



Ad-Hoc Query on registering entry bans in the SIS

Requested by FI EMN NCP on 10th November 2014

Compilation produced on 21st January 2015

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden, United Kingdom plus Norway (18 in Total)

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1. Background Information

In Finland, the entry ban is registered in the SIS either when the decision on entry ban is **final** (legally valid and non-appealable), or when the person in question has in effect **left the country**. Reaching the final decision will take some time: after the entry ban is issued there is an appeal period of 30 days. If the person in question makes an appeal, reaching the final decision will take even longer. Therefore, there are situations where the entry ban decision is not final yet, but it is already registered in the SIS due to the fact that the person in question has left the country. The status of the person is ambiguous if s/he attempts to enter Finland/Schengen area again. The Finnish Immigration Service would like to know, what the practice is in other Member States:

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1. At which point is the entry ban registered in the SIS in your Member State (i.e. as soon as the decision is made; when the person leaves the country; when the entry ban decision is final; at some other specific point: which)?
2. In particular, is it possible to register an entry ban in the SIS before the decision is final and non-appealable?
3. What happens in practice if a person, who has been issued an entry ban, attempts to enter the country again while the entry ban decision is not final yet: will s/he be allowed to enter the country?

We would very much appreciate your responses by **Monday December 8th**.

2. Responses

		Wider Dissemination?	
	Austria	Yes	<ol style="list-style-type: none"> 1. An entry ban will be registered in the SIS either if (i) the underlying decision is final (i.e. the foreigner in question has waived his right to appeal, or the Federal Administrative Court has rejected the appeal as inadmissible or unfounded) or (ii) the underlying decision is not yet final but enforceable. This is the case where an appeal is pending and the Federal Administrative Court has lifted the suspensive effect. 2. Yes (see above, at 1). 3. The person in question will be prevented from entering the country if the underlying decision is not yet final but enforceable. Source: Federal Ministry of the Interior.
	Belgium	Yes	<ol style="list-style-type: none"> 1. From the moment it has been notified to the person concerned, the entry ban can be registered in the SIS, even if the person introduced an appeal before an administrative jurisdiction (as the appeal does not have a suspensive effect). 2. See points 1 and 3. 3. No. Considering that the entry ban is final on notification, the person concerned has no right to enter the Belgian territory (entry will be refused).
	Czech Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Estonia	Yes	<ol style="list-style-type: none"> 1. In case of Estonia, the entry ban is registered to SIS as soon as the decision is made. 2. Yes. 3. No. According to Obligation to Leave and Prohibition on Entry Act § 28 (1) an alien with regard to whom a prohibition on entry applies shall not be granted permission to enter Estonia at a border checkpoint.
	Finland	Yes	<ol style="list-style-type: none"> 1. The entry ban is recorded in the SIS either when the decision is final <u>or</u> when the person in question leaves the country. 2. Yes. 3. This is ambiguous; therefore Finland requests this Ad-hoc query.

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	France	Yes	<ol style="list-style-type: none"> 1. Alerts are automatically entered into the SIS when issuing an entry ban. In accordance with article L. 511-1 III of the CESEDA (Code for Entry and Residence of Foreigners and Right of Asylum), the foreign national to whom the entry ban has been imposed is informed that he/she is the subject of an alert in the SIS for the purposes of refusing admission, in accordance with article 96 of the Schengen convention of 19 June 1990. 2. See 1. The alert may be erased if the entry ban has been cancelled by the competent court or repealed by the administrative authorities. In accordance with article L.512-1 of the CESEDA, the foreign national to whom an entry ban has been imposed can contest this decision before the administrative court with territorial jurisdiction, at the same time as the order to leave the French territory which has been notified to them. If the entry ban is cancelled, the alert in the SIS must be erased, in application of the combined provisions of article R.511-3 of the CESEDA and article 7 of the decree of 28 May 2010 concerning the wanted persons file. According to Article L.511-1 III of the CESEDA, Entry bans may be repealed by the administrative authorities if the foreign national provides proof of departure from French territory. 3. See 1 and 2. The alert in the SIS prevents the third-country national to whom the entry ban has been imposed from obtaining a visa to enter and stay in the Schengen area. He/she cannot, therefore, be admitted to enter or stay in the Schengen area.
	Germany	Yes	<ol style="list-style-type: none"> 1. An expulsion order which causes an entry ban will be reported directly to the police station responsible for the data entered in SIS. The same applies in the case of operation of a removal or deportation. 2. Yes. 3. The foreigner is refused entry. The travel ban occurs regardless of whether the appeal against the underlying expulsion order has suspensive effect or not.
	Hungary	Yes	<ol style="list-style-type: none"> 1. According to the Hungarian national legislation the alerts on entry ban are inserted in the SIS II when the decision becomes final. 2. No. 3. In line with the Schengen Borders Code the police officers at the border are obliged to check the entry condition of travellers. If there is no alert in the databases inserted the traveller is allowed to enter into the territory of the country. Therefore, in theory it is possible to enter into the territory of the country before the decision on entry ban becomes final.
	Ireland	Yes	<ol style="list-style-type: none"> 1. If a third country national receives a Deportation Order in Ireland they are then required to report to the Irish Police to facilitate their removal from the State. When they are removed they can no longer return. 2. Ireland is not in Schengen. 3. If a person tries to enter the country again they will be refused entry if a Deportation Order is already in force for that person.
	Latvia	Yes	<ol style="list-style-type: none"> 1. According to the Immigration Law the entry ban is recorded both in the national Entry ban Register and in the SIS when the person has left the EU territory. 2. No, according to the Immigration law it is not possible. 3. We haven't come across the situation like that. In theory it couldn't happen because once a person has left EU territory the entry ban is registered in information systems and legally they can't cross the EU border.
	Lithuania	Yes	<ol style="list-style-type: none"> 1. In case the decision to expel a foreigner from the territory of the Republic of Lithuania is accompanied by a decision to enter an alert into the SISII, the alert is entered after the notification that a foreigner has left the territory of the Republic of Lithuania is

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			<p>received, i.e. after the decision to expel a foreigner was implemented. In other cases, the alert into SISII is entered at the same day when the decision to expel a foreigner from the territory of Lithuania is made.</p> <ol style="list-style-type: none"> Yes. If a foreigner, who is imposed an entry ban and there is the alert in the SISII, attempts to enter the country while the time to appeal against the decision has not lapsed or the decision is appealed, (s)he will not be allowed into the country since these are not legal grounds to enter the territory of Lithuania.
	Luxembourg	Yes	<ol style="list-style-type: none"> In Luxembourg a return decision can be accompanied by an entry ban for a maximum period of 5 years. This decision is taken either at the same time as the return decision or subsequently by a separate decision. The entry ban will be entered into the SIS when it is taken and after it has been notified to the third country national by the Grand ducal police (see answer to question 2). It can also be introduced in the SIS when the person leaves the country. This will depend when the Directorate of Immigration decides to transfer the information to the Grand ducal police. Yes. According to article 113 of the amended law of 29 August 2008 on free movement of persons and immigration the appeal against an entry ban has not a suspensive effect so it can be introduced in the SIS. In principle, as the appeal against the entry ban does not have a suspensive effect (see answer to question 2), the entry ban can be executed.
	Netherlands	Yes	<ol style="list-style-type: none"> The entry ban is recorded in the SIS as soon as the return decision is made (when the departure term is 0 days) <u>or</u> during the departure term. Registration will not take place when there is an appeal with suspensory effect. Yes. With the entry ban in effect it will most likely be registered in the SIS preventing the person from entrance into the Netherlands, even when the entry ban decision isn't final yet. The entry ban can be appealed from abroad.
	Slovak Republic	Yes	<ol style="list-style-type: none"> The entry ban is registered in the national database from which the data is automatically transferred to the SIS database. The period of entry ban, i.e. the day of data entry into the SIS system is in compliance with the national legislation: <ol style="list-style-type: none"> on the day of return / expulsion from the Slovak territory on the day of departure through the Program of Assisted Voluntary Returns on the day when the period for departure specified in the return decision expires If a person who has been ordered to leave does not leave the territory of the Slovak Republic, and the entry ban has been registered, the period of entry ban starts again from the day of the return. Yes, it is possible e.g. if the suspensive effect of the appeal against the return decision is excluded. The return can be executed before the decision becomes effective which also makes the entry ban registered earlier into SIS. This also applies to cases when a person is apprehended on the external border when leaving the Schengen area and is issued a return decision with an entry ban. Unless this person waives the right to appeal, the decision becomes effective later than the entry ban is registered into SIS. A person with an entry ban is not allowed to enter the Slovak territory through the Schengen border.
	Spain	Yes	<ol style="list-style-type: none"> The entry ban is entered into the SIS when the person leaves the country. The entry ban is part of the return decision. Thus, when departure takes place no appeal is possible anymore. N/A
	Sweden	Yes	<ol style="list-style-type: none"> The re-entry ban is registered in the SIS when the decision is final, i.e. when it acquires legal force.

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			<ol style="list-style-type: none"> 2. No, the re-entry ban would be registered in the SIS when the decision is final. 3. Yes, s/he would be allowed to enter the country since a re-entry ban would not be registered until the decision is final.
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. The UK is not part of SIS 2. N/A 3. In the UK re-entry bans are imposed at the point that someone seeks to re-enter the UK at a port of entry or applies for entry clearance at a visa point abroad (i.e. they are not imposed at the point of return although the date that someone departed and the method by which they departed is flagged on the Warnings Index). Anyone who has previously broken the immigration laws, including not complying with a return obligation and overstaying for more than 90 days, would have their details noted on the Warnings Index and a re-entry ban would be imposed if they sought to re-enter the UK.
	Norway	Yes	<ol style="list-style-type: none"> 1. The general rule is that an entry ban is entered into SIS within six week of the decision to expel, taken in accordance with the provisions in the Immigration act, sections 66 (1) a, b, c, e or (2) 67, 68 or 126 (2) see section 7(2), having become effective, i.e. when the decision has not been appealed or the appeal has been rejected. A decision to expel may reversed on appeal. In this case the registered entry ban will be either changed or deleted. 2. The police may enforce an expulsion decision and the entry ban may be registered before the decision is final and non-appealable if the person does not have the right to stay in Norway during the appeals process, e.g. because s/he did not have a residence permit prior to the decision to expel or because s/he represents a danger to another person residing in Norway. 3. Whether s/he will be allowed to enter Norway while the appeal is being considered depends on whether the conditions of the residence permit, see § 61, include the right to travel abroad. If a delayed execution is granted for the appeals process then it is subject to a consideration of the concrete circumstances in each case whether the foreign citizen will be allowed entry before the entry ban has become effective.

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Summary:

18 Member States responded to this Ad-hoc Query. Member State practices vary concerning the point at which the entry-ban is registered in the Schengen Information System. Two most common practices seem to be that the entry-ban is registered either **when the decision is made** or when the person in question **leaves the country**. Another, less common practice is that the entry-ban is registered after the person in question **has been notified** of the decision.

There are a number of Member States, in which the entry-ban can be registered **only after the decision has become final**. However, it is not informative to categorise Member State practices in these terms, because practices on when the decision becomes final vary greatly: in some Member States the decision becomes final on notification, whereas in other Member States appeal is possible either while still in the country or even from abroad.

Similarly, because of the differences in the appeal procedures it is difficult to summarise the Member State practices on whether the person will be refused entry or allowed into the country during the appeal period. However, it seems that **in most Member States a person will be refused entry into the country if an entry ban has been issued, even if the decision is not final yet.**