



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

15 December 2022*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Second generation Schengen Information System (SIS II) – Decision 2007/533/JHA – Alert on an object sought – Article 38 – Objectives of the alert – Seizure or use as evidence in criminal proceedings – Article 39 – Execution of the action based on an alert – Measures taken in accordance with the national law of the Member States – National legislation laying down an obligation to prohibit the registration of vehicles which are the subject of alerts in SIS II)

In Case C-88/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 8 February 2021, received at the Court on 12 February 2021, in the proceedings

Regionų apygardos administracinio teismo Kauno rūmai,

intervener:

Lietuvos Respublikos vidaus reikalų ministerija,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Lithuanian Government, by K. Dieninis and V. Kazlauskaitė-Švenčionienė, acting as Agents,
- the Latvian Government, by J. Davidoviča and K. Pommere, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,

* Language of the case: Lithuanian.

– the Portuguese Government, by P. Barros da Costa, L. Inez Fernandes, M.J. Ramos and C. Vieira Guerra, acting as Agents,

– the European Commission, by L. Grønfeldt and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 July 2022,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 38(1) and Article 39(3) of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ 2007 L 205, p. 63; ‘the SIS II Decision’).
- 2 The request has been made in proceedings brought before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) by the Regionų apygardos administracinio teismo Kauno rūmai (Regional Administrative Court, Kaunas Division, Lithuania), concerning the lawfulness of Lithuanian legislation prohibiting vehicles which are the subject of an ongoing alert in the second generation Schengen Information System (‘SIS II’) from being registered in the national vehicle register.

Legal context

Regulation (EC) No 1986/2006

- 3 Article 1(1) of Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ 2006 L 381, p. 1, and corrigendum OJ 2015 L 26, p. 34) is worded as follows:

‘Notwithstanding Articles 38, 40 and 46(1) of [the SIS II Decision], the services in the Member States responsible for issuing registration certificates for vehicles, as referred to in [Council] Directive 1999/37/EC [of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57)], shall have access to the following data entered into SIS II in accordance with Article 38(2)(a), (b) and (f) of that Decision for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost or are sought as evidence in criminal proceedings:

(a) data concerning motor vehicles with a cylinder capacity exceeding 50 cc;

...’

The SIS II Decision

4 Recitals 5, 8 and 13 of the SIS II Decision state:

‘(5) SIS II should constitute a compensatory measure contributing to maintaining a high level of security within the area of freedom, security and justice of the European Union by supporting operational cooperation between police authorities and judicial authorities in criminal matters.

...

(8) It is necessary to establish a manual setting out the detailed rules for the exchange of certain supplementary information concerning the action called for by alerts. National authorities in each Member State should ensure the exchange of this information.

...

(13) Alerts should not be kept in SIS II longer than the time required to fulfil the purposes for which they were supplied. ... Alerts on objects for seizure or use as evidence in criminal proceedings should be automatically erased from SIS II after a period of 10 years. ...’

5 Under the heading ‘Establishment and general purpose of SIS II’, Article 1 of that decision provides, in paragraph 2:

‘The purpose of SIS II shall be, in accordance with this Decision, to ensure a high level of security within the area of freedom, security and justice of the European Union including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States ... using information communicated via this system.’

6 Article 3 of that decision, entitled ‘Definitions’, states, in paragraph 1:

‘For the purposes of this Decision, the following definitions shall apply:

(a) “alert” means a set of data entered in SIS II allowing the competent authorities to identify a person or an object with a view to taking specific action;

(b) “supplementary information” means information not stored in SIS II, but connected to SIS II alerts, which is to be exchanged:

...

(ii) following a hit in order to allow the appropriate action to be taken;

...’

7 Article 8(1) and (3) of that decision provides:

‘1. Supplementary information shall be exchanged in accordance with the provisions of the SIRENE Manual and using the Communication Infrastructure. ...

...

3. Requests for supplementary information made by other Member States shall be answered as soon as possible.’
- 8 Article 38 of the SIS II Decision, entitled ‘Objectives and conditions for issuing alerts’, provides:
- ‘1. Data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in SIS II.
2. The following categories of readily identifiable objects shall be entered:
- (a) motor vehicles with a cylinder capacity exceeding 50 cc, boats and aircrafts;
- ...’
- 9 Article 39 of that decision, entitled ‘Execution of the action based on an alert’, provides:
- ‘1. If a search brings to light an alert for an object which has been located, the authority which matched the two items of data shall contact the authority which issued the alert in order to agree on the measures to be taken. For this purpose, personal data may also be communicated in accordance with this Decision.
2. The information referred to in paragraph 1 shall be communicated through the exchange of supplementary information.
3. The Member State which located the object shall take measures in accordance with national law.’
- 10 Under the heading ‘Retention period of alerts on objects’, Article 45 of that decision states:
- ‘1. Alerts on objects entered in SIS II pursuant to this Decision shall be kept only for the time required to achieve the purposes for which they were entered.
- ...
3. Alerts on objects entered in accordance with Article 38 shall be kept for a maximum of 10 years.
4. The retention periods referred to in [paragraph 3] may be extended should this prove necessary for the purposes for which the alert was issued. In such a case, [paragraph 3] shall apply also to the extension.’
- 11 Article 49(1) and (2) of that decision provides:
- ‘1. A Member State issuing an alert shall be responsible for ensuring that the data [entered in SIS II] are ... up-to-date ...
2. Only the Member State issuing an alert shall be authorised to modify, add to, correct, update or delete data which it has entered.’

The SIRENE Manual

- 12 The annex to Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ 2013 L 71, p. 1), as amended by Commission Implementing Decision (EU) 2017/1528 of 31 August 2017 (OJ 2017 L 231, p. 6) ('the SIRENE Manual'), provides, in point 2.1:

'Definitions

- "Issuing Member State": Member State which entered the alert in SIS II.
- "Executing Member State": Member State which takes the required actions following a hit.

...'

- 13 Point 2.10 of the SIRENE Manual, entitled 'Deleting when the conditions for maintaining the alert cease to be met', provides:

'Alerts entered in SIS II shall be kept only for the time required to meet the purposes for which they were entered.

As soon as the conditions for maintaining the alert are no longer fulfilled, the issuing Member State shall delete the alert without delay. ...

...'

Lithuanian law

- 14 It is apparent from point 25 of the provisions of the national SIS II of Lithuania, approved by the Lietuvos Respublikos vidaus reikalų ministro įsakymas Nr. 1V-324 'Dėl Lietuvos nacionalinės antrosios kartos Šengeno informacijos sistemos nuostatų patvirtinimo' (Order No 1V-324 of the Lithuanian Minister for the Interior regarding approval of the provisions of the national second generation Schengen Information System of Lithuania) of 17 September 2007 (Žin., 2007, No 100-4084), that the information technology and communications department of the Lithuanian Ministry of the Interior is to ensure that the public undertaking Regitra has access to the list of N.SIS II data contained in points 1 and 3.1 to 3.3 (data on sought motor vehicles and their trailers, national vehicle register, registration documents of sought motor vehicles).
- 15 Article 27(1) of the Lietuvos Respublikos saugaus eismo automobilių keliais įstatymas (Law of the Republic of Lithuania on road traffic safety for motor vehicles) of 12 October 2000 (Žin., 2000, No 92-2883), in the version applicable to the dispute in the main proceedings, provides that 'duly registered motor vehicles and their trailers shall be permitted to travel on public roads in Lithuania'.

16 Point 13 of the rules for the registration of motor vehicles and their trailers, approved by the Lietuvos Respublikos vidaus reikalų ministro įsakymas Nr. 260 ‘Dėl kelių transporto priemonių registravimo taisyklių patvirtinimo’ (Order No 260 of the Lithuanian Minister for the Interior regarding rules for the registration of road vehicles) of 25 May 2001 (Žin., 2001, No 48-1683), in the version applicable to the dispute in the main proceedings, provides:

‘13. The public undertaking Regitra shall inform the police when:

13.1 the applicant wishes to register a vehicle:

13.1.1 whose engine or registration plate, or the vehicle itself, are registered in the register of sought vehicles, in the Schengen Information System of Lithuania or in the database of the General Secretariat of Interpol;

...’

17 Point 14 of those registration rules provides:

‘After informing the police ... the public undertaking Regitra shall examine applications for vehicle registration from applicants only after inspections or investigations by the law enforcement authorities ... Vehicles referred to in point 13.1.1 of the abovementioned registration rules ... may be registered only after they have been removed from the register of sought vehicles, from the Schengen Information System of Lithuania or from the database of the General Secretariat of Interpol.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 On 13 November 2015, D.R. purchased a motor vehicle in Germany on the basis of a contract concluded with AM Transportas. The vehicle in question had previously been stolen in Bulgaria.

19 On 20 November 2015, that motor vehicle was removed from the vehicle registration register in Germany, then transported to Lithuania and resold to another person whose identity is not specified in the request for a preliminary ruling.

20 On 22 February 2016, that other person sought to register the motor vehicle in Lithuania with Regitra, the public undertaking responsible for the registration of motor vehicles in that Member State. It was at that time that the abovementioned other person discovered that an alert had been entered in SIS II, in Bulgaria on 23 December 2015, for that motor vehicle. That person therefore terminated the contract of sale concluded in respect of that vehicle.

21 By decision of the Lithuanian public prosecutor’s office of 21 September 2016, the criminal investigation initiated in Lithuania concerning the motor vehicle in question was closed, on the ground that no criminal offence allegedly committed in that Member State could be established. As is apparent from the request for a preliminary ruling, by that decision, the motor vehicle was therefore returned to D.R., its purchaser.

22 Although the owner of that motor vehicle at the time of its alleged theft, the Bulgarian subsidiary of Nabko Holding Company, LLC, was informed of this by means of a copy of that decision and the provision of D.R.’s identity, and was thus in a position to assert its rights, that owner did not

take any steps in that regard. Moreover, despite the communication of the necessary information to the issuing Member State, the latter did not take any measures, more than three years after that communication, to delete the alert for the motor vehicle in question from SIS II.

- 23 By decision of 20 February 2019, the local office of Regitra rejected the application for registration of the vehicle concerned submitted by D.R. in Lithuania, a decision taken by that local office on the basis of a provision of Lithuanian legislation under which vehicles for which an ongoing alert has been entered in SIS II may be registered in that Member State only after such an alert has been deleted from that system.
- 24 AM Transportas challenged that decision before Regitra, which, by decision of 28 March 2019, upheld the local office's decision to reject the application for registration of that vehicle in Lithuania.
- 25 AM Transportas subsequently brought an appeal against the decisions of that public undertaking before the Regionų apygardos administracinio teismo Kauno rūmai (Regional Administrative Court, Kaunas Division).
- 26 That court referred the matter to the referring court for a review of the lawfulness of the relevant national legislation.
- 27 The referring court is uncertain whether national legislation which makes the registration of motor vehicles in the national register of road vehicles subject to the condition that the vehicle concerned is not the subject of an ongoing alert in SIS II is compatible with the SIS II Decision, in particular where that alert has not been deleted from SIS II by the issuing Member State, even though the authorities of the executing Member State have communicated the necessary information concerning the object which has been located both to the authorities of the issuing State and to the original owner of that object.
- 28 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - (1) Must Article 39 of [the SIS II Decision], in particular Article 39(3), be interpreted as imposing an obligation to prohibit the registration of objects for which an alert has been entered in [SIS II], notwithstanding the fact that that alert is no longer up-to-date (since the vehicle has been located, the criminal proceedings in the Member State where that vehicle was located have been closed in the absence of any criminal offence committed in that Member State, and the State which issued the alert has been informed but has failed to take any action to delete the alert from the system)?
 - (2) Must Article 39 of [the SIS II Decision], in particular Article 39(3), be interpreted as obliging the Member State which has located an object for which an alert was issued pursuant to Article 38(1) of that decision to lay down rules of national law that would prohibit any action in respect of the located object other than measures which would allow the objective referred to in Article 38 (seizure or use as evidence in criminal proceedings) to be achieved?

- (3) Must Article 39 of [the SIS II Decision], in particular Article 39(3), be interpreted as allowing Member States to lay down legal rules providing for derogations from the prohibition on registering vehicles for which an alert has been entered in [SIS II] pursuant to Article 38 of that decision, after the competent authorities of the Member State have taken steps to inform the issuing State about the object which has been located?’

Consideration of the questions referred

- 29 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 39 of the SIS II Decision, read in conjunction with Article 38(1) of that decision, must be interpreted as meaning that it, first of all, lays down a general obligation to prohibit the registration of a motor vehicle which is the subject of an ongoing alert in SIS II; that it then requires Member States to provide for general rules prohibiting actions relating to the object which has been located, other than those which enable the objectives of Article 38(1) to be achieved; and that, lastly, it allows those Member States to provide for derogations from any general prohibition on registering such a vehicle.
- 30 As a preliminary point, it is apparent from the request for a preliminary ruling that the relevant alert concerns a motor vehicle with a cylinder capacity exceeding 50 cc.
- 31 In that regard, Article 38(1) and (2)(a) of the SIS II Decision provides that data on a vehicle such as the one at issue in the main proceedings, sought for the purposes of seizure or use as evidence in criminal proceedings, are to be entered in SIS II.
- 32 As regards the questions referred, it should be noted at the outset that, in accordance with the settled case-law of the Court, it is necessary, when interpreting a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part (judgment of 28 October 2022, *Generalstaatsanwaltschaft München (Extradition and ne bis in idem)*, C-435/22 PPU, EU:C:2022:852, paragraph 67).
- 33 Article 39 of the SIS II Decision governs the detailed rules for executing the action based on an alert relating to objects for seizure or use as evidence in criminal proceedings.
- 34 As regards, in the first place, the wording of Article 39(1) of that decision, that provision provides that, where a search brings to light an alert for an object which has been located, the authority which matched the two items of data is to contact the authority which issued the alert in order to agree on the measures to be taken.
- 35 The information referred to in Article 39(1) of the SIS II Decision is to be communicated, as stated in Article 39(2), through the exchange of supplementary information.
- 36 Article 39(3) of that decision provides that the Member State which located the object is to take measures ‘in accordance with national law’.
- 37 It follows that Article 39 of the SIS II Decision merely describes, in general terms, how the competent authorities of the executing Member State must respond to a hit on an alert in SIS II issued on the basis of Article 38 of that decision.

- 38 Accordingly, as the Advocate General observed in point 49 of his Opinion, by choosing not to set out in detail in Article 39 of the SIS II Decision the exact measures that the Member States are to adopt for the purposes of executing an alert entered in SIS II under Article 38 of that decision, the EU legislature intended to leave them a broad discretion in that regard.
- 39 As regards, in the second place, the context of Article 39 of the SIS II Decision, it should be noted that, while operational cooperation between police authorities and judicial authorities in criminal matters, implemented under that decision, presupposes that the authorities of the executing Member State will take the necessary protective measures (see, to that effect, judgment of 16 June 2022, *Nachalnik na Rayonno upravlenie Silistra*, C-520/20, EU:C:2022:466, paragraph 40), no provision of that decision defines specifically the type of measures that the Member State which located the object for which an alert was issued must take in accordance with its national law.
- 40 Furthermore, it should be borne in mind that, although Article 1(1) of Regulation No 1986/2006 provides that the service in a Member State responsible for issuing registration certificates for motor vehicles is to have access to SIS II for the purpose of checking whether vehicles presented to it for registration have been stolen, misappropriated or lost or are sought as evidence in criminal proceedings, that provision does not envisage any obligation to prohibit the registration of vehicles which are the subject of an ongoing alert in SIS II.
- 41 In the third place, it is apparent from Article 1(2) of the SIS II Decision, read in conjunction with recital 5 thereof, that that decision is intended, inter alia, to support operational cooperation between police authorities and judicial authorities in criminal matters, and thus to contribute to ensuring a high level of security within the area of freedom, security and justice of the European Union, using information communicated via SIS II.
- 42 The interpretation of Article 39 of the SIS II Decision to the effect that that article does not require Member States to adopt predetermined measures but leaves them a broad discretion to identify the necessary measures to be taken is not contrary to that objective and preserves the contribution to strengthening the level of security within the area of freedom, security and justice of the European Union entailed by the communication of information concerning objects for seizure or use as evidence in criminal proceedings and the conduct of exchanges between the Member States concerned for the purposes of agreeing on the measures to be taken.
- 43 In those circumstances, it must be held that there is nothing in Article 39 of the SIS II Decision to suggest that there is a general obligation such as that prohibiting the registration of motor vehicles which are the subject of an ongoing alert in SIS II or prohibiting actions in respect of that vehicle, other than those relating to Article 38(1) of that decision.
- 44 It follows that, where a Member State decides to exercise its broad discretion under Article 39(3) of the SIS II Decision as regards the measures that may be adopted in accordance with its national law, by providing for a general prohibition on the registration of motor vehicles which are the subject of an ongoing alert in SIS II, that decision does not preclude that Member State from introducing derogations from such a prohibition.
- 45 Furthermore, in view of the doubts expressed by the referring court as to the lack of action on the part of the competent authorities of the issuing Member State in connection with the alert entered in SIS II, the following should be borne in mind, so far as the point is relevant.

- 46 First, it is apparent from Article 8(3) of the SIS II Decision that requests for supplementary information made by other Member States are to be answered as soon as possible. In addition, Article 45(1) of that decision, read in conjunction with recital 13, provides that alerts on objects entered in SIS II, in the context of applying the SIS II Decision, are to be kept only for the time required to achieve the purposes for which they were entered.
- 47 Secondly, it is true that Article 49(1) and (2) of that decision states that only the Member State issuing an alert, which is responsible, inter alia, for updating the data entered in SIS II, is authorised to delete those data. That being said, Article 8(1) of the SIS II Decision, read in conjunction with recital 8, refers to the SIRENE Manual, which contains more detailed rules and which requires, in the second subparagraph of point 2.10, that, where the conditions for maintaining the alert are no longer fulfilled, the issuing Member State is to delete the alert without delay. That provision of the SIRENE Manual thus imposes an obligation on the latter Member State to delete that alert, once the purpose for which it was entered has been achieved.
- 48 In the light of all the foregoing considerations, the answer to the questions referred is that Article 39 of the SIS II Decision, read in conjunction with Article 38(1) of that decision, must be interpreted as meaning that:
- it does not lay down any general obligation to prohibit the registration of a motor vehicle which is the subject of an ongoing alert in SIS II;
 - it does not require the executing Member State to provide for general rules prohibiting actions relating to the object which has been located, other than those which enable the objectives of Article 38(1) of that decision to be achieved;
 - it does not preclude that Member State from providing for derogations from a general prohibition on registering such a vehicle.

Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 39 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), read in conjunction with Article 38(1) of that decision,

must be interpreted as meaning that:

- **it does not lay down any general obligation to prohibit the registration of a motor vehicle which is the subject of an ongoing alert in the second generation Schengen Information System (SIS II);**

- **it does not require the executing Member State to provide for general rules prohibiting actions relating to the object which has been located, other than those which enable the objectives of Article 38(1) of that decision to be achieved;**
- **it does not preclude that Member State from providing for derogations from a general prohibition on registering such a vehicle.**

[Signatures]