

AG Opinion on SIS II Alerts for No Longer Relevant Objects

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News

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In his [opinion](#) delivered on 7 July 2022, Advocate General (AG) *Emiliou* clarified the obligations placed upon the competent authorities of the Member States in circumstances where an alert has been entered in the second generation Schengen Information System (SIS II) for the seizure of an object or its use as evidence in criminal proceedings, when that alert is no longer considered relevant.

The SIS II aims at preserving security and border management within the Schengen area in the absence of internal border controls by allowing the competent national authorities, e.g., police forces and border guards, to upload specific information into the SIS II, and exchange supplementary information so that specific action could be carried out. The SIS II also allows to enter and consult alerts on persons or objects (e.g., banknotes, firearms and stolen, misappropriated or lost vehicles).

The case at issue ([Case C-88/21](#), *Regionų apygardos administracinio teismo Kauno rūmai*) deals with an alert on an alleged stolen car, whose entry into the SIS II has not been lifted by Bulgarian authorities even though the Prosecutor's Office in Lithuania closed investigations and concluded that no criminal offence had been committed. The new owner of the car had attempted in vain to let register the car. The Bulgarian authorities did not take any action to remove the alert from the SIS II. The CJEU is asked to interpret Art. 39 of [Council Decision 2007/533/JHA](#) on the establishment, operation and use of the second generation Schengen Information System (SIS II). This provisions regulates the execution of the action based on an alert for objects.

The *Lietuvos vyriausiosios administracinės teismas* (Supreme Administrative Court of Lithuania) is particularly asking whether Art. 39, on the one hand, *requires* the Member States to prohibit the registration of a vehicle, for which an alert has been entered into the SIS II, and, on the other hand, *precludes* derogations to such a prohibition in circumstances where the alert is considered no longer to be relevant.

The AG first stated that neither Art. 39 of Decision 2007/533 nor Section 2.2.2 of Appendix 2 to the Sirene Manual refer expressly to an obligation of the Member States to prohibit the registration of a vehicle for which an alert has been entered into the SIS II. Nor can such an obligation be read as being impliedly provided for in those provisions. Accordingly, there is also no textual element in Art. 39 which would suggest such an obligation. While Art. 39 does not *require* the Member States to prohibit the registration of a vehicle for which an alert has been entered into the SIS II, the AG recognised that there is nothing in Decision 2007/533 which *precludes* the Member States from introducing a rule to that effect, as long as such a rule is compatible with the other rules and principles flowing from EU law more broadly, including the Charter of Fundamental Rights of the European Union.

As to the question if EU law *precludes* a national rule prohibiting the registration of an object, such as a vehicle, for which an alert has been entered into the SIS II, where the alert is considered to be no longer relevant, the AG agreed that such a national rule may give rise to a number of concerns vis-à-vis the right to property enshrined in Art. 17 of the Charter. According to this guarantee, everyone has the right to own, use, and dispose of his or her lawfully acquired possessions. In the AG's opinion a national rule which lays down an absolute and indefinite prohibition on the registration of a vehicle goes beyond what is necessary and constitutes a disproportionate interference with the right to property in Art. 17 of the Charter in circumstances where an alert entered into the SIS II is objectively no longer relevant even though the alert remains on the system.

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