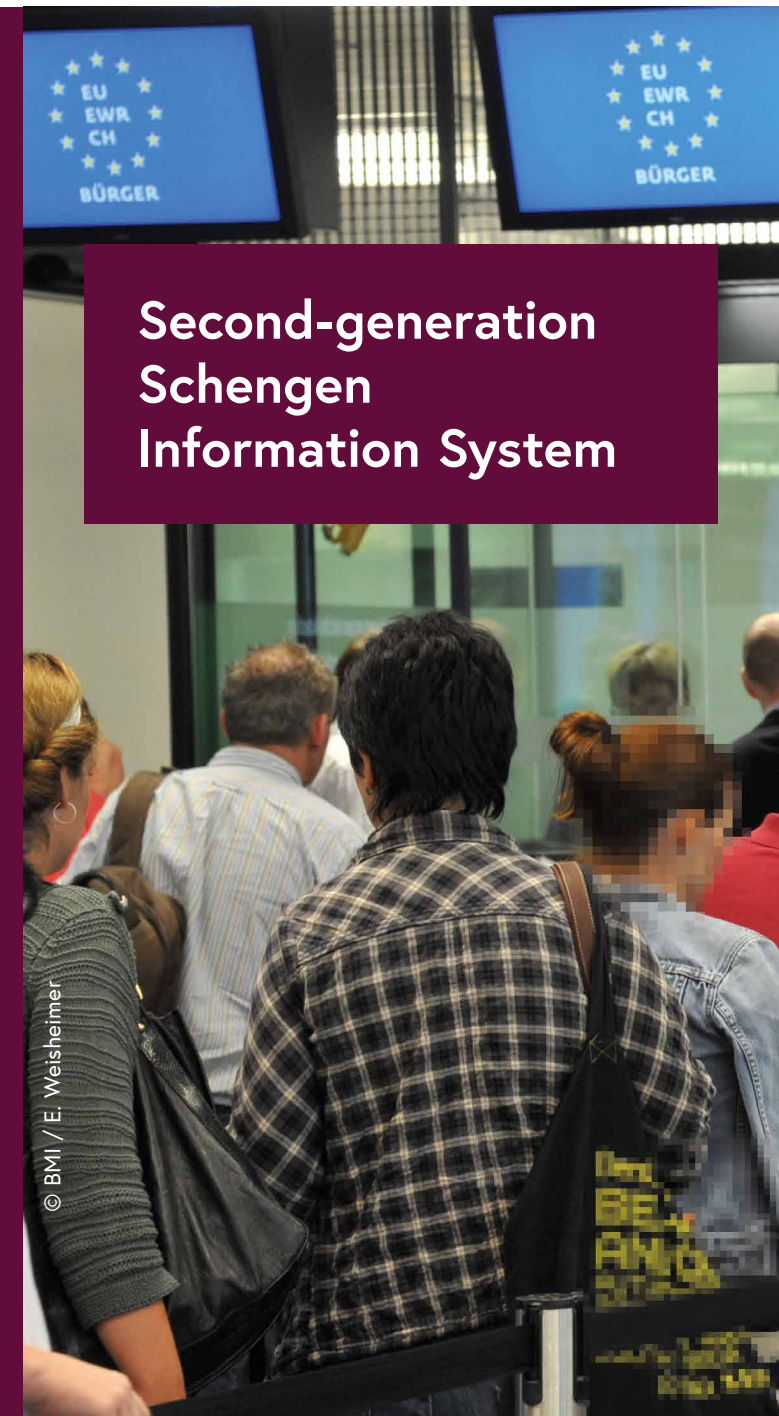


Who supervises data processing in SIS II?

Each Member State shall establish a National Supervisory Authority that shall monitor independently the lawfulness of the processing of SIS II personal data on its territory. In Austria the Data Protection Authority (DSB) has been designated as National Supervisory Authority. Anyone who feels that his or her rights were violated or that controllers or processors violated their duties can file a complaint with or send a message to the DSB.

For details on this process, please consult the website of the DSB at www.dsb.gv.at. The DSB provides no information on data stored in SIS II; rather, the DSB is in a position to check whether provided information or the denial of information is lawful.

Another authority supervising compliance with data privacy is the European Data Protection Supervisor⁸ (www.edps.europa.eu). Within the scope of their respective jurisdictions, the National Supervisory Authority and the European Data Protection Supervisor actively collaborate to ensure coordinated monitoring of SIS II.



Second-generation Schengen Information System

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What is the second-generation Schengen Information System?

The second-generation Schengen Information System¹ (SIS II) is a collaborative electronic law enforcement search and information system established by the Schengen member states as one of the most important compensatory measures for the abolition of internal border checks and for the fight against cross-border crime in Europe.

SIS II contains alerts on persons and objects. Alerts on persons can pertain to persons wanted for arrest, persons sought to assist with a judicial procedure, missing persons, persons for discreet or specific checks, or third-country nationals² who are banned from entering into or staying in the Schengen Area. Alerts on objects such as motor vehicles, firearms, documents and banknotes mean that these objects are sought for the purpose of seizure or use as evidence in criminal proceedings.

Currently, SIS II has 30 users:

Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom as well as the associated members Iceland, Norway, Liechtenstein and Switzerland. The UK, Ireland and Cyprus are EU Member States, but do not participate in the Schengen Area. The microstates Monaco, San Marino and the Vatican City are de facto part of the Schengen Area, as all of their borders are with the Schengen States France and Italy, and no border controls are in place.

¹ Based on Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), Official Journal of the European Union L 205 pp. 63-84, published on 7.8.2007; implemented by Sections 33-43 of the Austrian Federal Law on Police Cooperation with EU Member States and EUROPOL, (EU – Police Cooperation Act (EU-PolKG BGBl. I 2010/ 105) and on the Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II), Official Journal of the European Union L 381 pp. 4-23, published on 28.12.2006.

² Third-country nationals are individuals who are neither EU citizens, nor EEA citizens nor Swiss nationals.

Which personal data is stored in SIS?

The categories of data that are eligible to be processed in SIS particularly include³: surnames and forenames; names at birth; previously used names; aliases; place and date of birth; sex; specific physical characteristics not subject to change; photographs; fingerprints; nationality; whether the person concerned is armed, violent or has escaped; reason for the alert; authority issuing the alert; a reference to the decision giving rise to the alert; the type of criminal offence underlying the alert; action to be taken; numbers of identity papers and date of issue.

What rights do you have regarding data stored in SIS II?

Each person has the right to obtain confirmation as to whether or not personal data concerning him or her are being processed in SIS II. This right is based on Art. 53 Para. 1 of Regulation (EU) 2018/1861⁴, Art. 67 Para. 1 of Regulation (EU) 2018/1862⁵ and the national law of the Member State on whose territory this right is exercised. The relevant legal provisions in Austria are Section 44 of the 2018 Austrian Data Protection Act (DSG 2018)⁶, Art. 15 through 17 of the General Data Protection Regulation (GDPR), as well as Art. 14 and Art. 16 Para. 1 and 2 of Directive (EU) 2016/680⁷. The application can be filed using an electronic signature.

As a safeguard against misuse, you are required to sufficiently prove your identity to the data controller (any former names, date of birth, place/country of birth, parents' forenames, nationality, additional home addresses) if you request access to any personal data concerning you that may be stored in SIS II. In accordance with Sec. 42 Para. 7 of the DSG 2018, the controller may demand

³ See Section 33 Para. 2 of the EU – Police Cooperation Act / EU-PolKG.

⁴ Regulation (EU) 2018/1861 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006

⁵ Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU

⁶ 2018 Austrian Data Protection Act (DSG 2018), Federal Law Gazette 2018/24, as amended and updated from time to time.

⁷ Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data

additional necessary information in order to verify the identity of the person who has filed an application pursuant to Sec. 44 and 45 of the DSG 2018. The request for access must be in writing. Telephone requests cannot be answered for legal reasons.

What is right of access?

Each person not only has the right to request access to their personal data that has been entered in SIS II, but also – in accordance with Art. 53 of Regulation (EU) 2018/1861 in connection with Sections 44 and 45 of the 2018 Austrian Data Protection Act (DSG 2018) as well as Art. 16 and 17 of the General Data Protection Regulation – has the right to have inaccurate personal data corrected or unlawfully stored personal data deleted. If the operation of SIS II infringes on a person's rights, the respective member state is liable – to the extent defined by its national law – for any damage suffered. In Austria, the relevant legal provisions are Art. 82 of the of the General Data Protection Regulation in connection with Section 29 of the DSG 2018. Any claims for compensation against the controller are to be filed in a civil court.

Who is responsible for SIS II in Austria?

In Austria the Federal Ministry of the Interior (BMI) is responsible for operating the national part of SIS II. Due to this responsibility, i.e. as a controller, the BMI is also required to provide information pursuant to Section 44 of the DSG 2018. A request for information thus has to be submitted to the following BMI address:

Bundesministerium für Inneres
Bundeskriminalamt, Sirene Österreich
Josef-Holaubek-Platz 1
A-1090 Wien
Austria

For details on how to obtain information on data protection matters from the BMI and Austria's law enforcement agencies, please visit the website of the BMI (www.bmi.gv.at).