



## **Ad-Hoc Query on procedures for entering foreigner's data into the Schengen Information System**

**Requested by PL EMN NCP on 4<sup>th</sup> September 2013**

**Compilation produced on 7<sup>th</sup> January 2014**

**Responses from Belgium, Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Croatia (18 in Total)**

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### **1. Background Information**

In view of drafting new regulations on procedures for entering foreigner's data into the Schengen Information System, the Office for Foreigners would like to know more about other Member States' practices in this regard and ask the following questions:




1. What is a time period the Member States can enter the foreigner's data into the Schengen Information System for the purposes of refusing entry or stay for?

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2. In which circumstance the foreigner's data can be entered into the Schengen Information System?

We would very much appreciate your responses by **15<sup>th</sup> October 2013**.

## 2. Responses




		Wider Dissemination?	
	<b>Belgium</b>	<b>Yes</b>	<p>1. From 3 up to 10 years</p> <p>2. Foreigner's data are introduced into SIS if:</p> <ul style="list-style-type: none"> <li>the foreign national, being an illegal resident or a legal resident whose endangered public order/tranquillity or national security and is subjected to a removal or expulsion decree,</li> <li>the illegally residing foreign national who is subjected to a re-entry ban in the sense of Directive 2008/115/EU.</li> </ul>
	<b>Estonia</b>	<b>Yes</b>	<p>1. Mostly from 3 month up to ten years. In some cases a prohibition on entry can be permanent.</p> <p>2. Data on third-country nationals in respect of whom an alert has been issued for the purposes of refusing entry or stay can be entered if:</p> <ul style="list-style-type: none"> <li>the precept to leave (return decision) was filled;</li> <li>the court imposed expulsion with prohibition on entry as supplementary punishment;</li> <li>decision to apply a prohibition on entry was made by the Minister of the Interior.</li> </ul>
	<b>Finland</b>	<b>Yes</b>	<p>1. A prohibition of entry is ordered for a fixed term of a maximum of five years or until further notice. An alien who has been sentenced for an offence of aggravated or professional nature may be prohibited entry until further notice.</p> <p>2. The grounds for entering the foreigner's data into the Schengen Information System for the purposes of refusing entry are not laid down by law. The national practise however complies with Article 96 of the Schengen Treaty. Refusal of entry with regards deportation is registered into the SIS once there is a final decision on deportation. Refusal of entry with regards removal is registered as soon as the decision is enforceable and the appeal court does not prohibit the enforcement.</p> <p>Article 96:</p> <p>1. Data on aliens for whom an alert has been issued for the purposes of refusing entry shall be entered on the basis of a national alert resulting from decisions taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law.</p>

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			<p>2. Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose. This situation may arise in particular in the case of:</p> <ul style="list-style-type: none"> <li>• an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year;</li> <li>• an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party.</li> </ul> <p>3. Decisions may also be based on the fact that the alien has been subject to measures involving deportation, 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 aliens.</p>
	<b>Hungary</b>	<b>Yes</b>	<p>1-2. According to Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, entry and stay ban is ordered by the relevant immigration authority. The longest duration of an exclusion measure may not exceed ten years in the special case of the third-country national's residence in the territory of Hungary represents a serious threat to public security, public policy or national security. However, other types of expulsion have a period of 3 or 5 years.</p> <p>According to Section 9 of the Act CLXXXI of 2012 on the exchange of information in the framework of the second-generation Schengen Information System, immigration authorities may enter alerts and supplementary data on third country nationals in CS.SIS in accordance with Art. 24(2) and 26 of the SIS II Regulation. The alert shall be immediately deleted by the issuing authority or the SIRENE Bureau in cases of Art. 30 of the SIS II Regulation. Alert of third country nationals can be issued as well if their presence is estimated as a threat of national defence, security or public order in case of allowing the re-entry of the person concerned. Alerts shall be reviewed in every three year (cf. Section 22(1) of the Act CLXXXI of 2012 on the exchange of information in the framework of the second-generation Schengen Information System).</p>
	<b>Italy</b>	<b>Yes</b>	<p>1. The period may vary from 3 up to 5 years. This time limit may be overcome when the non-national is removed from Italy for reasons of public order, State security or because he/she is considered to be socially dangerous. According to legislation, moreover, if the expulsion is ordered by the Judicial Authority, the period of ineligibility in Italy - and the consequent entry into SIS - cannot be less than five years.</p> <p>2. Data of ineligible non-nationals are entered into SIS:</p> <ul style="list-style-type: none"> <li>• Seven days after notification of the order of unescorted expulsion;</li> <li>• Instead, in case of escorted expulsion, after the measure is enforced.</li> </ul>
	<b>Latvia</b>	<b>Yes</b>	<p>1. From one month up to three years;</p> <p>2. Foreigner's data could be entered into SIS if a decision on including a foreigner in the List of those Foreigners for whom Entry into the Republic of Latvia is Prohibited has been taken. This decision could be included in the voluntary return decision and removal order, as well as can be taken separately if:</p>




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			<ul style="list-style-type: none"> <li>• a competent State or foreign institution has provided information, which is the basis for considering that the foreigner threatens the State security, public order or safety;</li> <li>• the foreigner has crossed the external border, avoiding border checks, as well as has used a forged travel document, forged visa or residence permit;</li> <li>• during the preceding year the foreigner has violated the procedures specified in regulatory enactments for entry and residence of foreigners in the Republic of Latvia or in another Schengen Agreement Member State or customs regulations;</li> <li>• the foreigner has been convicted of a criminal offence committed in the Republic of Latvia, for which deprivation of liberty for at least one year has been provided;</li> <li>• a decision to annul or revoke a visa or residence permit has been taken in relation to the foreigner.</li> </ul>
	<b>Lithuania</b>	<b>Yes</b>	<p>The grounds for the entering into SIS are the refusal or annulment of a visa, the refusal or withdrawal of a residence permit, the refusal of entry into Lithuania, the obligation to depart from Lithuania, the return to the country of origin or a foreign country, the attempt to unlawfully depart or unlawful departure from Lithuania. The length of entrance into SIS is up to 5 years.</p> <p>In case the foreigner may constitute a threat to national security or public policy, the entrance into SIS is for a period exceeding five years.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. In Luxembourg, entry bans on the territory may have a maximum duration of five years and may be renewed for an additional period of 3 years. There is no deadline for the registration in the SIS</li> <li>2. Foreigner's data is entered into the SIS by the Service of International Relations of the Grand-Ducal Police, which is the responsible authority for the implementation of the SIS and SIS II, if the person is: <ul style="list-style-type: none"> <li>• Requested for extradition</li> <li>• Undesirable in the territory (order of expulsion because it has been convicted by a final judgement or it has been order by the Ministry of Immigration)</li> <li>• Minor of age, mentally ill patients, and missing persons or in danger with an aim of ensuring their own protection</li> <li>• Requested by a judicial authority, such as witnesses, those quoted to appear for notification of judgement and absconders</li> <li>• Suspected of taking part in serious offences and having to be the subject of checks or a surveillance control</li> </ul> </li> </ol> <p>In Luxembourg, data on aliens for whom an alert has been issued for the purposes of refusing entry is entered into the Schengen Information System (Article 96 of the Convention implementing the Schengen Agreement). It is not made on the basis of a separate administrative decision concerning the registration in the SIS but on grounds of a decision regarding the refusal to stay ('refus de séjour') in combination with a decision on the prohibition of entry to the territory ('interdiction d'entrée sur le territoire').</p>
	<b>Malta</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. 5 years.</li> <li>2. The following are instances when a foreigner's data can be entered into SIS: <ul style="list-style-type: none"> <li>• for the purpose of refusing entry to the Schengen territory of persons deemed to be prohibited immigrants in terms of Article 5 of Chapter 217 of the Laws of Malta;</li> <li>• arrest of person for the purposes of extradition (including EAWs)</li> </ul> </li> </ol>





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			<ul style="list-style-type: none"> <li>• missing adults for location</li> <li>• missing adults to take under protection</li> <li>• missing minors to take under protection</li> <li>• persons searches on behalf of judicial authorities (not for arrest purposes - for whereabouts/official address e.g., witnesses required for delivery of subpoena)</li> <li>• persons that should be monitored due their continuing/continuous involvement/suspected involvement in the commission of serious crime (discreet checks) e.g., person suspected of pedophilia</li> <li>• persons that should be searched/checked due to their continuing/continuous involvement/suspected involvement in the commission of serious crime (specific checks) e.g., person suspected of trading of child pornographic material/counterfeited euros</li> </ul> <p>Alerts on persons may be linked e.g., persons mentioned at 1 may be associated with others at 2 - 7. SIS II allows for the linking of alerts. Alerts on persons may also be linked to documents - person for refused landing and revoked residence permits/visa. SIS II also provides for these links.</p>
	<b>Netherlands</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Alerts can be included in SIS from 1 year up to 20 years from the date of actual departure from the Netherlands.</li> <li>2. Data are entered into SIS in cases where: <ul style="list-style-type: none"> <li>• a travel ban has been imposed;</li> <li>• access to Schengen has been denied because of drug related offenses or the use of false documents for crossing the border;</li> <li>• the person poses a danger or a threat to national security.</li> </ul> </li> </ol>
	<b>Poland</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. From 6 months up to five years.</li> <li>2. Foreigner's data are enter into SIS if: <ul style="list-style-type: none"> <li>• a final decision on expulsion has been issued,</li> <li>• a foreigner has been convicted by a final judgement,</li> <li>• foreigner's entry or stay are undesirable for reasons of posing a threat to national defense or security or the public order or would be against the interests of the Republic of Poland.</li> </ul> </li> </ol>
	<b>Portugal</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The decision to ban entry is entered in SIS in accordance with the specified period (forced return: at least five years; punishment of expulsion and a separate measure of judicial expulsion: as judicial decision). The registration maintenance in SIS is reviewed every three years in accordance with the indication for the purposes of refusing entry on the national list and in regard with the particular situation.</li> <li>2. The foreigner's data are enter into SIS if: <ul style="list-style-type: none"> <li>• a final decision of expulsion has been issued;</li> </ul> </li> </ol>



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			<ul style="list-style-type: none"> <li>a foreigner has been convicted by a final judgement; and</li> <li>the foreigner's entry or stay are undesirable for reasons of representing a danger or serious threat to public order and national security.</li> </ul>
	<b>Slovak Republic</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>Pursuant to the Slovak national law, for cases, in which competent court has decided on sentence of expulsion, sentence may be imposed for a period of not less than one year and not exceeding fifteen years. For cases, in which competent police department has decided on expulsion, expulsion may be imposed for a period of not less than one year and not exceeding ten years. Thus in general, in the SR we can enter alert in the Schengen information system ("SIS") on foreigner for the purposes of refusing entry or stay for period from 1 year to up to 15 years.</li> <li>The data into SIS can be entered in following cases: <ul style="list-style-type: none"> <li>When a final decision on expulsion sentence has been issued by the competent court;</li> <li>When a decision on administrative expulsion has been issued by the competent police department for reasons: <ul style="list-style-type: none"> <li>foreigner represents serious threat to the state security or public order,</li> <li>foreigner was lawfully sentenced for an intentional crime and not imposed the punishment of expulsion,</li> <li>foreigner has violated the regulations on narcotic drugs and psychotropic substances,</li> <li>foreigner has submitted a falsified or counterfeited document or a document of another person during control as per the Act on Residence of Aliens,</li> <li>foreigner has illegally crossed the external border,</li> <li>other more serious violations of Act on Residence of Aliens.</li> </ul> </li> </ul> </li> </ol>
	<b>Slovenia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>From 6 months up to 5 years (with accordance to the previous Penal code of Slovenia up to 10 years also).</li> <li>If a final decision, including a prohibition on entry or an expulsion, has been issued either by the court judgement (with accordance to the Minor offence act - art. 24 Official gazette of the Republic of Slovenia nr. 7/2003, or the Penal code of Slovenia -art. 40 Official gazette of the Republic of Slovenia nr. 95/2004), or also on the base of such administrative decision (including prohibition on entry/expulsion), issued with accordance to the Aliens act by migration authority or by the Police (art. 62 and 66 Official gazette of the Republic of Slovenia nr. 50/2011).</li> </ol>
	<b>Spain</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>Up to 10 years.</li> <li>When the return is carried out.</li> </ol>
	<b>Sweden</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>Up to five years.</li> <li>Foreigner's data are entered into SIS if:</li> </ol>

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			<ul style="list-style-type: none"> <li>• a final decision on a re-entry ban has been issued,</li> <li>• a decision on immediate removal of a person is issued.</li> <li>• a foreigner has been convicted by a final judgment (and the judgment includes a decision about removal).</li> </ul>
	<b>United Kingdom</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The UK did not implement or connect to SIS. Existing SIS countries have moved to SIS II.</li> <li>2. The UK is not yet connected to SISII. When connected, the UK will only have access to policing and judicial co-operation information (as we are excluded from the border control elements of Schengen - the UK retains its own border controls).</li> </ol>
	<b>Croatia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Given the fact that the Schengen Information System (SIS) has not yet been implemented in the Republic of Croatia, there is no entering of data into the SIS in Croatia yet. After the implementation of SIS II in Croatia, the entry of data on foreigners with a view to forbidding entry or stay in the Schengen area shall be entered in line with Article 26 of the Regulation on the establishment, operation and use of the second generation Schengen Information System (SIS II) and the Croatian national legislation. A time period related to entering data on aliens shall depend on the length of the pronounced protection or safety measure of forbidding entry or stay in our country or in the Schengen area.</li> <li>2. Given the fact that the Schengen Information System (SIS) has not yet been implemented in the Republic of Croatia, there is no entry of data into the SIS in Croatia yet. After the implementation of SIS II in the Republic of Croatia, foreigners, as well as Croatian nationals, may become objects of almost any alert within SIS II: <ul style="list-style-type: none"> <li>• Article 26 of the Decision on SIS II (persons wanted on the basis of an European Arrest Warrant)</li> <li>• Article 24 of the Regulation on SIS II (persons prohibited entry or stay)</li> <li>• Article 32 of the Decision on SIS II (missing persons)</li> <li>• Article 34 of the Decision on SIS II (persons wanted by the court as witnesses)</li> <li>• Article 36 of the Decision on SIS II (persons with pronounced measure of discreet checks).</li> </ul> </li> </ol>

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