



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

The Director-General

Brussels
HOME.B.3/TK

By registered letter with acknowledgment of receipt

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Subject: Your application for access to documents – Ref GestDem No 2020/1458

Dear Sir,

We refer to your access to documents request registered on 11 March 2020 with the number 2020/1458 to which we sent a holding reply on 30 March (Ares(2020)1832815) and an email on 23 April.

In your request, you are asking the following questions aimed at clarifying our reply to your previous access to documents request 2020/0555, on which we sent you a reply on 6 March:

- 1) *“The Commission web site states that DG HOME is responsible for the operation of the SIS (see: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-andvisas/schengen-information-system_en). Is the information published there incorrect?*
- 2) *If DG HOME is in any fashion involved in the operation of the SIS, can you describe the relationship between DG HOME and the SIS, and/or provide any information and documents that describes that relationship?*
- 3) *If DG HOME is the DG responsible for the operation of the SIS, can you explain how it is possible that it maintains the system without any written documentation (such as the material requested in my previous request)? Can you provide any policies for the operation of IT systems within DG HOME, in particular where they state that no written documentation is produced?*

4) *I would like you to include in this new request any postal or email communications between DG HOME and the UK government related to the SIS and the exit of the UK from the European Union. Further include any communication between DG HOME and any IT service providers (privately owned or otherwise) regarding the same topic.”*

We understand that the scope of your request is limited to the SIS large-scale IT system (https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/alerts-and-data-in-the-sis_en) and we consider consequently your follow-up questions as a request for information, except for question 4 that is being treated under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

Reply to question 1 (access to information):

Please note that the responsibilities of each stakeholder are clearly defined in the relevant provisions of the SIS legislation, i.e. Regulation (EC) No 1987/2006² and Council Decision 2007/533/JHA³ (please see Chapter II ‘Responsibility of the Member States’ and Chapter III ‘Responsibility of the Management Authority’). In accordance with Article 1(3) of Regulation (EU) 2018/1726⁴, the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) took over the tasks conferred on the Management Authority in relation to SIS and is responsible for the operational management of the SIS.

This division of competences is also clearly referred to on the Commission’s website, in the section ‘How is SIS designed and who is responsible for its management?’:

‘Each Member State using SIS is responsible for setting up, operating and maintaining its national system and its national SIRENE Bureau. The EU Agency for large-scale IT systems (eu-LISA) is responsible for the operational management of the central system and the communication infrastructure. The European Commission is responsible for the general supervision and evaluation of the system and for the adoption of implementing measures where uniform conditions for implementation are needed, such as the rules for entering and searching data.’

Reply to question 2 (access to information):

DG HOME (Directorate-General for Migration and Home Affairs) is one of the services of the European Commission. One of the main roles of the Commission is to propose and enforce EU legislation as well as implement various policies. In that regard, DG HOME is responsible for general supervision and enforcement of the SIS Union legislation. The Commission has various tools to fulfil this responsibility, such as the ‘Schengen evaluation and monitoring mechanism’ established under Regulation (EU) No 1053/2013⁵ or the infringement procedures.

There are several specific responsibilities of the Commission related to SIS, which are defined in the SIS Union legislation. For instance, the Commission, in accordance with the timeframes

¹ OJ L 145, 31.5.2001, p. 43.

² OJ L 381, 28.12.2006, p. 4.

³ OJ L 205, 7.8.2007, p. 63.

⁴ OJ L 295, 21.11.2018, p. 99.

⁵ OJ L 295, 6.11.2013, p. 27.

provided for in that legislation must perform an overall evaluation of the Central SIS II (second generation Schengen Information System) and the bilateral and multilateral exchange of supplementary information between Member States. The Commission also adopts, in consultation with the ‘Comitology’ Committee, implementing acts in relation to the SIS legislation. There are several implementing acts adopted by the Commission in relation to SIS, such as Commission Implementing Decision (EU) 2017/1528 on the SIRENE Manual and other implementing measures for the SIS II⁶ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1528&from=EN>); Commission Implementing Decision (EU) 2016/1345 on minimum data quality standards for fingerprint records within the second generation SIS⁷ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D1345&from=EN>) and others.

The Commission also implements policies related to the SIS and attempts to harmonise its use. This is done, for instance, through issuing and updating Commission Recommendation C(2018) 2161, establishing a catalogue of recommendations and best practices for the correct application of the SIS II and the exchange of supplementary information by the competent authorities of the Member States implementing and using the SIS II.

The Commission has also a prerogative to propose new EU legislation. The Commission tabled in particular the proposals for three new SIS Regulations. In November 2018, these were adopted by the co-legislators as Regulation (EU) 2018/1860⁸ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1860&from=EN>), Regulation (EU) 2018/1861⁹ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1861&from=EN>) and Regulation (EU) 2018/1862¹⁰ (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1862&from=en>).

You may find more information under <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Sis-Ii> and https://edps.europa.eu/data-protection/european-it-systems/schengen-information-system_en.

Reply to question 3 (access to information):

As stated above, eu-LISA is responsible for the operational management of the SIS.

As regards the second part of your question ‘*Can you provide any policies for the operation of IT systems within DG HOME, in particular where they state that no written documentation is produced?*’, as explained at the beginning of this letter, we consider that you are referring in your request for information (questions 1, 2 and 3) and in your request for access to documents (question 4) to the SIS large scale IT system. For the reasons explained above, DG HOME is not responsible for the operational management of this IT system. We therefore confirm that we do not have written documentation except publicly available information, as referred in our answers to questions 1, 2 and 3 (please see above).

⁶ OJ L 231, 7.9.2017, p. 6.

⁷ OJ L 213, 6.8.2016, p. 15.

⁸ OJ L 312, 7.12.2018, p. 1.

⁹ OJ L 312, 7.12.2018, p. 14.

¹⁰ OJ L 312, 7.12.2018, p. 56.

Reply to question 4 (access to documents):

Your last question concerns communication between DG HOME and the UK government on the SIS in the context of UK's withdrawal from the European Union. We regret to inform you that the Commission does not hold any documents (*'postal or email communications'*) between DG HOME and the UK government related to the SIS and the exit of the UK from the European Union nor does it hold any documents (*'communication'*) between DG HOME and any IT service providers (privately owned or otherwise) regarding the same topic that would correspond to the description given in your request for access to documents.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Monique Pariat
[e-signed]