

Numero
1974

sl

0

Bellinzona
19 aprile 2024

Consiglio di Stato
Piazza Governo 6
Casella postale 2170
6501 Bellinzona
telefono +41 91 814 41 11
fax +41 91 814 44 35
e-mail can@ti.ch
web www.ti.ch

Repubblica e Cantone
Ticino

Il Consiglio di Stato

Dipartimento federale di giustizia e polizia
DFGP
Palazzo federale ovest
3000 Berna

Invio per e-mail:
caterina.ariashernandez@bj.admin.ch
camille.dubois@bj.admin.ch
ana.thoonen-tornic@bj.admin.ch

Procedura di consultazione concernente la valutazione Schengen della Svizzera 2025 nel settore della protezione dei dati - risposte dei Cantoni al questionario standard

Gentili signore, egregi signori,

abbiamo ricevuto la vostra richiesta del 15 marzo 2024 in merito alla summenzionata procedura di consultazione e ringraziamo per l'opportunità che ci viene offerta di esprimere il nostro giudizio per il tramite dell'allegato questionario.

Vogliate gradire, gentili signore, egregi signori, i sensi della nostra massima stima.

PER IL CONSIGLIO DI STATO

Il Presidente

Raffaele De Rosa

Il Cancelliere

Arnaldo Coduri

Allegato:

- Standard questionnaire for the evaluation of the implementation of the Schengen acquis

Copia a:

- Signor Hanspeter Pfenninger, CdC (H.Pfenninger@kdk.ch)
- Signor Alain Hofer, CCDJP (alain.hofer@kkjpd.ch)
- Signora Isabel Blatter, CCDJP (isabel.blatter@kkjpd.ch)

RG n. 1974 del 19 aprile 2024

- Dipartimento delle istituzioni (di-dir@ti.ch)
- Segreteria generale del Dipartimento delle istituzioni (di-sg.ap@ti.ch)
- Polizia cantonale (polizia-segr@polca.ti.ch)
- Sezione della popolazione (di-sc.direzione@ti.ch)
- Incaricato cantonale della protezione dei dati (can-protezionedati@ti.ch)
- Deputazione ticinese alle Camere federali (can-relazioniesterne@ti.ch)
- Pubblicazione in Internet



Brussels, 7.7.2023
C(2023) 3000 final

ANNEX

ANNEX

to the

Commission Implementing Decision

establishing a standard questionnaire in accordance with Article 14 of Council Regulation (EU) 2022/922, and repealing Commission Implementing Decision C(2019)6863

ANNEX

The standard questionnaire for the evaluation of the implementation of the Schengen *acquis*

CONTENTS

1. Management of external borders	1
2. Absence of controls at internal borders.....	11
3. Return policy	12
4. Large-scale information systems	24
5. The common Visa Policy	36
6. Police cooperation	40
7. Data protection	47
8. Functioning of the authorities applying the Schengen acquis	61
9. Legislation on firearms	62
10. Judicial cooperation.....	63

To note:

For all requests on statistics submitted also to the European Border and Coast Guard Agency (or any other EU body/institution), the most recent data possible may be used.

For all requests on submission of national legislation or relevant extracts thereof, including decisions taken on the basis of national legal acts, we kindly invite you to submit them, to the extent possible, in English. This would contribute to make the information accessible in a smooth and fast way to the members of the Schengen Committee as well as to all Member States' experts who will be members of the evaluation teams.

All questions referring to EES and ETIAS need to be replied to only from the moment that the respective system is being used in practice.

Erklärung Farbcodes/ *Explication des codes couleurs*

- **Gelb/jaune**: Kantonale Datenschutzbeauftragte/*Préposés cantonaux à la protection des données*
- **Grün/vert**: Kantonale Polizeibehörden/*Autorités de police cantonales*
- **Blau/bleu**: Kantonale Migrationsbehörden/*Autorités de migration cantonales*

7 DATA PROTECTION¹

Data Protection Authority/ies

462. Please confirm for each of the elements mentioned below whether the national Data Protection Authority/ies (DPA(s)) has/have this information available to assist in the performance of its/their tasks:

a) Management of external borders

b) SIS

a. How are the national information systems used by the competent authorities and the processes for the purpose of entry, update and deletion of each category of alert function; what are the data flows between the national systems and SIS in relation to the input of all data elements according to each category of alert;

The DPA doesn't have these informations.

b. Which are the source systems for alerts and is their data transfer to SIS automatic or manual?

The DPA doesn't have these informations.

c. If alerts are introduced in batches, for which alert types does this occur and what is the frequency of the batch execution and the volumes typically expected in each batch?

The DPA doesn't have these informations.

d. Which authorities are responsible for data quality monitoring? Which procedures are in place?

Fedpol serves as a single point of contact for all authorities with access to the SIS database such as the cantonal police forces, the Border Guard Corps, the Federal Office of Justice, the State Secretariat for Migration, visa-issuing embassies and consulates abroad, cantonal migration offices and other authorities. They are responsible for data quality monitoring.

c) VIS

a. Do you have a dataflow in the national visa system, starting with the admissibility of the application, describing the processing in the national system and the VIS?

NO

¹ All questions referring to EES and ETIAS need to be replied to only from the moment that the respective system is being used in practice.

b. Which authorities are responsible for data quality monitoring? Which procedures are in place?

See 462 b) d.

d) EES
XXX

463. How often does/do the DPA(s) receive updated information on the topics mentioned in the previous questions? How is this information provided?

The DPA doesn't receive periodic updates.

464 - 465

466. Give an overview of the DPA(s) organisation of work, financial resources and staff regarding the supervision of SIS, VIS, EES and ETIAS. Please specify:

a) by providing figures on the number of legal and IT experts etc., including the development of the last three years and planned changes, and in particular on how many of these experts (in full-time equivalent) are working on SIS, VIS, EES and ETIAS issues including supervision.

1 expert (lawyer) working on SIS and VIS.

No IT experts, no development neither in the next past nor in the future.

b) information on training (frequency, mandatory nature or not, content, duration, training material, e.g. slides) of those colleagues working on SIS, VIS, EES and ETIAS issues on topics relevant for supervision of those databases.

1 expert (lawyer) working on SIS and VIS and member of the national Schengen's federal working group. Training is provided during these meetings.

467. Please provide information whether there is any possibility of external influence which could endanger the independence of the DPA in relation to the Schengen related tasks of the DPA(s) e.g. procedure of appointment and dismissal of the members of the DPA; procedure of establishing the budget; right of the DPA to appoint its own staff, planning and carrying out of supervision of SIS, VIS, EES and ETIAS,

Staff chosen and appointed by the Government (DPA not involved) and integrated in the Government legal service. Independence not guaranteed.

468. Give a general overview of the DPA(s) tasks and powers with respect to national public authorities processing of SIS, VIS, EES and ETIAS personal data. Please specify:

a) Does/do the DPA(s) have a right to launch an investigation on own initiative?

Yes, the DPA, as supervisory and control authority, intervenes on his own initiative or on the recommendation of third parties. He investigates the facts of his own motion.

b) Does/do DPA(s) issue binding decisions against authorities concerned, including police or other law enforcement authorities

No, the DPA cannot issue binding decisions.

- c) Please list and describe the investigatory powers of the DPA(s) (including competences like the right to enter all premises e.g. of the N.SIS and VIS and the backup premises, if any, to access all data bases concerned; possibility to question all levels of the data controller including its senior management).

The Cantonal Data Protection Officer, as supervisory and control authority, intervenes on his own initiative or on the recommendation of third parties. He investigates the facts of his own motion. In order to carry out his duties, the Officer may demand oral or written information concerning the situation from public organs and from third parties who have been entrusted with the processing of personal data or who have received such data from them; he may inspect all documents and files relating to specific processing operations; he may carry out inspections and request the submission of processing operations as well as access to their computer systems. The Officer is not be subjected to official secrecy.

- d) Please list and describe the corrective powers of the DPA(s) (including, but not limited to, orders to bring processing into compliance, orders to limit or ban processing, to order to comply with the data subjects' requests, to order rectification or erasure of data) with respect to the authorities concerned (national authorities who are data controller of respective systems as well as authorities accessing and using SIS, VIS, EES or ETIAS data), including police or other law enforcement authorities. Has/have the DPA(s) made use of its/their corrective powers in the context of SIS, VIS, EES or ETIAS data processing?

If it emerges from the clarification that data protection regulations have been infringed, the Officer shall recommend to the responsible authority that the processing be modified or discontinued. He shall inform the competent higher authority of the recommendation. If an individual's interests worthy of protection are clearly threatened or impaired, the Officer can request the responsible authority or the competent higher authority to restrict or terminate the processing of personal data immediately. If a recommendation is rejected or not acted upon, in whole or in part, the Officer may refer the matter to the appropriate higher authority. The decision of this authority shall be formally notified to the person concerned and to the Officer. The Officer can also appeal against the decision referred to in paragraph above and against the decision of the Appeals Authority.

The DPA has never made use of his corrective power in the context of SIS, VIS data processing.

- e) Please list and describe the advisory powers of the DPA(s) with respect to the authorities concerned.

See 468 d)

- f) Do the same powers apply to the national data controllers of SIS, VIS, EES and ETIAS, as well as to the data processors?

Yes

- g) Do the same powers apply to other authorities having access to SIS, VIS, EES and ETIAS personal data? In particular, do the same powers apply to law enforcement authorities

processing SIS, VIS, EES and ETIAS personal data?

Yes

469. Have/has the DPA(s) clarified the requirements and procedural steps for data breach notifications towards the authorities managing the SIS, VIS, EES and ETIAS? If so, please provide respective documentation.

Yes, link on the DPA's website.

470. Do/does the DPA(s) have a planning for the supervision of the data processing in the SIS, VIS, EES and ETIAS? If so, please specify and provide a copy of that planning.

Yes, supervision is programmed during the summer this year. No planning has been made yet.

471. Please describe all activities of the DPA(s) to supervise the processing of personal data by national authorities in the context of SIS (inspection audits, follow-up to complaints, etc.) which have been carried out since the previous Schengen Evaluation. Please indicate the date/timeframe of each supervisory activity, describe its scope and outcome as well as follow-up to it. Does (do) the DPA(s) inspect the SIS log files periodically?

No supervision since 2014.

472. Please describe in particular all activities of the DPA(s) to supervise law enforcement access to VIS data and provide the respective legal reference for such activity for each instance.

No supervision since 2014.

473. Please describe all activities of the DPA(s) to supervise the visa issuing procedure including and processing of personal data by national authorities in the context of VIS (inspections, audits, follow-up to complaints etc.) which have been carried out since the previous Schengen Evaluation including, in particular in Consular Posts and External Service Providers. Please indicate the date/timeframe of each supervisory activity, describe its scope and outcome as well as follow-up to it. Does (do) the DPA(s) inspect VIS log files periodically?

No periodical inspections as described, due to lack of resources.

474. – 475

476. [...] Please describe all activities of the DPA(s) to supervise the law enforcement access to VIS, EES and ETIAS data.

No supervision since 2014.

477. – 478

Public awareness and data subjects' rights

DPA's Role

479. What information does/do the DPA(s) provide to the data subjects about the processing of their personal data in SIS, VIS, EES and ETIAS as well in particular on their data subjects' rights including on the right to complain to the DPA(s)? Does/do the DPA(s) provide information as well on the right to appeal to the national courts? Please specify what information is provided, in what form (e.g. flyer, internet) and in which languages as well as where it can be found (including the links or any copies where information is provided in paper).

Please reply separately for:

a) SIS

Link on the DPA's and the cantonal's police website. The informations are in Italian and English.

b) VIS

Link on the DPA's and the cantonal's police website. The informations are in Italian and English.

c) EES

d) ETIAS.

480. Does the DPA provide model letters or standard forms for exercising data subjects' rights? If so, please specify which of these is provided, in what form (e.g. paper, internet) and in which languages as well as where it can be found (including the links or any copies where information is provided in paper).

Please reply separately for:

a) SIS

Yes, Link on the DPA's and the cantonal's police website.

b) VIS

Yes, Link on the DPA's and the cantonal's police website.

c) EES

d) ETIAS

481. What is the scope of assessment by the DPA(s) when it deals with a complaint about the controller's decision on data subjects' request? Does the DPA also check the underlying lawfulness of the processing? How does the DPA reply to the data subject, i.e. does it inform the data subject about the lawfulness of processing, measures ordered to the data controller and the actual personal data processed? Does the DPA have guidelines that it uses to determine whether (and if so what) information may be restricted from its replies?

Please reply separately for:

a) SIS

No complaints have been made so far.

b) VIS

No complaints have been made so far.

- c) EES
- d) ETIAS

482. Can a data subject lodge an appeal with a court against the decision (or lack of decision) on the data subject's request by the DPA? How many complaints were lodged with a court against the DPA since the last Schengen Evaluation, on what and what was the outcome?

Please reply separately for:

a) SIS

Yes, citizens can appeal with a court against the decision on the data subject's request by the DPA. No complaints have been made so far.

b) VIS

Yes, citizens can appeal with a court against the decision on the data subject's request by the DPA. No complaints have been made so far.

- c) EES
- d) ETIAS

483. – 484.

Schengen Information System (SIS)

485. What information do the SIS authorities (N.SIS controller and authorities having access to the SIS e.g. police, border guards) provide to the data subjects on the SIS in general and in particular on the processing of personal data in the SIS as well as on data subjects rights including on the right of complaint/appeal to the DPA(s) and appeal to the national courts? Please specify what information is provided, in what form (e.g. flyer, internet) and in which languages as well as where it can be found (including the links or any copies where information is provided as flyers).

The Central Services of the cantonal Police enter the research orders given by the competent authorities into the SSOPortal/Ripol programme. These authorities also establish whether the search is to be entered in the SIS (international search) or not. The input work is limited to this case.

On the other hand, a person who is inscribed in the SIS becomes aware of the reason for the warrant by the officer who is dealing with him/her. As far as we know, the person concerned is not given any particular information other than what is defined in the search or provided by SIRENE, as necessary through an interpreter.

In particular, according to our knowledge, the individual is not provided with any specific information on the treatment of personal data in the SIS as well as on the rights to complain/report to the data protection authority.

486. X

Which authority (and which particular entity, subentity or department) is in charge of dealing with SIS related data subjects' requests?

Concerning Ticino, the only entity in charge of dealing with SIS requests is the cantonal Police.

487. – 489.

490. What kind of remedies are available against the decision on the data subject's request adopted by the SIS authorities? Can a data subject lodge a complaint with a court against the decision on the data subject's request adopted by the SIS authorities? **How many complaints/appeals were lodged with the DPA/court, on what and what was the outcome?**

No complaints have been made until now.

491. – 492.

Visa Information System (VIS)

493. What information do the different visa/VIS authorities (at central level as well as at embassies and consulates) provide about the VIS in general and in particular on the processing of personal data in the VIS as well as on data subjects' rights including on the right of complaint/appeal to the DPA(s) and appeal to the national courts? Please specify what information is provided, in which form (e.g. flyer, internet) and in which languages and where it can be found (including the links or any copies where information is provided as flyers).

First of all, we note that the Ufficio della migrazione (UM - Migration Office) of the Sezione della popolazione (SP - Population Section) is neither a central authority nor a consulate or embassy. Consequently, we cannot give a precise answer as to what these Authorities do. The State Secretariat for Migration (SEM), as a Central Authority, could provide an answer on this subject matter. By way of information, we note that, to date, we have never been asked about data protection during the visa procedure.

494. – 496.

497. What kind of remedies are available? Were there any appeals made against decisions on data subjects' rights requests adopted by the VIS-authorities? How many, on what and what was the outcome? Can a data subject lodge a complaint with the DPA against the decision on the data subject's request by the VIS authorities? Can a data subject lodge a complaint with a court against the decision on the data subject's request by the VIS authorities? **How many complaints were lodged with the DPA/court, on what and what was the outcome?**

No complaints have been made so far.

498. – 499.

Entry/Exit System (EES) and European Travel Information and Authorisation System (ETIAS)

498 – 507

Schengen Information System (SIS) - organisational and technical issues

508 – 510

511. What technical and organisational security measures are in place to protect SIS data? In relation to the security requirements provided for in Article 10 of Regulations (EC) 2018/1861, 2018/1862 and 2018/1860, on which information is being asked in the SIS-chapter of this questionnaire, please elaborate more in detail:

f) Is/are the DPA(s) involved in relation to any of the security issues (e.g. by advising the data

controller, in context of data breach notifications)?

Yes, the DPA is involved in relation to the security issues in case of data breach.

512. – 518.

519. What information on data security and data protection is being provided to the staff of the authorities managing the SIS and having access to SIS and through which channels? Please specify what information is provided to staff of the SIRENE Bureau and to end-users of the SIS. Please elaborate on the content and the format. Are the DPA (in charge of supervision of the N-SIS) and the data controller's internal DPO involved in developing the information material?

According to our understanding, SIS doesn't provide any information on security and data protection. The cantonal Police of the Canton Ticino is based on the cantonal personal data protection law (Legge sulla protezione dei dati personali – LPDP) and on the protection of personal data processed by the cantonal police and municipal police (Legge sulla protezione dei dati personali elaborati dalla polizia cantonale e dalle polizie comunali - LPDPpol).

520. What training on data security and data protection is being provided to the staff of the authorities managing the SIS and having access to SIS? Please specify what training is provided to staff of the SIRENE Bureau and to end-users of the SIS; please provide a copy of the training plans if available. How often is this training provided? Are the DPA (in charge of supervising the N-SIS) and the data controller's internal DPO involved in the setting up of the training programme? Are they involved in the actual training activities?

During the first year of training at the police academy, aspirants are instructed in the use of the database RIPOL with four teaching units (1 teaching units = 45 minutes). In contrast, the use of SIS is not covered during this training.

No training is currently given to the members of the Cantonal Police who already enter data into the program.

521. X

Visa Information System and Visa procedures - organisational and technical issues

522. – 535.

536. Please elaborate what measures are taken to fulfill the obligation of self-monitoring of each authority entitled to access VIS data and whether there is a cooperation with the DPA.

It is specified that the SP does not have direct access to the VIS. This is done via the ORBIS application. Access to the ORBIS interface is granted by the competent federal authority, which in this case is the SEM. For the SP, there is no possibility of verifying the correct use of the ORBIS database by its own employees. At cantonal level, the Data Protection Authority is not involved.

537. – 538.

539. What information on data security and data protection is being provided to the staff of the authorities managing the national VIS and having access to VIS and through which channels? Please specify what information is provided to consular officers and local staff at consulates as

well as to other end-users of the VIS. Please elaborate on the content and the format. Are the DPA (in charge of supervision of the VIS) and the data controller's internal DPO(s) involved in developing the information material?

Recalling the above, as far as ORBIS user are concerned, they are made aware, by signing a declaration on the use of databases within the SP, to undertake to respect official secrecy and not to disclose the information contained therein. Furthermore, according to this declaration, they are required to view files and profiles relating only to their professional activity.

540. Are the data protection supervisory authority (in charge of supervision of the national VIS) and the data controller's internal DPO(s) involved in the setting up of the training programme on data security and data protection provided to all VIS users? Are they involved in the actual training measures?

As mentioned above, the controlling body for the VIS/ORBIS is federal. The cantons receive the guidelines, manuals and respective training directly from the SEM, without being involved in their drafting and preparation.