



FRANS TIMMERMANS
First Vice-President

Brussels, 15 October 2018

Honourable Members,

I would like to thank you for your letters concerning the specific case of Ludmiła Kozłowska who was denied entry in the Schengen area on 10th August by the Belgian authorities following an entry ban entered in SIS by the Polish authorities.

I would like to underline that the Commission itself does not have access to SIS data or alerts. Only the Member States are responsible for the information they insert in SIS and they need to ensure that this is done in accordance with the applicable EU and national rules. The rules on the Schengen Information System regulate the processing of alerts in the SIS, not the underlying administrative or judicial decisions taken by Member States in accordance with the national law or the Union law. The Commission is responsible for the general oversight and evaluation of the Schengen Information System, including the correct application and implementation of its legal framework, and for the adoption of implementing measures such as the rules for entering and searching data. Additionally, the SIS-VIS Committee, comprised of technical and operational experts from the Member States and chaired by the Commission, harmonises operational procedures in order to optimise the use of SIS and enables the exchange of best practice between Member States.

In case an individual wishes to contest an alert issued by a Member State, full use can be made of the possibilities of appeal. The conditions and procedures for the entry and processing of refusal of entry alerts in SIS are laid down in Regulation (EU) 1987/2006. This Regulation contains strong provisions on data processing and data protection and includes important procedural safeguards for the protection of citizens, such as the right of individual assessment and motivated decision, the right of appeal and the right of information.

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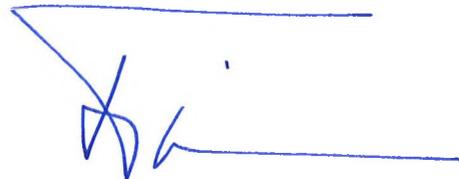
Concerned persons have the right to appeal in accordance with national law against the administrative or judicial decision to create the alert in the Member State concerned. In addition, the rules of the Schengen Information System provide for specific rights for persons who are subject to data entries. This includes the right of access, the right to correction of inaccurate data, the right to deletion of unlawfully stored data, as well as the right to bring proceedings before the courts or competent authorities (to correct or delete data) or obtain compensation. Anyone exercising any of these rights can apply to the competent authorities in any Schengen State, regardless of the State that issued the alert. However, only the Member State that entered the alert in SIS can delete or correct the alert.

Additional safeguards are included for third-country nationals who are beneficiaries of the right of free movement in the EU. In such cases, a refusal of entry alert may only be issued in limited circumstances where there are serious grounds of public policy or public or national security. This condition would also apply for example in cases of individuals who are spouses of EU citizens. The free movement directive (Article 27) equally allows Member States to restrict the free movement or shorten the stay of an EU citizen or their family member for reasons of public security. Measures taken on grounds of public security must comply with the principle of proportionality and must be based exclusively on the personal conduct of the individual concerned. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention are not accepted.

If an individual feels their rights have been infringed, they must turn in a first instance to the national judicial system to seek remedial action.

I assure you that the Commission takes your concerns very seriously and will not hesitate to make full use of its powers under the Treaties in case of breach of EU legislation by Poland. In addition, I assure you that the Commission remains strongly committed to upholding the rule of law in Member States.

Yours sincerely



Frans Timmermans