

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)



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Requested by BE EMN NCP on 16th January 2018

Border

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The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

The Belgian authorities are currently examining how to further optimize the alerts on refusal of entry or stay in SIS.

They would like to know the practices in other Member States and Norway regarding the alerts on refusal of entry or stay in SIS for TCNs who pose a threat to public order or national security, based on article 24, §§ 1 and 2 of the SIS II Regulation (No 1987/2006). According to this article, an alert should result from “a decision taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law taken on the basis of an individual assessment”.

The Belgian authorities would like to better understand how this is applied and experienced in other Member States and Norway and to this end, table the following questions:

Questions

1. Does your Member State issue alerts according to article 24, §§ 1er and 2 solely on the basis of an entry ban which accompanies a return decision?
2. If not, what other decisions can result in an alert for the purpose of refusing entry or stay under article 24, §§ 1 and 2? In particular: a) Can a decision of refusal of visa, refusal of entry, or end of stay, based on reasons of public order or national security, lead to an alert based on article 24, §§ 1 and 2? b) A Member State can take restrictive measures regarding a TCN in order to be banned from entry or transit for reasons of national security, which are comparable to those taken by the European Union in the context of the CFSP (Common Foreign and Security Policy). Can these measures lead to an alert based on article 24, §§ 1 and 2? c) Other decisions?
3. Although the SIS II Regulation is directly applicable in the Member States’ legal systems, has your Member State taken any legislative or regulatory measures for the purpose of its enforcement? In particular regarding the implementation of article 24? If yes, please elaborate.

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	1. Yes, according to Art 24 SIS II Regulation AT issues alerts only on basis of an enforceable return decision with entry ban.

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>2. No other decisions.</p> <p>3. On a national level, the basis for individual assessment according to Art 24 Para 1 SIS II Regulation is laid down in article 53 Alien Police Act. Article 53 para 2 and 3 Alien Police Act regulate the cases, in which an entry ban is to be issued. Furthermore article 53 para 3 Alien Police Act regulates the case of Art. 24 Para 2 SIS II Regulation. ----- Source: Ministry of the Interior</p>
	Belgium	Yes	<p>1. In the current state of law and practice, yes.</p> <p>2. a) N/A b) N/A c) N/A</p> <p>3. Article 25 of the Belgian Immigration Act of 15.12.1980 states that: “The foreigner who is subjected to an entry ban under this Act is alerted in the national database of refusal of entry or stay. He is also alerted in the Schengen Information System for the purpose of refusing entry or stay in the Schengen area. This in accordance with regulation (CE) n° 1987/2006 of the European parliament and of the Council of 20.12.2006 and in accordance with acts of the European Union pursuant of this regulation.”</p>
	Bulgaria	Yes	<p>1. Bulgaria is not a full member of the Schengen area and does not apply refusals to enter. It imposes restrictions only under national law.</p> <p>2. N/A</p> <p>3. N/A</p>
	Croatia	Yes	<p>1. Prohibition of entering and staying (in a certain time period) determined by the MOU units in the Republic of Croatia shall be stipulated solely in the cases where foreigners are required to leave the Republic of Croatia and the European Border Guard.</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>2. N/A</p> <p>3. The RH uses the SIS II Regulation from 27 June 2017. but only in the part related to portage for persons and objects. For this reason, the ban on entry and stay established by the Ministry of Interior are not in SIS, but rather a national database on bans on entry and stay of aliens.</p>
	Cyprus	Yes	<p>1. No</p> <p>2. n/a</p> <p>3. Cyprus is not a full member of the SIS II and therefore implementation of article 24 it is not applicable.</p>
	Czech Republic	No	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>
	Estonia	Yes	<p>1. No, not solely.</p> <p>2. a) Yes b) Yes c) Besides the entry bans arising from return decisions an entry ban may also be applied if: 1) there is good reason to believe that his or her stay in Estonia may endanger the security and public order of the Republic of Estonia, other member state of the European Union, a member state of the Schengen Convention or a member state of the North Atlantic Treaty Organisation or the health of other persons; 2) there is information or good reason to believe that he or she belongs to a criminal organisation, that he or she is connected with the illegal handling or illicit trafficking of narcotics, psychotropic substances or the illegal conveyance of persons across the border or a temporary control line, that he or she is a member of a terrorist organisation or has committed an act of terrorism, or there is good reason to believe that that he or she may commit a terrorist crime or he or she is involved in financing or supporting a terrorist crime or money laundering; 3) he or she is employed or has been employed by the intelligence or security service of a foreign state or he or she is related to or has been related to the intelligence or security service of a foreign state, or there is good reason to believe that he or she is employed or</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>has been employed by an intelligence or security service of a foreign state or he or she is related to or has been related to the intelligence or security service of a foreign state; 4) he or she has received or there is good reason to believe that he or she has received special training in landing operations or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units; 5) he or she incites or there is good reason to believe that he or she may incite national, racial, religious or political hatred in Estonia or a foreign state; 6) he or she has been punished or there is good reason to believe that he or she has been punished for a serious crime against humanity or for a war crime, regardless of whether the criminal record has expired or been expunged, and regardless of the expungement of data concerning the penalty from the criminal records database; 6¹) there is information or a good reason to believe that the alien has participated or contributed to violation of human rights in a foreign state, which has resulted in the death or serious injury of a person, the unfounded conviction of a person in an offence inspired by political motives or other serious consequences; 7) he or she has been punished for an intentionally committed criminal offence or for another offence in Estonia or a foreign state, and if the criminal record has neither expired nor been expunged or if data concerning the penalty have not been expunged from the criminal records database; 8) the alien has violated legislation regulating the stay of aliens in Estonia or the crossing of the state border by aliens; 9) the alien has provided incorrect information or a falsified document upon application for a legal basis to stay in Estonia or extension thereof, for Estonian citizenship, international protection or an identity document; 10) the alien has unperformed obligations to the Estonian state, a governmental authority or local government. In addition to the above mentioned grounds, in case a court imposes imprisonment to a third-country national, the court may additionally impose expulsion with an entry ban with a court decision.</p> <p>3. Procedural elements of imposing entry bans to third country nationals have been regulated in the respective national legislative framework. Article 29 of the Obligation to Leave and Prohibition to Entry Act gives a specific grounds in case the threat to public order or to national security may be presumed.</p>
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EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

	<p>Finland</p>	<p>Yes</p>	<p>1. Yes, a SIS alert is always issued in conjunction with a return decision if a TCN poses a threat to public order or national security.</p> <p>2. N/A</p> <p>3. Aliens' Act Section 150 paragraphs 1-3 regulate the issue. (1) A decision on refusal of entry or deportation, may include a prohibition of entry imposed on an alien. A prohibition of entry is ordered, if no time limit has been set out for voluntary return under section 147a(2), or if the alien has not left the country voluntarily within the fixed time limit, unless otherwise provided in section 146. An alien who has been issued with a residence permit under section 52a is not prohibited from entering the country, if he or she has not been issued with a new residence permit or his or her residence permit has been cancelled, unless he or she has refused compliance with the obligation to return or he or she is a danger to public order or security. A prohibition of entry may be ordered in a separate decision if the alien has not left the country voluntarily within the fixed time limit. (2) A prohibition of entry is ordered for a fixed term of no more than five years or until further notice. An alien who has been sentenced to punishment for professional offence may be prohibited from entering Finland until further notice, if he or she is a danger to public order or security. (3) A prohibition of entry is restricted to Finland if the alien has a residence permit in another Schengen State, and the permit is not cancelled.</p>
	<p>France</p>	<p>No</p>	<p>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</p>
	<p>Germany</p>	<p>Yes</p>	<p>1. The BAMF is currently not involved in searches for refusal of entry under Article 24 of Regulation (EC) No 1987/2006. In that regard, no statement can be made as to the current interpretation or handling of Article 24 of Regulation (EC) No 1987/2006.</p> <p>2. see question 1</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>3. With regard to the implementation of the new SIS regulations, which include the call for procedures on refusal of entry, agreements are currently underway at national level on how to interpret the requirements of the new SIS regulations</p>
	Hungary	Yes	<p>1. Yes, according to the procedure of Hungarian authorities in each case when a return decision is taken which is followed by an entry ban, an alert is issued according to article 24 of SIS Regulation in compliance with concerning national legislative acts.</p> <p>2. N/A</p> <p>3. Yes, the Act CLXXXI of 2012 on the information exchange in the frame of the second generation of Schengen Information System, furthermore the amendments of certain law enforcement laws regarding to that as well as the related Magyary Simplification Programme. According to the Article 9 of the Act, the immigration authority issues alert and supplementary information in regards to third country national in the cases defined by Art. 24 (2) and Art. 26 of SIS II Regulation.</p>
	Ireland	Yes	<p>1. Ireland does not participate in the SIS II Regulation (No 1987/2006).</p> <p>2. .</p> <p>3. .</p>
	Latvia	Yes	<p>1. In accordance with national legislation the alerts according to Article 24 (1) and (2) of the SIS II Regulation are not issued solely on the basis of an entry ban which accompanies a return decision.</p> <p>2. a) Yes. b) No. c) No other decisions.</p> <p>3. SIS II Regulation is applicable directly and there are also national legal acts establishing the competences of the authorities issuing decisions on entry bans and responsible for entering them</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>into SIS, as well as defining the practical measures on processing of data in SIS, they are: 1) Law On Operation of the Schengen Information System. 2) Regulations of the Cabinet of Ministers on the Procedures for the Entering, Correction and Deletion of Alerts in the Schengen Information System, as well as Ensuring Accessibility of Supplementary Information between the SIRENE Latvia Bureau and Procedures for the Exchange of Supplementary Information of Institutions and Authorities. 3) Immigration Law.</p>
	Lithuania	Yes	<p>1. The alerts according to Article 24 (1) and (2) of the SIS II Regulation are not issued solely on the basis of an entry ban which accompanies a return decision.</p> <p>2. a) Yes. b) No. c) No other decisions.</p> <p>3. Yes. There are also national legal acts establishing the competences of the authority responsible for issuing alerts according to Article 24 (1) and (2) of the SIS II Regulation, as well as defining the practical measures. According to Article 133 of the Law on the Legal Status of Aliens, the national no-entry list is drawn up and managed by the Migration Department, which also forwards the data from this list to the SIS in accordance with the procedure established by the Government. In accordance with the regulations of drawing up and handling of the national list of aliens prohibited from entering the Republic of Lithuania, approved by Resolution No. 436 of 20 April 2005 of the Government of the Republic of Lithuania, the data from the national list are forwarded to the SIS in case if the decision on entry ban meets the grounds specified in Article 24 (1) and (2) of the SIS II Regulation.</p>
	Luxembourg	Yes	<p>1. Yes. In Luxembourg entry bans can be jointly issued with a removal decision (article 112 (1) of the amended Law of 29 August 2008 on free movement of persons and immigration) or it can be issued in a separate decision (article 112 (1)). This decision can be issued later even if the person is not anymore on the territory but it is always linked to a removal decision. In the case of expulsion the entry ban is systematically issued with the expulsion decision (article 116 (3)). Entry bans are only issued in the framework of the law. However, if an alert from another database shows that the person is a risk for public order or national security or the international relations, according to article 34(3), the authorities can refuse entering in the country. The only</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>case when an entry ban can be issued to a person not residing in the territory is when it was issued after the issuance of removal decision and the person has already left the territory. A SIS alert is systematically entered when an entry ban has been imposed on a third-country national.</p> <p>2. N/A.</p> <p>3. See answer to question 1.</p>
	Malta	Yes	<p>1. It is a practice to issue an entry ban following a return decision/removal order.</p> <p>2. N/A</p> <p>3. Police Internal policy circulars were issued but no legislative measures were taken.</p>
	Netherlands	Yes	<p>1. No</p> <p>2. a). Yes. In case the return directive is not applicable an alert can be based on: -refusal of entry after using a false passport -refusal of entry after an attempt to smuggle drugs into the country -if there is a concrete indication that the TCN poses a threat to the national security -if there is a concrete indication that the TCN poses a threat to the public order b). not relevant c) no</p> <p>3. Yes, we have; the “Vreemdelingencirculaire’ contains specific information / instructions regarding alerts (f.e. like the reasons mentioned under 2a, the duration of an alert, instructions how to act if the alerted person has a residence-permit).</p>
	Poland	Yes	<p>1. Entry into the SIS may result not only from the decision to oblige the foreigner to return, which is accompanied by the re-entry prohibition (however, it should be noted that in Poland, all return decisions are accompanied by re-entry prohibition and thus entry of the foreigner's data to the SIS).</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>2. The entry of the foreigner 's data into SIS may also result from other circumstances that have been specified in article 443 of Act of 12 December 2013 on foreigners. Apart from the final decision on obliging the foreigner to return, the grounds for inclusion the foreigner's data in SIS is: 1) a final judgment referred to in Article 435(1)(2)(b) or (c), or 2) recognition of the foreigner's entry into the territory of the Republic of Poland or his/her stay within that territory as undesirable because of the threat to national defence or national security or the protection of public safety and order or the possibility of infringement of the interest of the Republic of Poland, or 3) a transfer of a foreigner to a third country on the basis of an international agreement on the transfer and acceptance of persons after detaining a foreigner because of border crossing in violation of legal regulations, or 4) Article 77 Act of 14 July 2006 on the entry into, residence in and departure from the territory of the Republic of Poland of nationals of the European Union Member States and members of their families (execution of a decision to expel Union citizen or a family member who is not a Union citizen, due to the threat to country's defences or safety, or protection of public safety and order). It should be noted that the entry into the SIS is made on the basis of an entry in the national list of foreigners whose stay in the territory of the Republic of Poland is undesirable. According to the Article 440 (1)Inclusion of data of a foreigner in the list, extension of the entry's validity period or deletion the data from the list shall be made by the Head of the Office, ex officio or upon request by one of the following bodies: 1) the minister of National Defence; 2) the minister competent for foreign affairs; 3) the Commander-in-Chief of the Police; 4) the Commander-in-Chief of the Polish Border Guard; 5) the Head of Internal Security Agency; 6) the Head of the Foreign Intelligence Agency; 7) the Head of the national Revenue Administration; 8) the President of the Institute of National Remembrance - the Chief Commission for the Prosecution of Crimes against the Polish Nation; 9) a Voivode. According to the Article 441 a public prosecutor or governmental administration bodies shall provide the Head of the Office with the available information about the circumstances justifying the entry of the data of a foreigner into the list or the circumstances justifying the removal of the data from the list, the suspension or renewal of the period of validity of an entry. The body that issued a decision on the basis of which: 1) the foreigner's data are to be entered into the list, or 2) the entry's validity is to be suspended, or 3) the foreigner's data are to be remove from the list – shall submit this decision to the Head of the Office when it has become final and binding along with a photograph of a foreigner. The court that has sentenced a foreigner in the Republic of Poland with</p>
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EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>a final judgment for an intentional offense or a tax offense to pay a fine or serve a prison sentence shall send the Head of the Office a copy of the final judgment in the case, as well as a copy of the decisions and judgments. This information and documents are the ground for the entry of the foreigner's data into the list (and in applicable cases to SIS), possibly for the extension of the entry period or its removal (Article 442 of the Act on Foreigners).</p> <p>3. See answer to question 2</p>
	Slovak Republic	Yes	<p>1. Alerts for the purpose of entry ban in SIS II SR are issued on the basis of: • Decision on administrative expulsion and entry ban • Decision on entry ban • Judicial expulsion</p> <p>2. a) Yes, in case of refusal of entry b) During the Presidency of the SR in the Council of the EU (SK PRES) created records for the purpose of refusal of entry in SIS II based on the decision of Council about restrictive measures, issued and published in the Official Journal of the EU during the Presidency of SR.</p> <p>3. Yes, in the SR this is also defined in the national legislation (Act 404/2011 Coll. on the Residence of Aliens) and there is an internal regulations as regards to the practice, related to the entering of records on entry bans into the national information system, from which records are transferred to the central SIS in line with the rules established.</p>
	Slovenia	Yes	<p>1. Yes</p> <p>2. n.a.</p> <p>3. No particular legislative measures have been added.</p>
	Sweden	Yes	<p>1. Yes. It's possible for the Swedish Migration Agency to give the applicant an re-entry ban when the agency take decision about deportation. An registration will be made in SIS II.</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>2. See question 3.</p> <p>3. Sweden put to order a national legislation (2000:344) how to deal with issues regarding registration in the SIS II system. All aspects are covered when it comes to for example in which situations third country nationals and items are allowed to make registration about. The Swedish Migration Agency also have an internal handbook as a guide for the processing officers at the agency. Registration is done by the Agency concerning lost resident permit cards, lost aliens passport and travel document for refugees for example. Swedish police uses the system for other aspect when it comes to crime prevention. Missions abroad like, Embassy's and General consulates make a check in the SIS II system when they receive a visa application and a check is also made before the embassy grant a visa. The Agency must also make a check in the SIS II system before you take decision an grant any kind of permits, for example residents permits, working permits and permits on family ties and also a check should be made when the Agency take decisions in a visa case.</p>
	United Kingdom	Yes	<p>1. The United Kingdom does not participate in the SIS II Regulation.</p> <p>2. N/A</p> <p>3. N/A</p>
	Norway	Yes	<p>1. Yes. Norway issues alerts for the purpose of refusing entry or stay in SIS, solely on the basis of a decision of expulsion. Please note that a decision of expulsion according to Norwegian legislation is the same as a return decision or a refusal of entry along with an entry ban. A third country national (TCN) who is expelled from Norway and thus is given an entry ban, will, as a main rule, also be registered in SIS according to Norwegian practice. Thus, Norway always considers issuing an entry ban and a SIS alert for TCNs convicted of a crime that can lead to a minimum of one year's imprisonment according to article 24 § 2 letter a in the Immigration Act. Even though there are serious grounds for believing that a TCN has committed a grave, criminal offence, or there are clear indications of an intention to commit such an offence according to article 24 § 2 letter b, in the Immigration Act, as long as the TCN is not convicted, there is no</p>

EMN Ad-Hoc Query on Ad-Hoc Query on the entering of alerts in SIS for reasons of public order (article 24, §§ 1 and 2 of SIS II Regulation)

			<p>legal basis in Norwegian law to issue that person an entry ban. In Norway, a TCN will only be registered in SIS if he/she has actually been convicted of a serious crime. If there are grounds for believing that the TCN is a threat to national security, Norway will, however, always consider issuing an entry ban even though the person has not been convicted.</p> <p>2. a) As mentioned above, Norway only registers a person in SIS for the purpose of refusing entry or stay on the basis of a decision of issuing an entry ban. If an application of visa or residence permit is rejected for reasons of public order or national security, Norwegian authorities will, as a main rule, also issue an entry ban together with the refusal. b) According to Norwegian law we can issue an entry ban even though the TCN has never been to Norway, which means that the decision to issue an entry ban can lead to refusal of entry along with an entry ban. If there is concern for national security, Norway as mentioned above, always considers an entry ban also if the TCN is outside of Norway, in order to be banned from entry. Thus, Norway in practice only uses article 24 § 3 to register persons in SIS for the purpose of refusing entry or stay, since the conditions for registration under §§ 1 and 2 is covered by § 3 according to Norwegian law and practice. c) N/A</p> <p>3. Norway has its own law concerning the use of SIS in Norwegian legislation, in the Immigration Act relating to the Schengen Information System, (the SIS Act). Norway incorporated some of the paragraphs in the previous Schengen convention in the SIS Act, among them previous article 96. Norway has made some changes in the SIS Act to correspond with the changes related to the SIS II Regulation. We have, however, not taken any legislative measures regarding article 24 in the Norwegian SIS Act as we did not find that necessary.</p>
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