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NOTE

from:	General Secretariat
to:	Permanent Representatives' Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen information system (SIS II) – Outcome of the European Parliament's first reading (Strasbourg, 23 to 26 October 2006)

I. INTRODUCTION

The rapporteur Mr. COELHO (PPE-DE/PT) presented three draft reports on behalf of the Committee of Civil Liberties, Justice and Home affairs which were subject to a joint debate. The reports relate to the Commission proposals for

- a Regulation of the Council and the Parliament on the establishment, operation and use of SIS II,
- a Regulation of the Council and the Parliament on access to SIS II by the services responsible for issuing vehicle registration certificates, and (see doc. 14298/06)
- a Council Decision on the establishment, operation and use of SIS II.

Even though the joint debate concerned the three reports, the intervention of both the Rapporteur and also the Members of the Parliament who intervened referred to the report concerning the Regulation for of establishment, operation and use of SIS II (COD 2005/0106).

II. DEBATE

Mr. FRATTINI speaking on behalf of the Commission expressed his satisfaction with the draft rapport presented by Mr. COELHO (PPE/DE-PT). He stressed the fact that the texts introduce improvements on a number of issues such as exchange of information, granting of security and also the safeguarding of data protection.

Mr. COELHO (PPE/DE-PT) referred to the three documents debated stressing the fact that even if they make part of the same reality, they follow different adoption procedures, two through co decision and one through consultation, which he considered illogical.

For the Rapporteur the reports reflect a good result for Europe as they improve security in Europe, allow for a better identification of persons through the use of biometric data, facilitate the use of alerts due to the interlinks of alerts, and also improve data protection. At the same time assure the free movement and more efficient control at external borders.

The reports are also a good result for the new Member States who have expectations to offer to their citizens the possibility to enjoy the right of free movement under the same conditions as the citizens of the old Member States.

The reports also represent a good result for the European Parliament since the new system grants a community management system which is subject to the control of the European Parliament and the Court of Justice (referring to the creation foreseen, through codecision procedure and within a 5 years period, of a Community agency for the management of the system). On top of other important issues, a system to supervise not only at national level, but also at European level is created, and reports on the functioning on the systems should be issued which will increase transparency.

Finally, the Rapporteur expressed his regret about the introduction of a new element by the Council only 48 hours before the vote of the draft report in the Parliament LIBE committee, which in his opinion does not respect the compromise reached through a lengthy process of negotiations. The access to the data bank obtained through the SIS system by the national secret services is not acceptable for the Parliament. The Rapporteur expressed as well the hope that the Council will finally respect to the compromise and adopt the EP report concluding the file in first reading.

The following members of the Parliament intervened on behalf of their political group:

Mr. BREJC (PPE-DE/SI) affirmed the support of his group for the report, but expressed his concern about the delay announced by the Commission for the implementation of the system in the new Member States and about the cost that it will carry.

Ms. ROURE (PSE-FR) considered that the implementation of the SIS II will have positive effects as it facilitates the free movement and border-cross for citizens of new Member States,. The new generation system is also positive from the point of view of security but rather weak on the protection of private life. The publication in the Official Journal of the list of authorities having access to the system is also perceived as a positive step towards transparency.

Concerning the delay of the implementation of the system due to technical reasons, she understood that is not the responsibility of the European Parliament, which should adopt the report with a view to a rapid adoption of the legal basis for SIS II.

Mr. LAX (ALDE-FI) also supported the report and expressed his concern about the delay for the implementation of the system, the reasons for which should be analysed through an independent study. He also drew attention to the danger of the use of biometric prints due to the fact that they create an alarm on a person.

Mr. SCHLYTER (VERTS/ALE-SE), while supporting the report, considered that the data stored in the system should be treated with special care, and in particular the biometric data. Secret services should not have access.

MS. KAUFMAN (GUE/ING-DE) announced that her group would vote against the report for two main reasons:

- the insufficient level of data protection in the third pillar, as the Council does not make progress in the process for the adoption of a framework decision on data protection;
- The use of biometric data that should not be decided through codecision.

She also expressed the opposition of her group to access to the system for secret services.

Mr. ZILE (UEN-LV) Welcomed the report while regretting the delay for implementation of the system in the new Member States.

Mr. BLOKLAND (IND/DEM-NL) spoke about the importance of the system not only for cross-borders issues but also for security and free movement inside the borders.

Mr. CZARNECKI (NI-PL) considered unacceptable the fact that the system will be in place in the old Member States before the new ones.

A large number of Members of the Parliament intervened in their own name to insist on two main issues:

- the delay for implementation of the system in the new Member States compared to the old Member States which is seen as an unacceptable discrimination against the citizens of the new Member States by a large number of MEPs belonging to such Member States.
- the insufficient data protection and abusive use of biometric data.

Other issues raised were the usefulness of the system for increasing control on illegal immigration and for the implementation of the arrest warrant.

Commissioner Frattini intervened at the end of the debate to give an explanation on the following issues:

- the delay on the implementation of the system is due to reasons very well known by Member States i.e. the fact that most of new Member States are not prepared to implement the system (only Slovenia is), as a result of technical reasons and also the implementation of national contractual procedures.

The Council will decide in December on the final date for implementation. He recalled that the Commission proposed 2008 as a starting date for new member States.

- concerning the legal base for the SIS II, he agreed with Mr. COELHO that the final text presented represents a good result. The Commissioner accepted the report as a whole and expressed his hope that the Council will finally adopt the main Regulation in first reading.

The Council presidency (minister LEHTOMÄKI) stressed the importance of the SIS II project and referred to the good negotiation results with the European Parliament but noted, however, that the draft report presented by the rapporteur did not reflect the Council position concerning the authorities having access to the Schengen information System. For the Council, all the authorities who are able to introduce data, should have access to the system.

The Council presidency announced that this Institution will debate on the report in the next weeks. The presidency hoped that an agreement in first reading is possible.

III. VOTE

The draft report presented by Mr. COELHO (PPE-DE) on behalf of the Committee on Civil Liberties, Justice and Home Affairs was subject to a single vote.

The report adopted reflects the compromise reached between the three institutions with the exception of the new wording of Article 17(1)(b) of the main Regulation (and of Article 37(1)(b) of the Decision), concerning those authorities with the right to have access to the data stored through the system.

The text of the European Parliament's legislative resolution is set out in Annex hereto.

Establishment, operation and use of SIS II (regulation) *I**

European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen information system (SIS II) (COM(2005)0236 – C6-0174/2005 – 2005/0106(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0236)¹,
 - having regard to Article 251(2) and Articles 62(2)(a) and 66 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0174/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A6-0355/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

PROPOSAL FOR A REGULATION

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment, operation and use of the second generation Schengen information system (SIS II)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(2)(a), 63(3)(b) and Article 66 thereof,

Having regard to the proposal from the Commission²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas :

- (1) The Schengen information system (hereinafter referred to as “SIS 1+”) set up pursuant to the provisions of Title IV of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders⁴ (hereinafter referred to as the “Schengen Convention”), constitutes an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.
- (2) The development of the second generation of the SIS (hereinafter, referred to as “SIS II”) has been entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001⁵ and Council Decision No 2001/886/JHA⁶ of 6 December 2001 on the development of the second generation Schengen Information System (SIS II). The SIS II will replace the SIS as established by the Schengen Convention.

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 871/2004 (OJ L 162, 30.4.2004, p. 29).

⁵ OJ L 328 , 13.12.2001, p. 4.

⁶ OJ L 328, 13.12.2001, p. 1.

- (3) This Regulation constitutes the necessary legislative basis for governing the SIS II in respect of matters falling within the scope of the Treaty establishing the European Community (hereinafter referred to as the “EC Treaty”). Council Decision No 2006/XX/JHA on the establishment, operation and use of the SIS II⁷ constitutes the necessary legislative basis for governing the SIS II in respect of matters falling within the scope of the Treaty of the European Union (hereinafter referred to as the “EU Treaty”).
- (4) The fact that the legislative basis necessary for governing the SIS II consists of separate instruments does not affect the principle that the SIS II constitutes one single information system that should operate as such. Certain provisions of these instruments should therefore be identical.
- (5) The SIS II should constitute a compensatory measure contributing to maintaining a high level of security within an area (...) of freedom, security and justice by supporting the implementation of policies linked to the movement of persons part of the Schengen acquis, as integrated into Title IV of the EC Treaty.
- (6) It is necessary to specify the objectives of the SIS II and to lay down rules concerning its operation, use and responsibilities including its technical architecture and financing, categories of data to be entered into the system, the purposes for which they are to be entered, the criteria for their entry, the authorities authorised to access it, the interlinking of alerts and further rules on data processing and the protection of personal data.
- (7) The expenditure involved in the operation of the Central SIS II and the Communication Infrastructure should be charged to the budget of the European Union.
- (8) It is necessary to establish a manual setting out the detailed rules for the exchange of supplementary information in relation with the action required by the alert. National authorities in each Member State should (...) ensure the exchange of this information.
- (9) For a transitional period, the Commission should be responsible for the operational management of the Central SIS II and of parts of the Communication Infrastructure.

However, in order to ensure a smooth transition between the SIS 1+ and the SIS II, it may delegate some or all of these responsibilities to two national public sector bodies. In the long term, and following an impact assessment, containing a substantive analysis of alternatives from a financial, operational and organisational perspective, and legislative proposals from the Commission, a permanent Management Authority with responsibility for these tasks should be established. The transitional period should last for no more than five years from the date of entry into force of this Regulation.

- (10) The SIS II should contain alerts on refusal of entry or stay. It is (...) necessary to further consider harmonising the provisions on the grounds for issuing alerts to third country nationals for the purpose of refusing entry or stay and to clarifying their use in the framework of asylum, immigration and return policies. Therefore, the Commission should review, three years after the entry into application of this Regulation, the provisions on the objectives and the conditions for issuing alerts for the purpose of refusal of entry or stay.

⁷ OJ. L...

- (11) Alerts aiming at refusing entry or stay should not be kept longer in the SIS II than the time required to meet the purposes for which they were supplied. As a general principle, they should be automatically erased from the SIS II after a period of three years. The decision to keep the alert should be based on a comprehensive individual assessment. Member States should review these alerts within this three year period and keep statistics about the number of alerts the conservation period of which has been extended.
- (12) The SIS II should permit the processing of biometric data in order to assist in the reliable identification of individuals concerned. In the same context the SIS II should also allow for the processing of data of individuals whose identity has been misused in order to avoid inconveniences caused by their misidentification, subject to suitable safeguards, in particular the consent of the individual concerned and a strict limitation of the purposes for which such data can be lawfully processed.
- (13) The SIS II should offer Member States the possibility to establish links between alerts. The establishment of links by a Member State between two or more alerts should have no impact on the action to be taken, the conservation period or the access rights to the alerts.
- (13A) Data processed in the SIS II in application of this Regulation should not be transferred or made available to a third country or to an international organisation.
- (14) Directive 1995/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁸ applies to the processing of personal data carried out in application of this Regulation. This includes the designation of the controller in accordance with Article 2(d) of that Directive and the possibility for Member States to provide for exemptions and restrictions to some of the provided rights and obligations in accordance with Article 13(1) of that Directive including as regards the rights of access and information of the individual concerned. The principles set out in Directive 1995/46/EC should be supplemented or clarified in this Regulation, where necessary.
- (15) Regulation (EC) No 2001/45 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁹ and in particular its Articles 21 and 22 as regards confidentiality and security of the processing applies to the processing of personal data by the Community institutions or bodies when carrying out their tasks as responsible for the operational management of the SIS II. The principles set out in Regulation (EC) No 2001/45) should be supplemented or clarified in this Regulation, where necessary.
- (15A) (*moved to Recital 15*)

⁸ OJ L 281, 23.11.1995, p. 31.

⁹ OJ L 8, 12.1.2001, p. 1.

- (15B) In so far as confidentiality is concerned, the relevant provisions of the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the European Communities shall apply to officials or other servants of the European Communities employed and working in connection with SIS II.
- (16) It is appropriate that National (...) Supervisory Authorities monitor the lawfulness of the processing of personal data by the Member States, whilst the European Data Protection Supervisor, appointed by Decision 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty¹⁰, should monitor the activities of the Community institutions and bodies in relation to the processing of personal data taking into account the limited tasks of the Community institutions and bodies with regard to the data themselves.
- (17) Liability of the Community arising from any breach by the Community institutions or bodies of this Regulation is governed by the second paragraph of Article 288 of the EC Treaty.
- (18) Both Member States and the Commission should elaborate a security plan in order to facilitate the concrete implementation of security obligations and should cooperate with each other in order to address security issues from a common perspective.
- (18a) In order to ensure transparency, a report on the technical functioning of the Central SIS II and the Communication Infrastructure, including its security, and on the exchange of supplementary information should be produced every two years by the Management Authority. An overall evaluation should be issued by the Commission every four years.
- (19) Certain aspects of the SIS II, such as technical rules on entering, including data required for entering an alert, updating, deleting and searching, rules on compatibility and priority of alerts, links between alerts and the exchange of supplementary information cannot be covered exhaustively by the provisions of this Regulation due to their technical nature, level of detail and need for regular update. Implementing powers in respect of those aspects should therefore be delegated to the Commission. Technical rules on searching alerts should take into account the smooth operation of national applications. Subject to an impact assessment by the Commission, it will be decided to what extent the implementing measures could be a responsibility of the permanent Management Authority, as soon as it is set up.
- (20) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹¹.
- (21) It is appropriate to lay down transitional provisions in respect of alerts issued in the SIS 1+ (...) which will be transferred to the SIS II (...). Some provisions of the Schengen acquis should continue to apply for a limited period of time until the Member States have examined the compatibility of those alerts with the new legal framework. The compatibility of alerts

¹⁰ OJ L 12, 17.1.2004, p. 47.

¹¹ OJ L 184, 17.7.1999, p. 23.

on persons should be examined as a matter of priority. Furthermore, any modification, addition, correction or update of an alert transferred from the SIS 1+ to the SIS II, as well as any hit on such an alert should trigger an immediate examination of its compatibility with the provisions of this Regulation.

- (22) It is necessary to lay down special provisions regarding the remainder of the budget affected to the operations of the SIS which are not part of the budget of the European Union.
- (23) Since the objectives of the action to be taken, namely the establishment and regulation of a joint information system, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (24) This Regulation respects the fundamental rights and observes the principles recognised, in particular by the Charter of Fundamental Rights of the European Union.
- (25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is, therefore, not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the EC Treaty, Denmark shall, in accordance with Article 5 of the said Protocol, decide, within a period of six months after date of the adoption of this Regulation, whether it will implement it in its national law.
- (26) This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis¹². The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (27) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis¹³. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (27A) This Regulation is without prejudice to the arrangements for the United Kingdom and Ireland's partial participation in the Schengen acquis as defined in Decision 2000/365/EC and Decision 2002/192/EC respectively.
- (28) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the

¹² OJ L 131, 1.6.2000, p. 43.

¹³ OJ L 64, 7.3.2002, p. 20.

European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis¹⁴, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement¹⁵.

- (28A) An arrangement has to be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchanges of Letters between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning committees which assist the European Commission in the exercise of its executive powers¹⁶, annexed to the abovementioned Agreement.
- (29) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC¹⁷ and 2004/860/EC¹⁸.
- (29A) An arrangement has to be made to allow representatives of Switzerland to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Community and Switzerland, annexed to the abovementioned Agreement.¹⁹
- (30) This Regulation constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

¹⁴ OJ L 176, 10.7.1999, p. 6.

¹⁵ OJ L 176, 10.7.1999, p. 31.

¹⁶ OJ L 176, 10.7.1999, p. 53.

¹⁷ Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 368, 15.12.2004, p. 26).

¹⁸ Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

¹⁹ Provisional insertion, pending a permanent solution to this question.

- (31) This Regulation should apply to the States concerned by Recitals 29 and 30 on dates determined in accordance with the procedures set out in the relevant instruments concerning the application of the Schengen acquis to those States.

CHAPTER I General provisions

1. Article 1

2. Establishment and general objective of the SIS II

1. The second generation Schengen Information System (hereinafter referred to as “SIS II”) is hereby established.
- 3.
2. The purpose of the SIS II shall be, in accordance with this Decision, to ensure a high level of security within an area (...) of freedom, security and justice, including the maintenance of public security and public policy and the safeguarding of (...) security in the territories of the Member States, and to apply the provisions of Title IV of the Treaty establishing the European Community (hereinafter referred to as “EC Treaty”) relating to the movement of persons in their territories, using information communicated via this system.

4. Article 2

5. Scope

1. This Regulation defines the conditions and procedures for the processing of alerts entered in the SIS II in respect of third country nationals, the exchange of supplementary information and additional data for the purpose of refusing entry or stay in the territory of the Member States.
2. This Regulation also lays down provisions in particular on the technical architecture of the SIS II, the responsibilities of the Member States and of the Management Authority referred to in Article 12, general data processing, the rights of the persons concerned and liability.

6. Article 3

7. Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - a. “alert” means a set of data entered in the SIS II allowing the competent authorities to identify a person (...) in view of a specific action to be taken;
 - b. “supplementary information” means the information not stored in the SIS II, but connected to SIS II alerts, which shall be exchanged:

- a. in order to allow Member States to consult or inform each other whilst entering an alert;
 - b. following a hit in order to allow the appropriate action to be taken;
 - c. when the required action cannot be taken;
 - d. when dealing with the quality of SIS II data;
 - e. when dealing with the compatibility and priority of alerts;
 - f. when dealing with the exercise of the right of access;
- c. “additional data” means the data stored in the SIS II and connected to SIS II alerts which shall be immediately available to the competent authorities where persons in respect of whom data has been entered in the SIS II are found as a result of searches made therein;
- d. “third country national” means any individual who is not:
- a. (...) a citizen of the European Union within the meaning of Article 17(1) of the EC Treaty; or
 - b. (...) a national of a third country who, under agreements between the Community and its Member States on the one hand, and these countries, on the other, enjoys rights of free movement equivalent to those of citizens of the Union.
- e. personal data” shall mean any information relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly;
- f. processing of personal data” (“processing”) shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

8. Article 4

9. Technical architecture and ways of operating the SIS II

1. The SIS II is composed of:
 - (aa) a central system (hereinafter referred to as “the Central SIS II”) composed of:
 - a technical support function (hereinafter referred to as “CS-SIS”) containing the (...) SIS II database;
 - a uniform national interface (hereinafter referred to as “NI-SIS”);

- (a) a national section (hereinafter referred to as “N.SIS II”) in each of the Member States, consisting of the national data systems which communicate with the Central SIS II. An N.SIS II may contain a data file (hereinafter referred to as “national copy”), containing a complete or partial copy of the (...) SIS II database;
 - (b) *(moved to (aa))*
 - (c) a communication infrastructure between the CS-SIS and the NI-SIS (hereinafter referred to as “Communication Infrastructure”) that provides an encrypted virtual network dedicated to SIS II data and the exchange of data between SIRENE Bureaux as referred to in Article 7(2).
2. SIS II data shall be entered, updated, deleted and searched via the N.SIS II. A national copy shall be available for the purpose of carrying out automated searches in the territory of each of the Member States using such a copy. It shall not be possible to search the data files of other Member States N.SIS II.
 3. The principal CS-SIS, which carries out technical supervision and administration, is located in Strasbourg (France) and a backup CS-SIS, capable of ensuring all functionalities of the principal CS-SIS in case of failure of this system, is located in Sankt Johann im Pongau (Austria).
 4. The CS-SIS will provide the services necessary for the update of, and searches in, the (...) SIS II database. For the Member States which use a national copy the CS-SIS will provide:
 1. the on-line update of the national copies;
 2. the synchronisation and the coherence between the national copies and the (...) SIS II database;
 3. the operation for initialisation and restoration of the national copies.

10.

11. Article 5

12. Costs

1. The costs of setting up, operating and maintaining the Central SIS II and the Communication Infrastructure shall be borne by the budget of the European Union.
2. These costs will include work done with respect to the CS-SIS that ensures the provision of the services referred to in Article 4(4).
3. The costs of setting up, operating and maintaining each N.SIS II shall be borne by the Member State concerned.
4. (...)

CHAPTER II

Responsibilities of the Member States

13. Article 6

14. National Systems

Each Member State (...) shall be responsible for:

- (a) setting up, operating and maintaining its N.SIS II;
- (b) connecting its N.SIS II to the NI-SIS.

15.

16. Article 7

17. N.SIS II Office and SIRENE Bureau

- 1. (a) Each Member State shall designate an authority (hereinafter referred to as “N.SIS II Office”), which shall have central responsibility for its N.SIS II;
- (b) The said authority shall be responsible for the smooth operation and security of the N.SIS II, shall ensure the access of the competent authorities to the SIS II and shall take the necessary measures to ensure compliance with the provisions of this Regulation;
- (c) Each Member State shall transmit its alerts via the N.SIS II Office.
- 2. (a) Each Member State shall designate the authority which shall ensure the exchange of all supplementary information (hereinafter referred to as the “SIRENE Bureau”) in accordance with the provisions of the SIRENE Manual, as referred to in Article 8;
- (b) This Bureau shall also coordinate the verification of the quality of the information entered in the SIS II (...);
- (c) For those purposes it shall have access to data processed in the SIS II.
- 3. The Member States shall inform the Management Authority referred to in Article 12 of their N.SIS II office and of their SIRENE Bureau. The Management Authority (...) shall publish the list of them together with the list referred to in Article 21(6).

18. Article 8

19. Exchange of supplementary information

- 1. Supplementary information shall be exchanged in accordance with the provisions of the SIRENE Manual and using the Communication Infrastructure.
- 2. Such information shall be used only for the purpose for which it was transmitted.
- 3. Should the Communication Infrastructure be unavailable, Member States may use other adequately secured technical means for exchanging supplementary information.

- 3aa Requests for supplementary information made by other Member States shall be answered as soon as possible.
- 3a Detailed rules for the exchange of supplementary information shall be adopted in accordance with the procedure defined in Article 35(3) in the form of a manual called the “SIRENE Manual”, without prejudice to the provisions of the instrument setting up the Management Authority referred to in Article 12.

20. Article 9

21. Technical compliance

1. To ensure the rapid and effective transmission of data, each Member State shall observe, when setting up its N.SIS II, the protocols and technical procedures established to ensure the compatibility of the CS-SIS with the N.SIS II. These protocols and technical procedures shall be established in accordance with the procedure referred to in Article 35(3), without prejudice to the provisions of the instrument setting up the Management Authority referred to in Article 12 (...).
2. If a Member State uses a national copy it shall ensure, by means of the services provided by the CS-SIS (...) that data stored in the national copy is, through automatic updates referred to in Article 4(4), identical and consistent with the SIS II database, and (...) that a search in its national copy will provide an equivalent result as a search in the SIS II database.

22. Article 10

23. Security (...)

1. Each Member State shall, in relation to its N.SIS II, adopt necessary measures, including the adoption of a security plan, in order to:
 - (aa) physically protect data including by making contingency plans for the protection of critical infrastructure;
 - a. deny unauthorised persons access to data-processing facilities used for processing personal data (facilities access control);
 - b. prevent the unauthorised reading, copying, modification or removal of data media (data media control);
 - c. prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
 - d. prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
 - e. ensure that persons authorised to use an automated data-processing system have access only to the data covered by their access authorisation and with individual and unique user identities and confidential access modes only (data access control);

- (ea) ensure that all authorities with a right of access to the SIS II or to the data processing facilities create profiles describing the functions and responsibilities for persons who are authorised to access, enter, update, delete and search the data and make these profiles available to the national supervisory authorities without delay upon their request (personnel profiles);
 - f. ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
 - g. ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems, when, by whom and for what purpose the data were input (input control);
 - h. prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data, in particular by means of appropriate encryption techniques (transport control);
 - (ha) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure the compliance with this Regulation (self-auditing).
2. Member States shall take measures equivalent to those referred to in paragraph 1 as regards security in respect of the exchange of supplementary information.

Article 10 A
Confidentiality

Each Member State shall apply its rules of professional secrecy or other equivalent obligations of confidentiality to all persons and bodies required to work with SIS II data and supplementary information, in accordance with its national legislation. This obligation shall also apply after those people leave office or employment or after the termination of the activities of those bodies.

24. Article 11
25. Keeping of records at national level

- 1. (a) Member States not using national copies shall ensure that every access to and all exchanges of personal data with the CS-SIS are recorded in the N.SIS II for the purposes of checking whether the search is admissible or not, for the purpose of monitoring the lawfulness of data processing, for self-monitoring, ensuring the proper functioning of the N.SIS II, data integrity and security.
 - (b) Member States using national copies shall ensure that every access to and all exchanges of SIS II data are recorded for the purposes specified in paragraph 1(a), with the exception of exchanges connected to the services referred to in Article 4(4).
- 1a (*moved to 1(b)*)

2. The records shall show, in particular, the history of the alerts, the date and time of the data transmitted, the data used to perform a search, the reference to the data transmitted and the name of both the competent authority and the person responsible for processing the data.
3. The records may only be used for the purpose specified in paragraph 1 and shall be deleted at the earliest after a period of one year and at the latest after a period of three years after their creation. The records which include the history of alerts shall be erased after a period of one to three years after the deletion of the alerts.
4. Records may be kept longer if they are required for monitoring procedures which have already begun.
- 4a The competent national authorities in charge of checking whether the search is admissible or not, for the purpose of monitoring the lawfulness of data processing, for self-monitoring, ensuring the proper functioning of the N.SIS II, data integrity and security, shall have access, within the limits of their competence and upon request, to these records to ensure that they are able to fulfil their tasks.

26. Article 11 A
27. Self-monitoring

The Member States shall (...) ensure that each authority entitled to access SIS II data shall take the measures necessary to ensure compliance with this Regulation and shall cooperate, where necessary, with the National Supervisory Authority, as referred to in Article 31(1a).

28. Article 11 B
29. Staff training

Before being authorised to process data stored in the SIS II, staff of the authorities with a right to access the SIS II shall receive appropriate training about data-security and data-protection rules and shall be informed of any relevant criminal offences and penalties.

30. Article 11 C
31. Communication with the public

(deleted)

Chapter III(...)
Responsibilities of the Management Authority

Article 12
Operational management

1. A Management Authority, which shall be funded by the budget of the European Union, shall be responsible for the operational management of the Central SIS II. It shall also be responsible for the following tasks related to the Communication Infrastructure:
 - (a) supervision;
 - (b) security;
 - (c) the coordination of relations between the Member States and the provider.
 2. The Commission shall be responsible for all other tasks related to the Communication Infrastructure, in particular:
 - (a) budget implementing tasks;
 - (b) acquisition and renewal;
 - (c) contractual matters.
 3. During a transitional period before the Management Authority mentioned in paragraph 1 takes up its responsibilities, the Commission shall be responsible for the operational management of the Central SIS II. The Commission may entrust the exercise of this management as well as of budget implementing tasks, in accordance with the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities²⁰, to national public sector bodies, in two different countries.
- 3aa Each national public sector body, as referred to in paragraph 3, must comply in particular with the following selection criteria:
- a. it must demonstrate a long term experience in operating a large-scale information system with the functionalities referred to in Article 4(4);
 - b. it must possess a long term expertise in the service and security requirements of an information system comparable to the functionalities referred to in Article 4(4);
 - c. it must have sufficient and experienced staff with the appropriate professional expertise and linguistic skills to work in an international cooperation environment such as provided for in Article 4;

²⁰ Official Journal L 248 of 16/09/2002, p. 1-48.

- d. it must have a secure and (...) custom-built facility infrastructure available, in particular able to back-up and guarantee the continuous functioning of large-scale IT systems; and
 - e. it must work in an administrative environment allowing it to implement its tasks properly and avoid any conflict of interests.
- 3a The Commission shall prior to any such delegation and at regular intervals afterwards inform the European Parliament and the Council about the conditions of delegation, the precise scope of the delegation, and the bodies to which tasks are delegated.
- 3b In case the Commission delegates its responsibility during the transitional period (...) pursuant to paragraph 3 it shall ensure that this delegation fully respects the limits set by the institutional system laid out in the Treaty. It shall ensure, in particular, that this delegation does not adversely affect any effective control mechanism under (...) Community law, be it by the Court of Justice, the Court of Auditors or the European Data Protection Supervisor.
4. Operational management of the Central SIS II shall consist of all the tasks necessary to keep the Central SIS II functioning on a 24 hours a day, 7 days a week basis in accordance with this Regulation, in particular the maintenance work and technical developments necessary for the smooth running of the system.
5. *(deleted)*
6. The Management Authority shall ensure, in cooperation with the Member States, that at all times the best available technology, subject to a cost-benefit analysis, is used for the Central SIS II.

32. Article 13

33. Security (...)

1. The Management Authority shall, in relation to the Central SIS II and the Commission in relation to the Communication Infrastructure, adopt the necessary measures, including the adoption of a security plan, in order to:
- (aa) physically protect data including by making contingency plans for the protection of critical infrastructure;
 - a. deny unauthorised persons access to data-processing facilities used for processing personal data (facilities access control);
 - b. prevent the unauthorised reading, copying, modification or removal of data media (data media control);
 - c. prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
 - d. prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

- e. ensure that persons authorised to use an automated data-processing system (...) have access only to the data covered by their access authorisation and with individual and unique user identities and confidential access modes only (data access control);
 - (ea) create profiles describing the functions and responsibilities for persons who are authorised to access the data or the data processing facilities and make these profiles available to the European Data Protection Supervisor without delay upon its request (personnel profiles);
 - f. ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
 - (fa) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems, when and by whom the data were input (input control);
 - g. prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media in particular by means of appropriate encryption techniques (transport control);
 - (ga) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure the compliance with this Regulation (self-auditing).
2. The Management Authority shall take measures equivalent to those referred to in paragraph 1 as regards security (...) in respect of the exchange of supplementary information through the Communication Infrastructure.

*Article 13 A
Confidentiality*

1. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Communities, the Management Authority shall apply appropriate rules of professional secrecy or other equivalent obligations of confidentiality to all its staff required to work with SIS II data on comparable standards to those provided in Article 10 A. This obligation shall also apply after those people leave office or employment or after the termination of their activities.
2. The Management Authority shall take measures equivalent to those referred to in paragraph 1 as regards (...) confidentiality in respect of the exchange of supplementary information through the Communication Infrastructure.

34. Article 14

35. Keeping of records at central level

1. The Management Authority shall ensure that every access to and all exchanges of personal data within the CS-SIS are recorded for the purposes provided for in Article 11(1).

2. The records shall show, in particular, the history of the alerts, the date and time of the data transmitted, the data used to perform a search, the reference to the data transmitted and the identification of the competent authority responsible for processing the data.
3. The records may only be used for the purpose provided for in paragraph 1 and shall be deleted at the earliest after a period of one year and at the latest after a period of three years after their creation. The records which include the history of alerts shall be erased after a period of one to three years after the deletion of the alerts.
4. Records may be kept longer if they are required for monitoring procedures which have already begun.
- 4a The competent authorities in charge of checking whether the search is admissible or not, for the purpose of monitoring the lawfulness of data processing, for self-monitoring, ensuring the proper functioning of the CS-SIS, data integrity and security, shall have access, within the limits of their competence and upon request, to these records to ensure that they are able to fulfil their tasks.

36. Article 14 AA

37. Information campaign

The Commission shall, in co-operation with the National Supervisory Authorities, referred to in Article 31(1a), and the European Data Protection Supervisor, referred to in Article 31A(1), accompany the start of the operation of the SIS II with an information campaign informing the public about the objectives, the data stored, the authorities with access and the rights of persons. After its establishment, the Management Authority, in co-operation with the National Supervisory Authorities and the European Data Protection Supervisor, shall repeat such campaigns regularly. Member States shall, in cooperation with their national supervisory authorities, devise and implement the necessary policies to inform their citizens in general about the SIS II.

Chapter IV

Alerts issued in respect of third country nationals for the purpose of refusing entry and stay

38. Article 14 A (...)

39. Categories of data

1. Without prejudice to Article 8(1) or the provisions of this Regulation providing for the storage of additional data, the SIS II shall contain only those categories of data which are supplied by each of the Member States, as required for the purposes laid down in Article 15.
2. The information on (...) persons for whom an alert has been issued shall be no more than the following:
 - a. surname(s) and forename(s), name at birth and previously used names and any aliases possibly entered separately;

- b. any specific, objective, physical characteristics not subject to change;
 - c. place and date of birth;
 - d. sex;
 - e. photographs;
 - f. fingerprints;
 - g. nationality(ies);
 - h. whether the persons concerned are armed, violent or have escaped;
 - i. reason for the alert;
 - j. authority issuing the alert;
 - k. a reference to the decision giving rise to the alert;
 - l. action to be taken;
 - m. link(s) to other alerts issued in the SIS II pursuant to Article 26.
3. (...)
- 3a The technical rules necessary for entering, updating, deleting and searching the data referred to in paragraph 2 shall be established in accordance with the procedure referred to in Article 35(3), without prejudice to the provisions of the instrument setting up the Management Authority referred to in Article 12.
- 3b. The technical rules necessary for searching the data referred to in paragraph 3a shall be similar for searches in the CS-SIS, in national copies and in technical copies, as referred to in Article 21(2).

40.

41. Article 14 B

42. Proportionality clause

The Member State issuing an alert shall determine whether the case is adequate, relevant and important enough to warrant entry of the alert in the SIS II.

43. Article 14 C

44. Specific rules for photographs and fingerprints

Photographs and fingerprints as referred to in Article 14 A(2)(e) and (f) shall be used subject to the following provisions:

- (a) Photographs and fingerprints shall only be entered following a special quality check to ascertain the fulfilment of a minimum data quality standard. The specification of the special quality check shall be established in accordance with the procedure referred to in Article 35(3), without prejudice to the provisions of the instrument setting up the Management Authority referred to in Article 12.
- (b) Photographs and fingerprints shall only be used to confirm the identity of a third country national who has been found as a result of an alphanumeric search made in the SIS II.
- (c) As soon as technically possible, fingerprints may also be used to identify a third country national on the basis of his/her biometric identifier. Before this functionality is implemented in the SIS II, the Commission shall present a report on the availability and readiness of the required technology, on which the European Parliament shall be consulted.

45.

46. Article 14 D

47. Requirement for an alert to be entered

- 1. An alert cannot be entered without the data referred to in Articles 14 A(2)(a), 14 A(2)(d), 14 A(2)(k) and 14 A(2)(l).
- 2. In addition, when available, all other data listed in Article 14 A(2) shall be entered.

48.

49. Article 15

50. Conditions for issuing alerts on refusal of entry or stay

- 1. Data on third country nationals for whom an alert has been issued for the purposes of refusing entry or stay shall be entered on the basis of a national alert resulting from a decision taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law. This decision may only be taken on the basis of an individual assessment. (...) Appeals against these decisions shall be carried out in accordance with national legislation.
- 1a *(deleted)*
- 2. An alert shall be entered when the decision referred to in paragraph 1 was based on a threat to public policy or public security or to national security which the presence of a third country national in national territory may pose. This situation shall arise in particular in the case of:
 - a. a third country national who has been convicted of an offence by a Member State carrying a penalty involving deprivation of liberty of at least one year;
 - b. a third country national in respect of whom there are serious grounds for believing that he has committed serious criminal offences or in respect of whom there are clear indications of an intention to commit such offences in the territory of a Member State;
 - c. *(moved to Article 15 AA)*

2a *(moved to Article 15 A)*

3. An alert may also be entered when the decision referred to in paragraph 1 was based on the fact that the third country national has been subject to measures involving expulsion, refusal of entry or removal which have not been rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of third country nationals.

3a *(moved to paragraph 1)*

3b This Article does not apply in respect of the persons referred to in Article 15 AA.

3c The application of (...) this Article (...) shall be reviewed by the Commission three years after the date referred to in Article 39(2). Based on this review the Commission shall, using its right of initiative in accordance with the Treaty, make the necessary proposals to modify the provisions of this Article (...) to achieve a higher level of harmonisation of the criteria for entering alerts.

51.

52. *Article 15 A*

53. *Conditions for entering alerts on third country nationals*

54. *who are beneficiaries of the Community right of free movement*

1. An alert concerning a third country national who is a beneficiary of the Community right of free movement within the meaning of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States shall be based in conformity with rules adopted in implementing the Directive.
2. In case of a hit on an alert pursuant to Article 15 concerning a third country national who is a beneficiary of the Community right of free movement, the executing Member State shall consult immediately the issuing Member State, by means of its SIRENE Bureau and in accordance with the provisions of the SIRENE Manual, in order to decide without delay on the action to be taken.

Article 15 AA

55. *Conditions for issuing alerts on third country nationals*

56. *subject to a restrictive measure taken in accordance with Article 15 TEU*

1. Without prejudice to Article 15 A, third country nationals who are the subject of a restrictive measure intended to prevent entry into or transit through the territory of Member States, taken in accordance with Article 15 of the EU Treaty including those implementing a travel ban issued by the Security Council of the United Nations, shall, insofar as data quality requirements may be satisfied, be entered into the SIS II for the purpose of refusing entry or stay.

2. Art 14D shall not apply in respect of alerts entered on the basis of paragraph 1.
3. The Member State that shall enter, update and delete these alerts on behalf of all Member States shall be designated at the moment of the adoption of the relevant measure taken in accordance with Article 15 of the Treaty on the European Union.

57. Article 16

58. Categories of data

(...)

59.

60. Article 17

61. Authorities with the right to access (...) alerts

1. Access to data entered in the SIS II in accordance with Article 15 and the right to search such data directly or in a copy of data of the CS-SIS shall be reserved exclusively to the authorities responsible for the identification of third country nationals for:
 - a. border control, in accordance with Regulation 562/2006/EC of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code);
 - b. other police and customs checks carried out within the country, and the coordination of such checks by designated authorities.
2. However, access to data entered in the SIS II and the right to search such data directly may also be exercised by national judicial authorities, inter alia, those responsible for the initiation of public prosecutions in criminal proceedings and judicial inquiries prior to indictment, in the performance of their tasks, as set out in national legislation, as well as their coordination authorities.
3. In addition, access to data entered in accordance with Article 15 and the data concerning documents relating to persons entered in accordance with Article 35(2)(d) and (e) of Council Decision 2006/XX and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on third country nationals in the context of the application of the Community acquis relating to the movement of persons. Access to data by these authorities shall be governed by the national law of each Member State.
4. The authorities referred to in this Article shall be included in the list referred to in Article 21(6).

62. Article 17 A
63. Limits of access

Users may only access data which they require for the performance of their tasks.

64.

65. Article 18

(...)

66.

67. Article 18 A

(...)

68.

69.

70. Article 19

71. Access to alerts on identity documents

(...)

72.

73.

74. Article 20

75. Conservation period of the alerts

1. Alerts on persons entered into the SIS II pursuant to this Regulation shall be kept only for the time required to meet the purposes for which they were supplied.
(... moved to paragraph 2)
2. Within three years from entering such an alert into the SIS II the necessity of keeping the alert shall be reviewed by the Member State issuing it.
- 2aa Each Member State shall, where appropriate, set shorter review periods in accordance with its national law.
- 2a The Member State issuing the alert may, within the review period, decide, following an comprehensive individual assessment, which shall be (...) recorded, to keep the alert should this prove necessary for the purposes for which the alert was issued. In this case paragraph 2 applies accordingly. Any extension of the alert must be communicated to the CS-SIS.
3. Alerts shall automatically be erased after the reviewing period referred to in paragraph 2 has expired. This will not apply in case the Member State issuing the alert communicated the extension of the alert to the CS-SIS as referred to in paragraph 2a. The CS-SIS shall automatically inform the Member States of scheduled deletion of data from the system four months in advance.
4. (moved to paragraph 3)
- 4a (moved to Article 20 AA)
- 4b Member States shall keep statistics about the number of alerts the conservation period of which has been extended in accordance with paragraph 2a.

76.

77. Article 20 AA

78. Acquisition of citizenship and alerts on refusal of entry

Alerts issued in respect of a person who has acquired citizenship of any State whose nationals are beneficiaries of the Community right of free movement shall be erased as soon as the Member State which issued the alert is informed pursuant to Article 24 or becomes aware that the person has acquired such citizenship.

79.

80. Article 20 A

81. Extension of the conservation period of the alerts

(deleted)

CHAPTER V

General data processing rules

82. Article 21

83. Processing of SIS II data

1. The Member States may process the data provided for in Article 15 for the purposes of refusing entry or stay in their territories.
2. Data may only be copied for technical purposes, provided that such copying is necessary in order for the authorities referred to in Article 17 to carry out a direct search. The provisions of this Regulation shall apply to these copies. Alerts issued by other Member States may not be copied from the N.SIS II into other national data files.
 - 2a (a) Technical copies, as referred to in paragraph 2, which lead to off-line databases may only be created for a period that shall not exceed 48 hours. This duration may be extended in emergency situations. These copies shall be destroyed once the emergency situation comes to an end.
 - (aa) By way of derogation to paragraph (a), technical copies which lead to off-line databases to be used by visa issuing authorities shall not be authorised one year after the authority in question has been connected successfully to the Communication Infrastructure for the Visa Information System as referred to in Regulation xx/xxxx/EC concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay visas. This shall not apply to copies made to be used only in emergency situations following the unavailability of the network for more than 24 hours.

- (b) (...) Member States shall keep an up-to-date inventory of these copies, make this inventory available to National Supervisory Authorities, as referred to in Article 31(1a) and ensure that the provisions of this Regulation, in particular those referred to in Article 10, are applied in respect of these copies.
3. Access to SIS II data shall only be authorised within the limits of the competence of the national authority and to duly authorised staff.
- 3a Data may not be used for administrative purposes. By way of derogation, data entered under this Regulation may be used in accordance with national law of each Member State by the authorities referred to in Article 17(3) for the performance of their tasks.
4. Data entered under Article 15 and data concerning documents relating to persons entered under Article 35(2)(d) and (e) of Council Decision xx/xxxx may be used in accordance with the national law of each Member State for the purposes referred to in Article 17(3).
5. Any use of data which does not comply with paragraphs 1 to 4 shall be considered as misuse under the national law of each Member State.
6. Each Member State shall send to the Management Authority a list of competent authorities which are authorised to search the data contained in the SIS II directly pursuant to this Regulation and any changes thereto. That list shall specify, for each authority, which data it may search and for what purposes. The Management Authority shall ensure the annual publication of the list in the *Official Journal* of the European Union.

84. Article 22

85. *Entering a reference number*

(...)

86.

87. Article 23

88. *SIS II data and national files*

1. Article 21 shall not prejudice the right of a Member State to keep in its national files SIS II data in connection with which action has been taken on its territory. Such data shall be kept in national files for a maximum period of three years, except if specific provisions in national law provide for a longer retention period.
2. Article 21(2) shall not prejudice the right of a Member State to keep in its national files data contained in a particular alert, which that Member State has issued in the SIS II.

89.

90. Article 23 A

91. SIS II alerts and national law

1. (...)
2. Insofar as (...) Community law does not lay down specific provisions, the law of each Member State shall apply to data entered in its N.SIS II.
3. If the requested action cannot be performed, the requested Member State shall immediately inform the Member State issuing the alert.

92. Article 24

93. Quality of the data processed in the SIS II (...)

1. The Member State issuing the alert shall be responsible for ensuring that the data is accurate, up-to-date and is entered in the SIS II lawfully.
2. Only the Member State issuing the alert shall be authorised to modify, add to, correct, update or delete data which it has entered.
3. If one of the Member States which has not issued the alert has evidence suggesting that an item of data is factually incorrect or has been unlawfully stored, it shall, through the exchange of supplementary information, inform the Member State issuing the alert thereof at the earliest opportunity and not later than ten days after the said evidence has come to its attention; the latter shall (...) check the communication and, if necessary, correct or delete the item in question without delay.
4. If the Member States are unable to reach agreement within two months, the Member State which did not issue the alert shall submit the case to the European Data Protection Supervisor who shall jointly with the involved National Supervisory Authorities, as referred to in Article 31, act as mediator.
5. (...)
- 5a The Member States shall exchange supplementary information if a person claims not to be the person wanted by an alert. If the outcome of the check is that there are in fact two different persons this person shall be informed about the provisions referred to in Article 25.

Where a person is already the subject of an alert in the SIS II, a Member State which enters a further alert shall reach agreement on the entry of the alert with the Member State which entered the first alert. The agreement shall be reached on the basis of the exchange of supplementary information. (...)

94.

95. Article 24 A

96. *Distinguishing between persons with similar characteristics*

1. When, while introducing a new alert, it appears that there is already a person in the SIS II with the same identity description element, the following procedure shall be followed:
2. *(deleted)*
 - a. *(deleted)*
 - b. the SIRENE bureau shall contact the requesting department to clarify whether the alert is on the same person or not;
 - c. if the cross-check reveals that the person in question is indeed one and the same, the SIRENE bureau shall apply the procedure for entering multiple alerts as referred to in Article 24(6). If the outcome of the check is that there are in fact two different people, the SIRENE bureau approves the request for entering another alert by adding the necessary elements to avoid any misidentifications.

97.

98. Article 25

99. *Additional data for the purpose of dealing with misused identity*

1. Where confusion may arise between the person actually intended by an alert and a person whose identity has been misused, the Member State which (...) entered the alert shall, subject to that person's explicit consent, add data related to the latter to the alert in order to avoid the negative consequences of misidentifications.
2. The data related to a person whose identity has been misused shall only be used for the following purposes:
 - a. to allow the competent authority to differentiate the person whose identity has been misused from the person actually intended by the alert;
 - b. to allow the person whose identity has been misused to prove his identity and to establish that his identity has been misused.
3. No more than the following personal data may be entered and further processed in the SIS II for the purpose of this article:
 - a) surname(s) and forename(s), name at birth and previously used names and any aliases possibly entered separately;
 - b) any specific objective and physical characteristic not subject to change;
 - c) place and date of birth;
 - d) sex;

- e) photographs;
 - f) fingerprints;
 - g) nationality(ies);
 - h) number(s) of identity paper(s) and date of issuing.
- 3a The technical rules necessary for entering, updating and deleting the data referred to in paragraph 3 shall be established in accordance with the procedure referred to in Article 35(3), without prejudice to the provisions of the instrument setting up the Management Authority referred to in Article 12.
4. The data referred to in paragraph 3 shall be erased at the same time as the corresponding alert or earlier if the person so requests.
5. Only the authorities having the right to access the corresponding alert may access the data referred to in paragraph 3 and may do so for the sole purpose of avoiding misidentification.
- 100.*

101. Article 26

102. Links between alerts

- 1. A Member State may create a link between alerts it issues in the SIS II. The effect of such a link shall be to establish a relationship between two or more alerts.
 - 2. The creation of a link shall not affect the specific action to be taken on the basis of each linked alert or the conservation period of each of the linked alerts.
 - 3. The creation of a link shall not affect the rights to access provided for in this Regulation. Authorities with no right to access certain categories of alerts shall not be able to see the link to an alert to which they do not have access.
 - 3a A Member State shall create a link between alerts only when there is a clear operational need.
 - 3b Links may be created by a Member State in accordance with its national legislation provided that the principles outlined in the present Article are respected.
 - 4. When a Member State considers that the creation of a link by another Member State between alerts is incompatible with its national law or international obligations, it may take the necessary measures to ensure there can be no access to the link from its national territory or by its authorities located outside its territory.
 - 4a. The technical rules for linking alerts shall be adopted in accordance with the procedure defined in Article 35(3), without prejudice to the provisions of the instrument setting up the Management Authority referred to in Article 12.
- 103.*

104. Article 27

105. Purpose and conservation period of supplementary information

1. Member States shall keep a reference to the decisions giving rise to the alert at the SIRENE bureau to support the exchange of supplementary information.
2. Personal data held in files by the SIRENE Bureau as a result of information exchanged (...), shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the alert related to the person concerned has been deleted from the SIS II.
3. Paragraph 2 shall not prejudice the right of a Member State to keep in national files data relating to a particular alert which that Member State has issued or to an alert in connection with which action has been taken on its territory. The period of time for which such data may be held in such files shall be governed by national law.

Article 27 AA

Transfer of personal data to third parties

Data processed in the SIS II in application of this Regulation shall not be transferred or made available to a third country or to an international organisation.

CHAPTER VI
Data protection

106. Article 27 A

Processing of sensitive categories of data

Processing of the categories of data listed in Article 8(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data shall not be authorised.

107.

Article 28

108. Right of access, correction of inaccurate data and deletion of unlawfully stored data

1. The right of persons to have access to data entered in the SIS II in accordance with this Regulation which relate to them shall be exercised in accordance with the law of the Member State before which they invoke that right. If national law so provides, the national supervisory authority provided for in Article 31(1) shall decide whether information shall be communicated and by what procedures. A Member State which has not issued the alert may communicate information concerning such data only if it has previously given the Member

State issuing the alert an opportunity to state its position. This shall be done through the exchange of supplementary information.

2. Communication of information to the data subject shall be refused if this is indispensable for the performance of a lawful task in connection with the alert or for the 2. protection of the rights and freedoms of third parties.
3. Any person has the right to have factually inaccurate data relating to them corrected or unlawfully stored data relating to them deleted.
- 3a The (...) individual concerned shall be informed as soon as possible and in any event not later than 60 days from the date on which he applies for access. If national law provides for a shorter delay, the latter shall be respected.
- 3b The individual shall be informed about the follow-up given to the exercise of his rights of correction and deletion as soon as possible and in any event not later than 3 months from the date on which he applies for correction or deletion. If national law provides for a shorter delay, the latter shall be respected.

109.

110. Article 29

111. Right of information

1. Third country nationals who are the subject of an alert issued in accordance with this Regulation shall be informed in accordance with Article 10 and 11 of Directive 95/46/EC. This information shall be provided in writing, together with a copy of or a reference to the national decision, referred to in Article 15(1), giving rise to the alert.
2. This information shall in any case not be provided:
 - a. where
 - i. the personal data have not been obtained from the third country national in question; and
 - ii. the provision of the information proves impossible or would involve a disproportionate effort;
 - b. where the third country national in question already has the information;
 - c. where, (...) national law allows for a restriction to the right of information (...), in particular in order to safeguard national security, defence, public security and the prevention, investigation, detection and prosecution of criminal offences.
3. (...)

112. Article 30

113. Remedies

1. Any person may bring an action before the courts or the authority competent under national law of any Member State, in particular to correct, delete or obtain information or to obtain compensation in connection with an alert involving them.
- 114.
115. 2. The Member States undertake mutually to enforce final decisions taken by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 32.
- 116.
117. 3. The rules on remedies provided for in this Article shall be evaluated by the Commission two years after the entry into force of this Regulation.

118. Article 31

119. Supervision of the N.SIS II

- 1a. The authority or authorities designated in each Member State and endowed with the powers referred to in Article 28 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter referred to as the “National Supervisory Authorities”) shall monitor independently the lawfulness of the processing of SIS II personal data on and from their territory, including the exchange and further processing of supplementary information.
- 1b. The authority or authorities referred to in paragraph 1a shall ensure that at least every four years an audit of the data processing operations in the N.SIS II is carried out according to international auditing standards.
- 1c. Member States shall ensure that the authority or authorities referred to in paragraph 1a have sufficient resources to fulfil the tasks entrusted to them by this Regulation.
2. (...)
3. (...)
4. (...)
5. (...)
6. (...)
7. (...)

120. Article 31 A

121. Supervision of the Management Authority

1. The European Data Protection Supervisor shall monitor that the personal data processing activities of the Management Authority are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data shall apply accordingly.
2. The European Data Protection Supervisor shall ensure that at least every four years an audit of the Management Authority's personal data processing activities is carried out according to international auditing standards. The report of the audit shall be sent to the European Parliament, the Council, the Management Authority, the Commission and the National Supervisory Authorities(...). The Management Authority shall be given an opportunity to make comments before the report is adopted.

122. Article 31 B

123. Cooperation between National Supervisory Authorities and the EDPS

1. The National Supervisory Authorities (...) and the European Data Protection Supervisor, each acting within the scope of their respective competences, shall cooperate actively in the framework of their responsibilities and shall ensure coordinated supervision of SIS II.
2. They shall, each acting within the scope of their respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems with the exercise of independent supervision or in the exercise of the rights of the data subject, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as may be needed.
3. The national supervisory authorities, (...) and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs and servicing of these meetings shall be at the charge of the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly according to need. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and the Management Authority every two years.

124. Article 31 C

125. Data protection during the transitional period

In case the Commission delegates its responsibilities during the transitional period to another body, pursuant to Article 12(3), it shall ensure that the European Data Protection Supervisor shall have the right and possibility to fully exercise his tasks including the possibility to carry out checks on the spot or to exercise (...) any other powers endowed to the European Data Protection Supervisor by Article 47 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

CHAPTER VII
Liability and sanctions

126.

127. *Article 32*

128. *Liability*

1. Each Member State shall be liable in accordance with its national law for any injury caused to a person through the use of the N.SIS II. This shall also apply to injury caused by the Member State which issued the alert, where the latter entered factually inaccurate data or stored data unlawfully.
2. If the Member State against which an action is brought is not the Member State issuing the alert, the latter shall be required to reimburse, on request, the sums paid out as compensation unless the data were used by the Member State requesting reimbursement in breach of this Regulation.
3. If failure of a Member State to comply with its obligations under this Regulation causes damage to the SIS II, that Member State shall be held liable for such damage, unless and insofar as the Management Authority or other Member State(s) participating in the SIS II failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.

129.

130. *Article 33*

131. *Sanctions*

Member States shall ensure that any misuse of data entered into the SIS II or any exchange of supplementary information contrary to this Regulation is subject to effective, proportionate and dissuasive sanctions in accordance with national law.

CHAPTER VIII
Final Provisions

132. *Article 34*

133. *Monitoring and statistics*

1. The Management Authority shall ensure that procedures are in place to monitor the functioning of the SIS II against objectives, in terms of output, cost-effectiveness, security and quality of service.
2. For the purposes of technical maintenance, reporting and statistics, the Management Authority shall have access to the necessary information related to the processing operations performed in the Central SIS II.
- 2a Each year the Management Authority shall publish statistics showing the number of records per category of alert, the number of hits per category of alert and how many times the SIS II was accessed, respectively given as a total and for each Member State.

3. Two years after the SIS II starts operations and every two years thereafter, the Management Authority shall submit to the European Parliament and the Council a report on the technical functioning of the Central SIS II and the Communication Infrastructure, including its security, the bilateral and multilateral exchange of supplementary information between Member States.
4. Three years after the SIS II starts operations and every four years thereafter, the Commission shall produce an overall evaluation of the Central SIS II and the bilateral and multilateral exchange of supplementary information between Member States. This overall evaluation shall include the examination of results achieved against objectives, assess the continuing validity of the underlying rationale, the application of this Regulation in respect of the Central SIS II, the security of the Central SIS II and any implications of future operations. The Commission shall transmit the reports on the evaluation to the European Parliament and the Council.
5. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraph 2a, 3 and 4.
- 5a. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 4.
6. During a transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for producing and submitting the reports referred to in paragraphs 2a and 3.

134. Article 35

135. Committee

1. The Commission shall be assisted by a Committee.
2. *(deleted)*
3. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.
4. The Committee shall adopt its Rules of Procedure.
5. The Committee referred to in paragraph 1 shall exercise its function from the date of entry into force of this Regulation.

136. Article 36

137. Amendment of the provisions of the Schengen Acquis

1. For the purposes of matters falling within the scope of the EC Treaty, this Regulation replaces, on the date referred to in Article 39(1a), the provisions of Articles 92 to 119 of the Schengen Convention, with the exception of Article 102 A thereof.

2. It also replaces, on the date referred to in Article 39(1a), the following provisions of the Schengen acquis implementing those articles²¹ :
- a. Decision of the Executive Committee of 14 December 1993 on the Financial Regulation on the costs of installing and operating the Schengen information system (C.SIS) (SCH/Com-ex (93) 16);
 - b. Decision of the Executive Committee of 7 October 1997 on the development of the SIS (SCH/Com-ex (97) 24);
 - c. Decision of the Executive Committee of 15 December 1997 amending the Financial Regulation on C.SIS (SCH/Com-ex (97) 35);
 - d. Decision of the Executive Committee of 21 April 1998 on C.SIS with 15/18 connections (SCH/Com-ex (98) 11);
 - e. Decision of the Executive Committee of 28 April 1999 on C.SIS installation expenditure (SCH/Com-ex (99) 4);
 - f. Decision of the Executive Committee of 28 April 1999 on updating the SIRENE Manual (SCH/Com-ex (99) 5);
 - g. Declaration of the Executive Committee of 18 April 1996 defining the concept of alien (SCH/Com-ex (96) decl. 5);
 - h. Declaration of the Executive Committee of 28 April 1999 on the structure of SIS (SCH/Com-ex (99) decl. 2 rev.);
 - i. Decision of the Executive Committee of 7 October 1997 on contributions from Norway and Iceland to the costs of installing and operating of the C.SIS (SCH/Com-ex (97) 18).
3. For the purposes of matters falling within the scope of the EC Treaty, references to the replaced articles of the Schengen Convention and relevant provisions of the Schengen acquis implementing those articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex.

138. Article 37

139. Repeal

Regulation (EC) No 378/2004, Regulation (EC) No 871/2004, Decision 2005/451/JHA, Decision 2005/728/JHA and Decision 2006/628/EC are repealed on the date referred to in Article 39(1a).

140.

²¹ OJ L 239 22.9.2000, p. 439.

141. Article 38

142. Transitional period and budget

1. Alerts may be transferred from SIS 1+ to the SIS II. The Member States shall ensure, giving priority to alerts on persons, that the contents of the alerts that are transferred from the SIS 1+ to the SIS II satisfy the provisions of this Regulation as soon as possible and within three years of the date referred to in Article 39(1a) at the latest. During this transitional period, the Member States may continue to apply the provisions of Articles 94 and 96 (...) of the Schengen Convention (...) to the contents of the alerts that are transferred from the SIS 1+ to the SIS II, subject to the following rules:
 - In the event of a modification of, an addition to or a correction or update of the content of an alert transferred from the SIS 1+ to the SIS II, the Member States shall ensure that the alert satisfies the provisions of this Regulation as from the time of that modification, addition, correction or update.
 - In the event of a hit on an alert transferred from the SIS 1+ to the SIS II, the Member States shall examine the compatibility of that alert with the provisions of this regulation immediately but without delaying the action to be taken on the basis of that alert.
2. The remainder of the budget at the date set in accordance with Article 39(1a), which has been approved in accordance with the provisions of Article 119 of the Schengen Convention, shall be paid back to the Member States. The amounts to be repaid shall be calculated on the basis of the contributions from the Member States as laid down in the Decision of the Executive Committee of 14 December 1993 on the financial regulation on the costs of installing and operating the Schengen Information System.
3. During the transitional period referred to in Article 12(3), references in this Regulation to the Management Authority shall be construed as a reference to the Commission.

143.

144. Article 39

Entry into force, applicability and migration

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
- 1a. It shall apply to the Member States participating in the SIS 1+ from a date to be fixed by the Council, acting by the unanimity of its Members representing the Governments of the Member States participating in the SIS 1+.
2. The date referred to in paragraph 1a shall be fixed after:
 - a) the necessary implementing measures have been adopted;

- b) all Member States fully participating in the SIS 1+ have notified the Commission that they have made the necessary technical and legal arrangements to process SIS II data and exchange supplementary information;
 - c) the Commission has declared the successful completion of a comprehensive test of the SIS II, which shall be conducted by the Commission together with the Member States, and the preparatory bodies of the Council have validated the proposed test result. This validation will confirm that the level of performance of the SIS II is at least equivalent to that achieved with SIS 1+;
 - d) the Commission has made the necessary technical arrangements for allowing the Central SIS II to be connected to the N.SIS II of the Member States concerned;
- 2a The Commission shall inform the European Parliament of the results of the tests carried out according to paragraph 2(c).
3. Any Decision of the Council taken in accordance with paragraph 1a shall be published in the Official Journal of the European Union.
4. *(deleted)*

145. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg,

*For the European Parliament
The President*

*For the Council
The President*

ANNEX

Correlation table

Schengen Convention²²	Regulation Articles
Articles	
Art. 92(1)	Art. 1(1); Art. 2(1); Art. 4(1)(2)(3)
Art. 92(2)	Art. 4(1)(2)(3); Art. 5(2)(3); Art.6; Art.9
Art. 92(3)	Art. 4(1)(2)(3), Art. 5(1), Art. 12
<i>Art. 92(4)</i>	Art.3 (1); Art. 7(2)(3); Art.8
Art. 93	Art.1(2)
Art. 94(1)	Art. 21(1)
<i>Art. 94(2)</i>	Art.15(1)
<i>Art. 94(3)</i>	Art. 16(1); Art. 25(3)
Art. 94(4)	
Art. 95(1)	
Art. 95(2)	
Art. 95(3)	
Art. 95(4)	
Art. 95(5)	
Art. 95(6)	
Art. 96(1)	Art. 15(1)
Art. 96(2)	Art. 15(1)
Art. 96(3)	Art. 15(1)
Art. 97	
Art. 98(1)	
Art. 98(2)	
<i>Art. 99(1)</i>	
Art. 99(2)	
<i>Art. 99(3)</i>	
Art. 99(4)	

²² Articles and paragraphs in italics have been added or amended by Council Regulation (EC) No. 871/2004 and Council Decision 2005/211/JHA on the introduction of new functions for the Schengen Information System, including the fight against terrorism.

Schengen Convention²²**Regulation Articles****Articles**

Art. 99(5)

Art. 99(6)

Art. 100(1)

Art. 100(2)

Art. 100(3)

Art. 101(1)

Art. 17(1)

Art. 101(2)

Art. 17(1)(3); Art. 18; Art.19

Art. 101(3)

Art. 21(2)

Art. 101(4)

Art. 21(3)

Art. 101A(1)

Art. 101A(2)

Art. 101A(3)

Art. 101A(4)

Art. 101A(5)

Art. 101A(6)

Art. 101B(1)

Art. 101B(2)

Art. 101B(3)

Art. 101B(4)

Art. 101B(5)

Art. 101B(6)

Art. 101B(7)

Art. 101B(8)

Art. 102(1)

Art. 21(1)

Art. 102(2)

Art. 23(1)(2)

Art. 102(3)

Art. 102(4)

Art.17(1)(3); Art.18; Art.19

Art. 102(5)

Art. 32(1)

Art. 103

Art. 11

Art. 104(1)

Art. 104(2)

Art. 104(3)

Schengen Convention²²**Regulation Articles****Articles**

Art. 105	Art. 24(1)
Art. 106(1)	Art. 24(2)
Art. 106(2)	Art. 24(3)
Art. 106(3)	Art. 24(4)
Art. 107	Art. 24(6)
Art. 108(1)	Art. 7(1)
Art. 108(2)	
Art. 108(3)	Art. 6; Art. 7(1); Art. 9(1)
Art. 108(4)	Art. 7(3)
Art. 109(1)	Art. 28; Art. 29(1)(2)(3)
Art. 109(2)	
Art. 110	Art. 29(1)(4); Art.31(1)
Art. 111(1)	Art. 30
Art. 111(2)	
Art. 112(1)	Art. 20(1)(2)(3)(4)(5); Art. 24(7)
Art. 112(2)	Art. 24(7)
Art. 112(3)	Art. 20(6)
Art. 112(4)	Art.20(5)
<i>Art. 112A(1)</i>	Art. 27(2)
<i>Art. 112A(2)</i>	Art. 27(3)
<i>Art. 113(1)</i>	
Art. 113(2)	Art. 14(3)(4)(5)(6)
<i>Art. 113A(1)</i>	Art. 27(2)
<i>Art. 113A(2)</i>	Art. 27(3)
Art. 114(1)	Art. 31(1)
Art. 114(2)	Art. 31
Art. 115(1)	Art. 31(2)
Art. 115(2)	
Art. 115(3)	
Art. 115(4)	
Art. 116(1)	Art. 32(1)

Schengen Convention²²**Regulation Articles****Articles**

Art. 116(2)

Art. 32(2)

Art. 117(1)

Art. 117(2)

Art. 118(1)

Art. 10(1)

Art. 118(2)

Art. 10(1)

Art. 118(3)

Art. 10(3)

Art. 118(4)

Art. 13

Art. 119(1)

Art. 5(1); Art.38(2)

Art. 119(2)

Art. 5(2)(3)