

ANNEX

SIRENE Manual and other implementing measures⁽¹⁾

4. ALERTS FOR REFUSAL OF ENTRY OR STAY (ARTICLE 24 OF THE SIS II REGULATION)

The following steps shall be considered:

- entering an alert,
- check for multiple alerts,
- misused identity,
- entering an alias,
- the exchange of information after a hit,
- special case of family member of EU citizens.

4.1. Entering an alert

In accordance with Article 24 of the SIS II Regulation, alerts for refusal of entry or stay may be entered in the SIS II for third-country nationals based on a national alert issued for reasons of a threat to public policy, public security or national security.

An alert may be also entered based on the fact that the third-country national has been subject to a measure involving expulsion, refusal of entry or removal which has not been rescinded or suspended, that includes or is accompanied by a prohibition on entry or residence, based on the failure to comply with national regulations on the entry or residence of third-country nationals.

In addition, Article 26 of the SIS II Regulation provides that, subject to certain specific conditions, alerts relating to 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 Treaty on European Union, shall also be entered.

According to Article 25 of the SIS II Regulation, specific rules apply to third-country nationals who are beneficiaries 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⁽²⁾. The SIRENE Bureau shall as far as possible be able to make available any information that was used to assess whether an alert for refusal of entry or stay be entered for a beneficiary of the Community right of free movement⁽³⁾.

4.2. Multiple alerts

See general procedure in Section 2.2.

Compatibility of alerts for refusal of entry or stay

Alerts for refusal of entry are compatible with alerts for arrest. They are not compatible with alerts on missing persons, alerts for checks or alerts for a judicial procedure.

4.3. Misused identity

See general procedure in Section 2.11.1.

4.4. Entering an alias

For general rules see Section 2.11.2.

4.5. Exchange of information following a hit

Carrying out the information procedures laid down under Article 5(4)(c) of the Schengen Border Code and the consultation procedures laid down under Article 25 of the Schengen Convention, falls within the competences of the authorities responsible for border controls and for issuing residence permits or visas. In principle, the SIRENE Bureaux shall be involved in these procedures only in order to transmit supplementary information directly related to the alerts (e.g. notification of a hit, clarification of identity) or to erase alerts.

However, the SIRENE Bureaux may also be involved in transmitting supplementary information necessary for the expulsion of, or for refusing entry to, a third-country national; and, may be involved in transmitting any supplementary information further generated by these actions.

4.5.1. Exchange of information when issuing residence permits or visas

The following procedure shall apply:

- (a) without prejudice to the special procedure concerning the exchange of information, which takes place in accordance with Article 25 of the Schengen Convention; and without prejudice to point 4.6, which concerns the exchange of information following a hit on a third-country national who is the beneficiary of the Community right of free movement (in which case the consultation of the SIRENE of the issuing Member State is obligatory); the executing Member State may inform the Member State which issued an alert for refusal of entry or stay that the alert has been matched in the course of the procedure for issuing a residence permit or a visa. The Member State that issued the alert may then inform other Member States using an **M form** if appropriate;
- (b) if so requested, in accordance with national legislation, the SIRENE Bureaux of the Member States concerned may assist in transmitting the necessary information to the appropriate authorities responsible for issuing residence permits and visas.

Special procedures as provided for in Article 25 of the Schengen Convention

Procedure under article 25(1) of the Schengen Convention

If a Member State that is considering granting a residence permit discovers that the applicant concerned is the subject of an alert for refusal of entry or stay issued by another Member State, it shall consult with the Member State that issued the alert via the SIRENE Bureaux. An **N form** shall be used for that purpose. The alert shall be deleted if, after consultation, the Member State maintains its decision to issue the residence permit. The person can, nevertheless, be put on a Member State's national list of alerts for refusal of entry.

Procedure under article 25(2) of the Schengen Convention

If a Member State that entered an alert for refusal of entry or stay finds out that the person who is the subject of the alert has been issued a residence permit, it shall instigate a consultation procedure with the Member State that issued the residence permit, via the SIRENE Bureaux using an **O form**. The consultation via SIRENE Bureaux using an **O form** shall also take place if the Member State that issued the residence permit discovers later that there is an alert for refusal of entry or stay on that person entered into the SIS II⁽⁴⁾.

If a third Member State (i.e. neither that which granted the residence permit nor that which issued the alert) discovers that there is an alert on a third-country national that holds a residence permit from one of the Member States, it shall notify both the Member State which granted the permit and the Member State which issued the alert, via SIRENE Bureaux using an **H form**.

If the procedure foreseen under Article 25 of the Schengen Convention entails deleting an alert for refusal of entry or stay, the SIRENE Bureaux shall, whilst respecting their national legislation, offer their support if so requested.

4.5.2. Exchange of information when refusing entry or expelling from the Schengen territory

The following procedure shall apply:

- (a) without prejudice to the special procedures concerning the exchange of information, which takes place in accordance with Article 5(4)(a) and (c) of the Schengen Borders Code; and without prejudice to point 4.6 which concerns the exchange of information following a hit on a third-country national who is the beneficiary of the Community right of free movement (in which case the consultation of the issuing Member State via its SIRENE Bureau is obligatory), a Member State may ask to be informed of any hits on alerts for refusal of entry or stay that it has issued.

Any Member State that wishes to take up this option shall ask the other Member States in writing;

- (b) the executing Member State may take the initiative and inform the issuing Member State that the alert has been matched and that the third-country national has not been granted entry or has been expelled from the Schengen territory;
- (c) if, on its territory, a Member State intercepts a third-country national for whom an alert has been issued, the issuing Member State, upon request, shall forward the information required to return the person concerned. Depending on the needs of the executing Member State and, if available at the issuing Member State, this information shall include the following:
- the type and reason for the decision,
 - the authority issuing the decision,
 - the date of the decision,
 - the date of service (the date on which the decision was served),
 - the date of enforcement,
 - the date on which the decision expires or the length of validity.

If a person on whom an alert has been issued is intercepted at the border, the procedures set out in the Schengen Borders Code, and by the issuing Member State, shall be followed.

There might also be an urgent need for supplementary information to be exchanged via the SIRENE Bureaux in specific cases in order to identify an individual with certainty (see Section 2.8.3).

Special procedures as provided for in Article 5(4)(a) and (c) of the Schengen Borders Code Procedure in cases falling under Article 5(4)(a)

According to Article 5(4)(a) of the Schengen Borders Code, a third-country national who is subject to an alert for refusal of entry or stay and, at the same time, has a **residence permit** or a **re-entry visa** issued by one of the Member States, shall be allowed entry for transit purposes to the Member State which issued the residence permit or re-entry visa, when crossing border in another Member State. The entry may be refused if this Member State has issued a national alert for refusal of entry.

If the third-country national concerned tries to enter the Member State which has entered the alert into the SIS II, his/her entry may be refused by this Member State. However, at the request of the competent authority, the SIRENE Bureau of that Member State shall consult the SIRENE Bureau of the Member State that issued the residence permit using an **O form** in order to allow the competent authority to determine whether there are sufficient reasons for withdrawing the residence permit. If the residence permit is not withdrawn, the alert in the SIS II shall be deleted but the person concerned may nevertheless be put on the national list of alerts for refusal of entry.

Status: This is the original version (as it was originally adopted).

If this person tries to enter the Member State that issued the residence permit, he/she shall be allowed entry into the territory but the SIRENE Bureau of that Member State, at the request of the competent authority, shall send an **O form** to the SIRENE Bureau of the Member State that issued the alert in order to enable the competent authorities concerned to decide on withdrawal of the residence permit or deletion of the alert.

If third-country national concerned tries to enter a third Member State, which is neither the State that issued the alert nor that one which granted the residence permit, and the third Member State finds out that there is an alert in the SIS II on that person albeit he/she has a residence permit issued by one of the Member States, it shall allow transit towards the Member State that issued the residence permit. The entry may be refused if this third Member State has put the person concerned on its national list of alerts. In both cases, at the request of the competent authority, its SIRENE Bureau shall send the SIRENE Bureaux of the two Member States in question an **H form** informing them of the contradiction and requesting that they consult each other in order to either delete the alert in the SIS II or to withdraw the residence permit. It may also request to be informed of the result of any consultation.

Procedure in cases falling under Article 5(4)(c)

According to Article 5(4)(c) a Member State may derogate from the principle that a person for whom an alert for refusal of entry was issued shall be refused entry on humanitarian grounds, on grounds of national interest or because of international obligations. At the request of the competent authority, the SIRENE Bureau of the Member State that allowed entry shall inform thereof the SIRENE Bureau of the issuing Member State using an **H form**.

4.6. Exchange of information following a hit on a third-country national who is a beneficiary of the Community right of free movement

If there is a hit on a third-country national who is beneficiary of the Community right of free movement within the meaning of Directive 2004/38/EC⁽⁵⁾:

- (a) at the request of the competent authority, the SIRENE of the executing Member State shall immediately contact the SIRENE of the issuing Member State using a **G form** in order to obtain the information necessary to decide without delay on the action to be taken,
- (b) upon receipt of a request for information, the SIRENE of the issuing Member State shall immediately start gathering the required information and send it as soon as possible to the SIRENE of the executing Member State,
- (c) the executing Member State shall inform via its SIRENE Bureau the SIRENE Bureau of the issuing Member State whether the requested action to be taken was carried out (using **G form**) or not (using **H form**).

4.7. Deletion of alerts entered for EU citizens

When a third-country national for whom an alert for refusal of entry or stay has been issued, acquires citizenship of one of the EU Member States, the alert shall be deleted. If the change of citizenship comes to the attention of a SIRENE Bureau of a country other than the issuing one, the former shall send the SIRENE Bureau of the issuing Member State a **J form**, in accordance with the procedure for rectification and deletion of data found to be legally or factually inaccurate (see Section 2.7).

- (1) This text is identical to the text in the Annex to Commission Decision 2008/333/EC (see page 4 of this Official Journal).
- (2) [OJ L 158, 30.4.2004, p. 77.](#)
- (3) Article 30 of the Directive 2004/38/EC provides that the person refused entry shall be notified in writing thereof and informed in full on grounds on which the decision was taken unless it is contrary to the interests of State security.
- (4) In the case of alerts for refusal of entry issued for the family members of EU citizens, it is necessary to recall that it is not possible as a matter of routine to consult SIS II prior to issuing a residence card for such a person. Article 10 of the Directive 2004/38/EC lists the necessary conditions for acquiring right of residence for more than three months in a host Member State by family members of Union citizens who are third-country nationals. This list, which is exhaustive, does not allow for routine consultation of the SIS prior to the issuing of residence cards. Article 27 (3) of this Directive specifies that Member States may request, should they consider it essential, information from other MS only regarding any previous police record (so i.e. not all of the SIS II data). Such enquiries shall not be made as a matter of routine.
- (5) According to Directive 2004/38/EC, a person benefiting from the Community right of free movement may only be refused entry or stay on the grounds of public policy or public security when their personal conduct represents a genuine, immediate, and sufficiently serious threat affecting one of the fundamental interests of society and when the other criteria laid down in Article 27 (2) of this Directive are respected. 27(2) stipulates: 'Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.' Moreover, there are additional limitations for persons enjoying the right of permanent residence who can only be refused entry or stay on **serious** grounds of public policy or public security as stated in Article 28(2) of the Directive.