

2. The legal procedure established in **Belgium** requires systematic checks to be performed when a request for a vehicle registration is entered into the system of the vehicle registration authority. In consequence, the number of hits is higher in comparison with the results obtained through checks in the SIS performed only by field officers.

The statistics for hits show that there are still a high number of attempts to register stolen vehicles in BE. The fact that this is no longer possible reduces the value of a stolen vehicle on the illegal BE market.

On the other hand, BE considers that it would greatly benefit Belgium 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 (8 000 stolen vehicles per annum, including not only clones of BE vehicles, but certainly also of many foreign vehicles (usually those of the country of registration)). In BE a bona fide buyer can keep his or her vehicle.

3. In **Greece** the authorities which are responsible for vehicle registration (Ministry of Infrastructure, Transport and Networks) currently have indirect access to this category of data. Direct access will be established upon full implementation of SIS II.

The results of the implementation of this article are encouraging. It has led to an increase in hits, and thereby enhanced the capability of the services in the fight against illicit trafficking of stolen vehicles and the protection of bona fide individuals.

4. According to **Estonia** legislation, all vehicle-related data, namely registration and alterations to the registration should be checked through SIS by the Estonian Road Administration (ERA). Therefore, almost 50% of all hits discovered are based on checks performed by ERA. 30% (15 vehicles) of the vehicles were captured in conjunction with ERA (in the event of a hit in the SIS 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 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 allow for a breakdown into different categories, although it is possible to specify the number of searches for each category (see the second table under the heading "Statistics").

The implementation of Article 102A has been a great success in terms of restricting the scope for smuggling stolen vehicles.

5. The registration of vehicles in **Slovakia** requires a mandatory search in the SIS and the implementation of Article 102A has provided added value in terms of its preventive function. If there is a hit, it is not possible to register the vehicle.

6. The application of Article 102A in **Poland**, together with other methods and police techniques, has contributed to the fight against organised crime by preventing the registration of vehicles stolen, misappropriated or lost in any other way (allowing the discovery of 129 hits recorded in the category of vehicle and 4 hits in the category of certificate). It has contributed to reliable verification of vehicle and document registration in accordance with national legislation and a decrease in the registration of vehicles and documents stolen, misappropriated or lost in any other way. It also protects citizens against the harmful effects of the possession and use of such vehicles and documents.
In PL checks made by the competent local authorities on the registration of vehicles are currently carried out manually by the Central Technical Body of the National Technical Information System. A total of 106 301 requests for data were received from the 256 local authorities competent for the registration of vehicles from all over PL, including questions related to 99 108 vehicles and 7 193 vehicle registration documents.

7. Since 1 January 2010 **Austria** has changed its way of counting hits. The only hits currently accounted for are those which arise during the registration process.

8. In **Bulgaria** the Unit for the 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 as from 7 December 2010. Since then, and as a result of the implementation of Article 102 A, there has been an increase in the number of hits. The application of this provision has helped to prevent organised crime related to the trafficking of stolen vehicles, certificates and insurance fraud.

9. In **Switzerland**, in the event of a hit, the competent police force is directly contacted by the Road Traffic Licensing department. This situation does not allow the registration of a detailed statistic.

10. Like in 2010, Czech Republic 35 % of all hits resulted from car registration. The number of hits in the table represents only some of the hits linked to vehicle registration checks. Owing to

continuing difficulties with data collection by the car registration authorities, the statistics provided are incomplete.

Implementation of this provision is positive, however further efforts are necessary to reinforce the impact of the Article, namely physical qualified checks on vehicle identifiers (e.g. VIN) when registering the car, repeated checks during car registration to be able to react on delayed reports of car thefts, harmonised rules in the EU for stolen car seizure and repatriation. Also, cooperation between the police and car registration authorities must be improved.

CZ authorities are still working on finding the best way of communicating with the car registration authorities about hits and obtaining statistical data from them in the form necessary for this report.

11. **Hungary** performs real-time, systematic and automatic CISA Art 102A checks on the VIN, L/P and the last Registration Certificate of all vehicles presented for registration before issuing the new Registration Certificate. This is the only procedure that enables the verification of vehicle provenance before its fraudulent legalisation.

12. In **Latvia** the implementation of Article 102A is a very important issue, because the Road Traffic Safety Directorate in Latvia is able to query the SIS and to ascertain stolen, lost and misappropriated vehicles as well other objects under Article 100 CISA. The matching of the hit provides useful information for the ensuing investigation, in some cases concerning organised crime.

13. **Romania** has recorded a clear increase in the number of hits discovered due to the implementation of Article 102A. The application of this Article has also improved police investigations, with regard to both organised crime and police checks for clarification of the legal status of vehicles.

Article 102A is only partially implemented in RO, meaning that access to the SIS database is allowed only to the authorities involved in the process of vehicle registration. In order to fully implement the Article it would be necessary to amend the legislation and to develop a technical system that could offer a hidden access to the SIS database to those entities that currently do not have access.

14. In **Sweden** all vehicles (cars, trucks, lorries, motorcycles, buses, trailers and caravans) that are registered or re-registered are checked through SIS at least once prior to registration. This enables a systematic approach to checking vehicles and their identities prior to registration or re-registration.
15. In **Denmark** Article 102A CISA is not yet fully implemented.
16. **Malta** does not consider that the partial implementation (available only for police authorities) of Article 102A brought an increase in hits related to stolen vehicles locally. Hence the lack of significant results from the small amount of hits.
17. 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. So far, these services have been services other than government services in only one Member State (AT). As provided for in the second paragraph of Article 102A, these services have no direct access to the SIS.
18. However, a few Member States were unable to provide any relevant figures for 2011 due to the fact that the provision has not been fully implemented (DK).
19. Some Member States may be having difficulty providing statistics as there are no resources to finance technical functionalities to collect statistics from the car registration authorities.
20. The first table shows the number of hits when registering vehicles (102A CISA).

21. The second table shows that some Member States 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, BG, CZ, EE, HU, IT, LT, MT, NL, RO) are able to provide statistics in addition to the hits on the total number of searches, as shown by table 3.

22. In BE, BG, CZ, DE, EE, 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 Article 103 CISA.

In conclusion, in 2011 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, FR, HU, IT, LT, LV, MT, NL, SE, SI, SK, PL, RO and CH.

IV. STATISTICS

Implementation of Article 102A CISA during 2011

	AT	BE	BG	CH	CZ	DE	DK	EE	EL	FR	HU	IT	LT	LV	MT	NL	PL	RO	SE	SI	SK
Government authority	NO	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	YES	NO	NO	NO	YES	YES	NO	YES	YES	NO	NO	YES	YES	NO	YES	YES
A search is always automatically performed when registering vehicles	YES	YES	YES	NO	YES	NO	NO	YES	NO	YES	YES	NO	YES	YES	NO	YES	NO	NO	NO	YES	YES
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	X	X
b) trailers and caravans	X	X	X	X	X	X	X	X		X	X		X	X		X	X	X	X	X	X
c) (i) certificates			X	X	X			X			X		X	X			X				X
c) (ii) number plates	X		X	X	X			X			X		X				X		X	X	X

Hits pursuant Article 102A CISA

	HITS motor vehicles	HITS trailers and caravans	HITS certificates	HITS Number plates	TOTAL HITS
AT	6			1	7
BE	951				951
BG					735
CZ	596		258	1980	2834
EE	15				15
HU	204	434	136	165	939
IT	531				531
LT	920	19	183	271	1393
LV	18	1	9		28
MT	12			3	15
NL	211				211
PL	113	12	4	4	133
RO					111
SE	24				24
SI					10

Searches pursuant Article 102A CISA

	Searches motor vehicles	Searches trailers and caravans	Searches certificates	Searches on number plates	TOTAL SEARCHES
BE	1199550				1199550
BG					3334555
CZ	932538		183789	183391	1299718
EE	723524		506		724030
HU	49831	5860	73547	7231	136469
IT	223814				223814
LT	565623	27074	460908	94060	1147665
MT	11052			11052	22104
LI					1071
NL	628	187			815
RO	131423	10823			142246

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 stated 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 implemented Article 102A CISA either fully or partly, on time or with short delays.
- b) In 2011, therefore, Article 102A CISA had been totally or partially implemented in the following Member States: AT, BE, CZ, DE, DK, EE, EL, ES, FR, HU, IT, LT, LV, MT, NL, SE, SI, SK, PL, RO and CH.
- c) In most of the countries currently applying Article 102A CISA, the authorities performing the checks are the authorities which performed such checks in the past, mostly police authorities.
- d) In the majority of the countries, the checks referred to in Article 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 provided an added value in the implementation of Article 102A CISA as described above. Member States in which Article 102 A has recently been implemented have already stated a remarkable increase in registering hit results (e.g. BG, GR, MT, RO).
- 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 the implementation of Article 102A CISA is assessed as positive, some Member States consider 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. The 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 Article 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 regard registration certificates and number plates as constituting 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 notification 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 is to 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 102A 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 it is examined by the Working Party for Schengen Matters (SIS/SIRENE) on 30 April 2012 this report will be forwarded to the Joint Supervisory Authority (JSA) for an opinion. Once the JSA has delivered its observations, the report will be finalised by the Working Party for Schengen Matters (SIS/SIRENE). The draft report will then be submitted to COREPER and Council to be forwarded to the European Parliament in accordance with Article 102A(4) of the Convention implementing the Schengen Agreement.