



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 May 2009**

**7558/1/09  
REV 1**

**LIMITE**

**SIRIS 45  
ENFOPOL 57  
COMIX 237**

**NOTE**

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from : Presidency  
to : SIS/SIRENE Working Party (Mixed Committee EU/Iceland, Norway and  
Switzerland, Liechtenstein)

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No prev. doc : 5153/09 SIRIS 5 ENFOPOL 5 COMIX 19  
5450/1/09 REV 1 ENFOPOL 12 SIRIS 12 + COR 1  
6367/3/09 REV 3 SIRIS 24 ENFOPOL 33 COMIX 140

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Subject : Improving exchange of information on persons disturbing the public order and/or  
endangering public security by using SIS

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The need to share information on people endangering security of Schengen Area has been discussed for many years at various levels of the Council. The SIS was recognized as a possible tool for the mentioned sharing of information and therefore the SIS/SIRENE Working Party has been involved.

**So-called “violent troublemakers”**

One specific issue has been the exchange of information concerning persons such as sport hooligans, rioters and other persons violently disturbing the public order for whom the term “violent troublemakers” is used. Already the term itself raised many concerns and the discussions encountered the problem that so far there had not been a general agreement on how to define “violent troublemakers” and also what should be the required “action to be taken”.

Since then has not been an agreement concerning even the operational need and solutions for exchange of this sort of information. Therefore, the Police Cooperation Working Party concluded that an agreement on making data on violent troublemakers permanently available was not likely in the short term.<sup>1</sup>

On the other hand the latest incidents during the NATO summit again showed in a drastic way that there is an urgent need for the exchange of data on persons disturbing the public order and/or endangering public security.

Hence, the Presidency would like to invite the SIS/SIRENE Working Party to look at the matter from a broader point of view.

### **Need for sharing the information**

Several discussions held within the Council working parties and other bodies, lastly the discussion at the SIRENE Task Force, confirmed the interest of Member States in sharing information on persons disturbing the public order and/or endangering public security, e.g. sport hooligans, violent rioters, sexual offenders, repeated offenders of serious crimes. This demand is quite understandable, as without controls at internal borders the above mentioned persons can move freely and possibly breach law and public peace in any of the Member States, as proven by many cases which often raised quite intensive public concern.

It must be mentioned that Article 99 alerts may already be used for the purposes of sharing information on persons presenting risks for public safety and security, provided that the conditions laid down therein are met (see also 7557/09 SIRIS 44 CONOP 13 ENFOPOL 56 COMIX 236) and Member States are interested in receiving information in case of a hit. However, this type of alert does not fully cover all types of persons mentioned above and also the “action to be taken” is not appropriate for the purpose of sharing information.

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<sup>1</sup> 5450/1/09 REV 1 ENFOPOL 12 SIRIS 12

Several possible technical solutions were mentioned concerning the sharing of information at EU/Schengen area level - linking national databases (Prüm), creating a new centralised database or using the SIS. Bearing in mind the fact that linking national databases would be a difficult and long term task and creating a completely new database would be costly and against the endeavour to avoid further fragmentation of information flows in the area of JHA, the use of an already established, operational and effective database - SIS - could be considered as one possible solution, Hence the SIS/SIRENE Working Party, without prejudice to relevant decision taken within the Council in this area, could consider the issue of sharing the information about above mentioned persons via SIS.

### **Possible new alert in SIS**

Owing to the nature of the data which would be shared in SIS and its purpose it seems to be thinkable to create certain new type of alert for “sharing the information” on special categories of persons, e.g. “violent troublemakers”. However, the creation of such alert for the different categories of persons would have to be based on a case-to-case examination including suitability, usefulness and adequacy of the respective category.

One way of creating such an alert might be to amend the present structure of alert on persons in SIS. Therefore, the alert would have to contain further information on the nature of the threat the person concerned poses to public security. To this end, the field “type of offence” may be technically used by adding some entries (e.g. football hooligan). Such field is indeed already foreseen for SIS II alerts on persons (in SIS 1+ this field is foreseen in the so-called Spanish initiative only for Article 95). Other technical solutions may also be considered.

Concerning the possible specific criteria for the alert, such alert would be entered “for the purpose of sharing information with the aim of prevention and protection against serious threats for public security” with possible more concrete specification e.g. sport hooligans, violent rioters, sexual offenders, repeated offenders of serious crimes etc. Use of the list of offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA on EAW may also be considered.

The new possible alert should be different from an Article 99 alert. In case of a new type of alert as described above, no response is to be given to the issuing Member State when a hit occurs and the person may face some action following the hit. On the contrary, Article 99 alerts require that information about the hit is transmitted to the issuing Member State whilst the person subject of the alert must not be informed (or even noticed) that he/she is in SIS.

Bearing in mind quite different situations in which hits on the possible new alert may occur and which require a completely different approach (strongly linked with national legislation), the only solution seems to be that the respective “action to be taken” would fully depend on the Member States receiving the alert. There may be guidance that appropriate measures should be taken in line with national legislation to ensure public security while preserving the rights of the person. This “action to be taken” is completely different from the “action to be taken” in case of Article 99 alerts (see above).

The difference of the “action to be taken” is owed to the fact that the present alerts in SIS are issued in the interest of the issuing Member States whereas the considered new type of alert would be issued primarily in the interest of the other Member States enabling them to take concrete actions, under their respective national laws, in order to protect their own public security.

The current legal framework of SIS does not provide necessary legal base for the new alert described above and the SIS is seen as a “search” database only. Hence, legal changes would be necessary. It has to be taken into account that the present technical solution of SIS is frozen due to preparations for SIS II. Therefore, the implementation of possible new alert in SIS, even if the Member States support its creation, does not provide the immediate solution and would need further consideration. However, such consideration may start in advance, especially in connection with preparations of the new multi-annual JHA programme (“post-Hague”).

## Conclusions

The Presidency would like to invite the delegations at SIS/SIRENE Working Party:

- to delay further discussion on so-called “violent troublemakers” at SIS/SIRENE Working Party until there are consolidated findings from the Police Cooperation Working Party,
- if/when the Police Cooperation Working Party provides the SIS/SIRENE Working Party with consolidate findings proposing SIS as the channel, to immediately seek for a solution to exchange information about the persons presenting serious threat for public order and security,
- to define Member States positions for future discussions about the idea of using the SIS for sharing the information on persons disturbing the public order and/or endangering public security including the creation of a new type of alert on special categories of persons in SIS, based on a case-to-case examination including suitability, usefulness and adequacy of the respective categories, and
- to invite the Commission to analyze the suggestions of such new type of alert in the SIS as regards the legal and technical implications.

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