Revision of the Schengen Information System for border checks
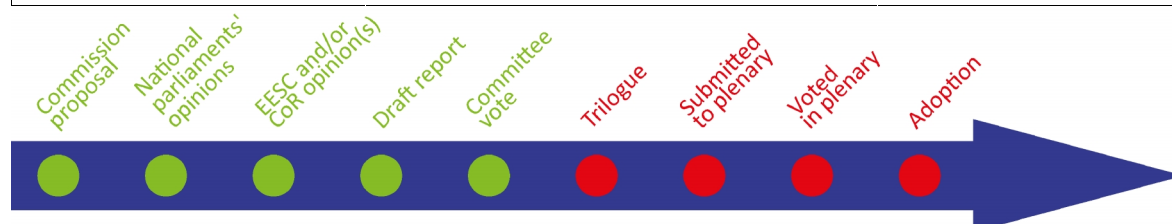
OVERVIEW

The Schengen Information System (SIS) is a large-scale information database that supports external border control and law-enforcement cooperation in the Schengen states by enabling competent authorities, such as police and border guards, to enter and consult alerts on wanted or missing persons and lost or stolen property. In view of responding more effectively to new migration and security challenges, in December 2016, the European Commission put forward a package of three legislative proposals aimed at revising the legal framework of the SIS.

The proposal on the establishment, operation and use of the SIS in the field of border checks provides for more effective use of fingerprints and facial images in the SIS, and imposes an obligation on the Member States to record all entry bans issued to third-country nationals who have been found staying illegally in their territory.

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

Committee responsible:	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2016) 882 21.12.2016
Rapporteur:	Carlos Coelho (EPP, Portugal)	2016/0408(COD)
Shadow rapporteurs:	Miriam Dalli (S&D, Malta), Jussi Halla-Aho (ECR, Finland), Gérard Deprez (ALDE, Belgium), Marie-Christine Vergiat (GUE/NGL, France), Eva Joly (Greens/EFA, France), Jörg Meuthen (EFDD, Germany), Lorenzo Fontana (ENF, Italy)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Trilogue negotiations	

Commission proposal · National parliaments' opinions · EESC and/or CoR opinion(s) · Draft report · Committee vote · Trilogue · Submitted to plenary · Voted in plenary · Adoption

EN

Introduction

The Schengen Information System (SIS) was established by the Convention implementing the Schengen Agreement in 1990, as a primary compensatory measure for the abolition of controls at the internal borders in the Schengen area. SIS II – the current version of the system – was established in 2006 and became operational in 2013. Its legal basis is currently defined by Regulation (EC) No 1987/2006 on alerts on persons, Regulation (EC) No 1986/2006 on alerts on vehicles, and Council Decision 2007/533/JHA on alerts on missing and wanted persons and objects. In 2014, Regulation (EU) No 515/2014 established, within the Internal Security Fund, the instrument for financial support for external borders and visa, in order to support a common visa policy and an integrated border management.

To respond more effectively to new migration and security challenges in recent years, the EU decided to implement a set of measures aimed at strengthening its external borders and enhancing cooperation and information exchange between Member States. One such measure was the proposal for a European Border and Coast Guard in 2015 and its launch in October 2016. Similarly, in December 2015, the European Commission proposed a targeted modification of the Schengen Borders Code to establish mandatory systematic checks for all travellers entering or exiting the EU. Within the revised smart borders package of February 2013, the Commission launched a proposal to establish an EU entry/exit system (EES) for registering data on the entry and exit of third-country nationals crossing the EU's external borders. The proposal for a European travel information and authorisation system (ETIAS), put forward in November 2016, is aimed at introducing a pre-screening mechanism requiring visa-exempt third-country nationals to obtain authorisation to travel to the Schengen area.

The proposal for the establishment, operation and use of the SIS in the field of border checks is part of a reform package that also includes a proposal on the use of the SIS in the field of police cooperation and judicial cooperation in criminal matters, and a proposal on the use of the SIS for the return of illegally staying third-country nationals.

Context

Recently, the EU's external borders have come under strain due to a dramatic surge in the number of people crossing them, either legally or illegally. The number of non-EU citizens travelling to the EU has increased from 49 million individuals (191 million border crossings) in 2014, to 50 million individuals (200 million border crossings) in 2015. It is estimated that the number of non-EU travellers will continue to increase and will reach 76 million (302 million border crossings) by 2025. The number of illegal crossings detected at the EU's external borders reached

Figure 1 – Detections of illegal crossings of EU external borders (in millions)

Data source: Frontex, 2014, 2015, 2016.

1.8 million in 2015, despite efforts to stop this flow, 0.5 million in 2016 (see Figure 1). The unprecedented influx of irregular migrants exposed deficiencies in the EU border management system and led to the temporary reintroduction of checks along several internal borders.
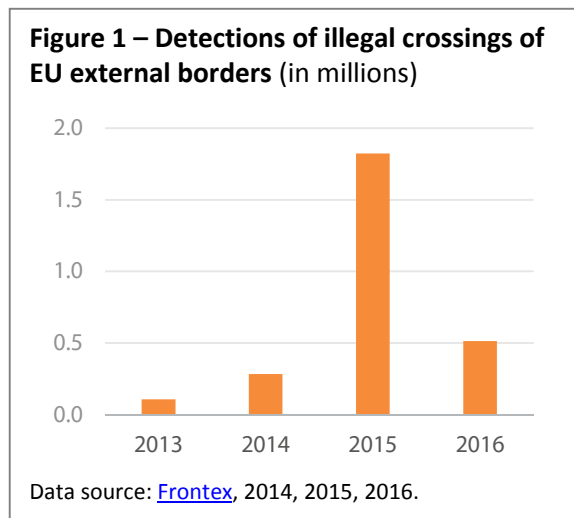
Existing situation

Characteristics of the SIS

The SIS consists of three components: 1) a central system; 2) national systems in each Member State that communicate with the central system; and 3) a communication infrastructure. Member States can enter, update, delete and search data via their national systems and exchange information via the Supplementary Information Request at the National Entry bureaux (Sirene). Member States are responsible for setting up, operating and maintaining their national systems and national Sirene bureaux. The EU Agency for large-scale IT systems in the area of freedom, security and justice (eu-LISA) is responsible for the operational management of the central system and the communication infrastructure. The Commission is responsible for the general oversight and evaluation of the system and for the adoption of implementing measures. The European Data Protection Supervisor (EDPS) monitors the application of the data protection rules for the central system, while the national data protection authorities supervise the application of the data protection rules in their respective countries.

SIS alerts cover the following categories of persons and objects:

- refusal of entry or stay to third-country nationals who are not entitled to enter into or stay in the Schengen area;
- persons for whom a European arrest warrant or an extradition request (in the case of associated countries) has been issued;
- missing persons, in view of placing them under protection, if necessary;
- persons sought to assist with criminal judicial procedures;
- persons and objects for discreet or specific checks, in view of prosecuting criminal offences and preventing threats to public or national security;
- objects for seizure or use as evidence in criminal procedures.

SIS alerts consist of three types of data: identification data for the person or object that the alert is about; information about why the person or object is being sought; and instructions for concrete action to be taken by officers on the ground when the person or object is found. Access to data is given to national authorities responsible for border control, police, customs, visa and vehicle registration and, by extension, to national judicial authorities when this is necessary for the performance of their tasks. The European Police Office (Europol) and the European Union's Judicial Cooperation Unit (Eurojust) have limited access rights for performing certain types of queries.

SIS checks are mandatory for the processing of short-stay visas, for border checks for third-country nationals and, on a non-systematic basis, for EU citizens and other persons enjoying the right of free movement. Every police check on the territory of a Schengen state should include a check in the SIS.

Any person has the right to access SIS data related to them, as provided for by the national law of the Member State concerned. Access may only be refused when this is indispensable for the performance of a lawful task related to an alert, and for protecting the rights and freedoms of other people. Individuals may bring actions before courts or other authorities competent under the national law to access, correct, delete or retrieve information, or to obtain compensation in connection with an alert relating to them.

Identified shortcomings

According to eu-LISA reports, the number of alerts entered into the SIS increased from 50 million to 63 million, between December 2013 and December 2015 (see Figure 2). However, the distribution of alerts and the use of the SIS have been uneven among Member States. In 2015, three Member States generated more than half of the total number of alerts: Italy (18 million) Germany (9.5 million) and France (6.5 million). During the reference period, the great majority of alerts in the SIS were related to documents issued. The number of alerts on persons remained low and decreased slightly, from 861 900 (1.7 % of total) in 2013 to 793 318 (1.2 % of total) in 2015. The majority of alerts on persons in the SIS concerned refusals of entry or stay. The number of searches in the SIS increased from 1.2 billion to 2.9 billion between April 2013 and December 2015.

Figure 2 – SIS alerts (in millions)
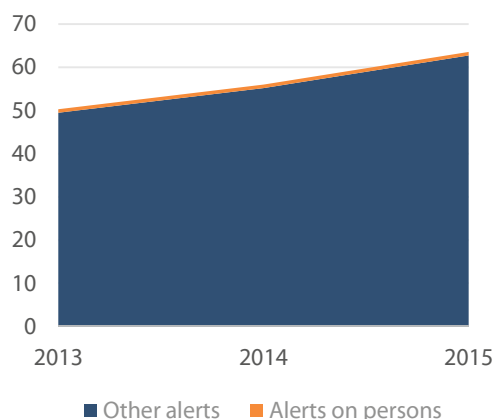
Data source: eu-LISA, 2014, 2015, and 2016 and 2017.

However, in 2015, three Member States conducted about half of the searches: France (555 million), Spain (398 million) and Germany (393 million).

Currently, identity checks in the SIS are based on alphanumeric searches (name and date of birth). Fingerprints can only be used to verify and confirm the identity of a person who has already been identified by name. The SIS legal framework allows the use of biometrics for verifying identity, provided that the necessary technology is available.

In a March 2016 report, the European Counter-terrorism Coordinator (ECTC) pointed to problems related to the fact that the SIS does not have common standards for inserting alerts and for interpreting and reporting information: there are incompatibilities between the rules on issuing alerts that hinder the creation of alerts on different grounds for the same person; furthermore, alerts often lack relevant information, which makes it difficult to hold persons at the scene in case of a discreet check. Although Europol has the right to directly access and search data in the SIS for arrests, discreet and specific checks, and objects for seizure, so far it has carried out only a limited number of searches.

According to the current rules, there are categories of persons that are not sufficiently covered by the SIS. There is an information gap with regard to EU citizens and other persons enjoying the right of free movement (such as third-country nationals who are family members of EU citizens) are not subject to systematic checks when crossing Schengen borders. The Commission proposal for a targeted modification of the Schengen Borders Code sought to make it mandatory for Member States to carry out systematic checks against relevant databases for all persons entering or exiting the Schengen area.

Parliament's starting position

The European Parliament has consistently advocated more effective cooperation between Member States' law enforcement authorities, provided that appropriate safeguards on data protection and privacy are maintained. In its resolution of 11 February 2015 on anti-terrorism measures, the Parliament restated its call on the Member States to make optimal use of existing databases, and reiterated that 'all data collection and sharing, including by EU agencies such as Europol, should be compliant

with EU and national law and based on a coherent data protection framework offering legally binding personal data protection standards at an EU level'. In its resolution of 6 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament stressed that the integrity of the Schengen area and the abolition of internal border controls are dependent on effective external border management and effective information exchange between Member States.

The Parliament has broadly supported the upgrading of the Frontex mandate and the establishment of the European Border and Coast Guard Agency, which was given the additional task of assisting Member States in implementing return decisions. In its resolution of 6 July 2016 on the strategic priorities for the Commission's 2017 work programme, the Parliament called on the Commission to present proposals to improve and develop the existing information systems in order to address information gaps.

Council and European Council starting position

The **European Council** has repeatedly called for reinforcing the management of the EU's external borders in order to cope with migration pressure and security challenges. The European Council's strategic guidelines for justice and home affairs of June 2014 identified the need to improve the link between the EU's internal and external policies and called for the intensification of operational cooperation among Member States, 'while using the potential of information and communication technologies' innovations'. In its conclusions of 15 October 2015, the European Council called for devising 'technical solutions to reinforce the control of the EU's external borders to meet both migration and security objectives, without hampering the fluidity of movement'. In its conclusions of 17- 18 December 2015, the European Council urged to address the shortcomings at the external borders, notably by ensuring systematic security checks with relevant databases.

In its conclusions of 10 June 2015 on the renewed European Union internal security strategy 2015-2020, the **Council** called for 'reinforcing border security through systematic and coordinated checks against the relevant databases based on risk assessment', and for 'improving information exchange and accessibility, especially by ensuring the interoperability of different information systems'. On 6 June 2016, the Council Presidency put forward a roadmap to enhance information exchange and information management including interoperability solutions in the area of justice and home affairs. In its note Information technology (IT) measures related to border management, presented on 3 October 2016, the Council Presidency maintained that a well-functioning information architecture constituted a prerequisite for effective border management.

Preparation of the proposal

In its communication on a European agenda on migration, the Commission stated that managing the borders more efficiently requires making better use of the opportunities provided by IT systems and technologies. In another communication, on a European agenda on security, the Commission announced its intention to revise the SIS legal framework and to look into possibilities to assist Member States in implementing travel bans. In the EU action plan on return, the Commission stated that the existing European information systems should be better used to enhance the effectiveness of the EU return system, and announced proposals to make it compulsory for Member States to introduce all entry bans and return decisions into the SIS. The Commission communication on stronger and smarter information systems for borders and security explored options on how existing and future information systems could enhance external border

management and internal security, and discussed the possibility of creating an SIS alert on irregular migrants subject to return decisions.

In June 2016, the high-level expert group on information systems and interoperability (HLEG) was established to work on a joint strategy to make data management in the EU more effective and efficient. The HLEG's interim report, presented in December 2016, emphasised the need to raise the standards of data quality and data usage, and identified priority options to be considered in promoting the interoperability of information systems.

The comprehensive evaluation of the SIS, finalised by the Commission in December 2016, found that 'SIS has been a genuine operational success' and that changes were needed in order to provide a better response to ongoing security and migration challenges. The report emphasised the need to harmonise national procedures in the field of managing refusals of entry and stay. In the preparation of the proposal, the Commission took into account the results of consultations with relevant stakeholders, such as the SISVIS Committee, the SISII supervision coordination group and the Member States' national data protection authorities. The Commission did not carry out an impact assessment but relied on the findings of four independent studies.

The changes the proposal would bring

End-to-end use of the SIS
The proposal introduces measures that address end-users' operational and technical needs. It adds new data fields for existing alerts, strengthens provisions regarding business continuity, and establishes a uniform set of rules and obligations for end-users (officers on the ground) on how to access and process SIS data in a secure way.

New alert on refusal of entry and stay
Currently, Member States may enter alerts in the SIS in respect of persons subject to an entry ban based on a failure to comply with national migration legislation. The proposal introduces the obligation for Member States to enter an alert in the SIS where an entry ban has been issued to an illegally staying third-country national. It specifies the timing and conditions for entering such an alert after the third-country national has left the territory of the Member State in compliance with an obligation to return.

Extended use of biometrics
The proposal provides for more effective use of fingerprints and facial images in the SIS and introduces palm prints as a new element of biometric identification. It will be mandatory to carry out a fingerprint search if the identity of the person cannot be ascertained in any other way. The use of facial images for identification will ensure greater consistency between the SIS and the proposed EES, electronic gates and self-service kiosks (available at regular border crossing points).

Wider access for EU agencies
The proposal maintains the existing access rights of national authorities and extends access to the SIS for Europol, the European Border and Coast Guard agency and its teams, and the future ETIAS central unit. National visa authorities will also have access to alerts on documents, if this is necessary for carrying out their tasks.

Enhanced data protection and security
The proposal clarifies the responsibilities for preventing, reporting and responding to incidents that may affect the security and integrity of the SIS. It allows for more detailed information to be included in the alerts and expands the list of personal data to be

collected for the purpose of dealing with misused identities. It provides for specific rules on the retention and deletion of alerts.

Budgetary implications

The estimated costs related to the proposal amount to €64.3 million for the 2018-2020 period – also covering the implementation of the changes provided for in the proposal on the use of the SIS in the field of police cooperation and judicial cooperation in criminal matters. Each Member State will receive a lump sum of €1.2 million to upgrade its national system. The budget will be secured through a re-programming of the remainder of the smart borders envelope of the Internal Security Fund.

Advisory committees

The advisory committees are not consulted mandatorily on this proposal.

National parliaments

The deadline for the subsidiarity check passed on 30 May 2017. Chambers of national parliaments from 18 Member States considered the proposals and a number submitted comments for political dialogue.

Stakeholders' views

This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

In his opinion of May 2017, the **European Data Protection Supervisor** (EDPS) praised the proposal for the attention paid to data protection, but expressed concerns about the rules governing the collection and processing of sensitive data (such as DNA profiles), the broadening of institutional access to data and the extension of the data retention period for most of the alerts on persons.

In its report on fundamental rights and the interoperability of EU information systems, the **European Union Agency for Fundamental Rights** (FRA) welcomed the reinforced SIS rules on missing children or children subject to trafficking in human beings, and emphasised the need to ensure high quality and completeness of SIS alerts.

Legislative process

The legislative proposal on the Schengen Information System for border checks (COM(2016) 882) was published on 21 December 2016. It falls under the ordinary legislative procedure (2016/0408(COD)).

In the European Parliament, the proposal has been assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The rapporteur, Carlos Coelho (EPP, Portugal), presented a draft report on 27 June 2017. The Committee on Foreign Affairs (AFET) also adopted an opinion on the proposal in July 2017. The final report was adopted in the LIBE committee on 10 November 2017, and the decision to enter into interinstitutional negotiations was confirmed in plenary the same month. The rapporteur welcomed the Commission's proposal but opposed making it mandatory for Member States to establish national copies of the SIS. He put forward several amendments aimed at clarifying the rules of access to the SIS by European agencies, further harmonising the criteria for the insertion of alerts for the purpose of refusing entry, increasing data security and ensuring the respect of data protection rules.

In the Council, the proposal was discussed several times and a [mandate](#) to start interinstitutional negotiations was agreed on 8 November 2017. The Council opposes making it obligatory for Member States to establish national copies of the SIS. It suggests the possibility for two or more Member States to establish a shared copy of a SIS national system. Further amendments sought to clarify the conditions for consultation between Member States with regard to, among other things, introducing alerts and granting or extending a residence permit or long-stay visa. The scope of the searches in the SIS related to the prevention, detection, and investigation or prosecution of criminal offences would be expanded to include 'the safeguarding against and the prevention of threats to public or national security'. Further amendments concern provisions regarding data retention and rules of access for national authorities and EU agencies.

EP supporting analysis

Dumbrava, C., [Revision of the Schengen Information System for law enforcement](#), EPRS, February 2018.

Dumbrava, C., [Use of the Schengen Information System for the return of illegally staying third-country nationals](#), EPRS, February 2018.

Dumbrava, C., [Interoperability of European information systems for border management and security](#), June 2017.

Dumbrava, C., [European information systems in the area of justice and home affairs: An overview](#), EPRS, May 2017.

Gatto, A., Carmona, J., [European Border and Coast Guard System](#), EPRS, October 2016.

Orav, A., [Smart Borders: EU Entry/Exit System](#), EPRS, June 2017.

Radjenovic A., [European Travel Information and Authorisation System (ETIAS)](#), EPRS, October 2017.

van Ballegooij, W., [The cost of non-Schengen: Civil liberties, justice and home affairs aspects](#), EPRS, September 2016.

Voronova, S., [Combating terrorism](#), EPRS, European Parliament, September 2017.

Other sources

[Schengen Information System (SIS) in the field of border checks](#), European Parliament, Legislative Observatory (OEIL).

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