Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2458 (2022)[1]

Misuse of the Schengen Information System by Council of Europe member States as a politically motivated sanction

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 1894 (2012) "The inadmissibility of restrictions on freedom of movement as punishment for political positions" and stresses that, since its adoption, many changes to the functioning of the Schengen Information System (SIS), including its reshaping into a more advanced version – SIS II, have been put in place.

2. The Assembly recalls that, in principle, States have a sovereign right under international law to decide whom shall be allowed to enter their territories. The European Convention on Human Rights (ETS No. 5, the Convention) does not guarantee a right to entry into a specific State, as the European Court of Human Rights has repeatedly stressed.

3. New cases of allegedly unjustified alerts, including ones on politically motivated grounds, have been reported. The Assembly condemns such practices and recalls that member States of the Schengen Area are bound not only by the legal order of the European Union but also by the European Convention on Human Rights, which shall "secure" the rights and freedoms guaranteed therein to "everyone within their jurisdiction", notably the right to respect for private and family life and the protection against discrimination. This includes foreigners applying for a visa or seeking entry at the external borders of the Schengen Area, all of whose member States are States Parties to the Convention.

4. The free movement of persons is one of the four basic freedoms of the European Union. The existence of the Schengen Area, based on the 1985 Schengen Agreement and the 1990 Schengen Convention, has strengthened this right by abolishing checks at internal borders, while subjecting the crossing of the European Union's external borders to more stringent controls and various preventive measures. In this respect, the SIS, whose purpose is to maintain a high level of security within the Schengen Area, is a key tool. Its good functioning depends on mutual trust between the national authorities.

5. The Assembly notes that the current European Union legal framework on SIS II, by referring to the notion of a "threat to public policy or public security or to national security", gives a large amount of discretion to the Schengen Area member States in deciding whether and in which circumstances they can place alerts in SIS II. The Assembly stresses that the use of alerts should not lead to any misuse of the system and should not infringe the human rights of third-country nationals trying to enter the Schengen Area, in particular the right to respect for private and family life, the right to freedom of expression, the right to freedom of movement and the right to an effective remedy. If need be, additional measures should be taken to prevent misuse of the SIS and improve the protection of the human rights of third-country nationals subject to alerts in the SIS.

6. Therefore, the Assembly calls on member States of the Schengen Area to:

6.1. enter only accurate and lawful data in SIS II;

6.2. make sure that the data in the SIS are not entered for political reasons;

6.3. respect the principles of proportionality and individual assessment of each case when issuing alerts in SIS II;

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1. *Assembly debate* on 11 October 2022 (29th sitting) (see Doc. 15600, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ziya Altunyaldiz). *Text adopted by the Assembly* on 11 October 2022 (29th sitting).

6.4. introduce transparency and adequate monitoring and verification mechanisms concerning the interoperability of large-scale information systems so that the data registered in one system are not unduly used by the other systems;

6.5. provide for persons subject to an SIS II alert effective and timely remedies against national administrative or judicial authorities' decisions which have been at the origin of the alert;

6.6. observe the right of third-country nationals to be informed about the inclusion of an alert in SIS II;

6.7. stop practices that prevent citizens of States not belonging to the Schengen Area from participating in the cultural, social and scientific activities in the Schengen Area and that hamper free trade;

6.8. avoid any misuse of SIS II that could prevent the establishment of commercial activities and a more effective investment co-operation;

6.9. adjust their national legislations to ensure that administrative decisions on refusal to issue a Schengen visa due to political or other reasons are subject to judicial review in the relevant member State;

6.10. take all necessary measures to ensure that the use of SIS and related systems does not create an obstacle to the achievement of a greater unity between Council of Europe member States, as enshrined in the Statute of the Council of Europe (ETS No. 1);

6.11. provide for persons subject to an SIS II alert the right to access data relating to them and to request the correction of inaccurate data or the deletion of data which have been unlawfully stored in SIS II;

6.12. provide for such persons the possibility to bring effective legal action before the courts or other competent bodies in order to access, correct, delete or retrieve data, or to obtain, where relevant, compensation in connection with an alert relating to them;

6.13. make use of the Supplementary Information Request at the National Entries (SIRENE) network to verify relevant information before denying entry or a short-term visa to a third-country national;

6.14. enhance co-operation between the competent national authorities examining individual cases of alerts (courts, data protection controllers and other relevant bodies);

6.15. establish a mediation (ombudsperson-type) body, whose main task would be to examine whether human rights standards have been observed by the national authorities when entering an alert in SIS II or denying entry to third-country nationals on the basis of such an alert;

6.16. pay particular attention to alerts entered by States found in systematic breach of the rule of law by the European Commission or under the Parliamentary Assembly of the Council of Europe's monitoring procedure for the functioning of democratic institutions and the rule of law.

7. The Assembly also invites the European Union and calls on its member States to conclude as soon as possible the revision of the Schengen evaluation mechanism and to examine ways in which current and possible future deficiencies in the functioning of SIS II could be avoided. It invites the European Union to involve the European Parliament in these processes.

8. It also invites the European Union and calls on its member States to:

8.1. adopt guidelines on minimum common standards governing the SIS II alert procedure that would be applicable to third-country nationals as well as substantive criteria for issuing SIS II alerts;

8.2. consider establishing a mediation (ombudsperson-type) body, whose main task would be to examine whether human rights standards have been observed by the national authorities when entering an alert in SIS II or denying entry to third-country nationals, or granting this competence to the European Ombudsman, the European Union Agency for Fundamental Rights, the European Data Protection Supervisor or another European Union body.

9. The Assembly also calls on member States of the Schengen Area to collect and exchange data about current national practices concerning the use of SIS II alerts and their impact on human rights, and to co-operate in this respect also with Council of Europe member States which are not members of the European Union.