



**COUNCIL OF
THE EUROPEAN UNION**

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**SIRIS 166
SCHENGEN 62
COMIX 882**

NOTE

from : Swedish Presidency

to : Delegations

No prev. docs: 13944/09 SIRIS 123 SCHENGEN 29 COMIX 728
14776/09 SIRIS 138 SCHENGEN 36 COMIX 783
14819/09 SIRIS 139 SCHENGEN 37 COMIX 788
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14994/09 SIRIS 142 SCHENGEN 41 COMIX 802
15284/09 SIRIS 145 SCHENGEN 42 COMIX 812

Subject : Proposal for a Council Regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)
- Presidency compromise version

Taking into consideration the discussions held in the meetings of the Working Party on the Schengen Acquis on 9 October 2009 and 4 November 2009, as well as the written contributions sent in by the delegations, the Swedish Presidency presents below a compromise redrafted version of the abovementioned proposal.

Changes to the initial text of the Commission's proposal¹ are in **bold**; deletions are indicated with “(...)”.

The amendments proposed to this proposal would be mutatis mutandis incorporated in the proposal for a Council Decision amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).²

¹ 13944/09 SIRIS 123 SCHENGEN 29 COMIX 728.

² 13945/09 SIRIS 124 SCHENGEN 30 COMIX 729.

COUNCIL REGULATION

amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 66 thereof,

Having regard to the proposal from the Commission³,

Having regard to the opinion of the European Parliament⁴,

Whereas:

- (1) The second generation Schengen Information System (SIS II) was established by 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)⁵ and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II)⁶.
- (2) The conditions, procedures and responsibilities applicable to the migration from SIS 1+ to SIS II are laid down in Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS1+) to the second generation Schengen Information System (SIS II)⁷ and Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS1+) to the second generation Schengen Information System (SIS II)⁸. However, those instruments will expire at the latest on 30 June 2010.

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 381, 28.12.2006, p. 4.

⁶ OJ L 205, 7.8.2007, p. 63.

⁷ OJ L 299, 8.11.2008, p. 1.

⁸ OJ L 299, 8.11.2008, p. 43.

- (3) The preconditions for migration will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed.
- (4) The Commission and the Member States should continue to cooperate closely during all steps of the **development and the migration** in order to complete the process. **In the Council conclusions on the SIS II of 26-27 February and 4-5 June 2009, an informal body consisting of the experts of the Member States and designated as the Global Programme Management Board, was established to enhance the cooperation and to provide direct Member States support to the central SIS II project. The positive result of the work of the group and the necessity to further enhance the cooperation and the transparency of the project justify the formal integration of the group into the SIS II management structure.** A group of experts, called the **Global Programme Management Board** should therefore be formally established under this Regulation to complement the current organisational structure. **In order to ensure efficiency as well as cost effectiveness the number of experts should be limited. This group of experts should be without prejudice to the responsibilities of the Commission and of the Member States.**
- (5) The Commission should remain responsible for the Central SIS II and its communication infrastructure. It is necessary to maintain and, where appropriate, further develop the Central SIS II and its communication infrastructure. Additional development of the Central SIS II should at all times include the correction of errors. The Commission should provide coordination and support for the joint activities.
- (5a) **Article 15 of Regulation (EC) 1987/2006 and Decision 2007/533/JHA provides that the best available technology, subject to a cost-benefit analysis, should be used for Central SIS II. Annex to the Council conclusions on the further direction of SIS II from 4-5 June 2009 laid down milestones which should be met in order to continue with the current SIS II project. In parallel, a study has been conducted concerning the elaboration of an alternative technical scenario for developing SIS II based on SIS 1+ evolution (SIS 1+ RE) as the contingency plan, in case the tests demonstrate non-compliance with the milestones requirements. Based on these parameters, the Council may decide to invite the Commission to switch to the alternative technical scenario.**⁹

⁹ Suggested by COM to reflect the Council Conclusions of June 2009 (10708/09 JAI 360 SIRIS 82 CATS 64 COMIX 478).

- (6) (...) The description of the technical components of the migration architecture therefore should be adapted to allow for another technical solution, **and in particular the SIS 1+RE regarding the development of Central SIS II. SIS 1 + RE is a possible technical solution to develop Central SIS II and to achieve the objectives of the SIS II laid down in Regulation (EC) 1987/2006 and Decision 2007/533/JHA. The references in this Regulation to the technical architecture of SIS II should therefore, in case of a switch over¹⁰ to the contingency plan, be read as the references to SIS II based on another technical solution, notably SIS 1+RE.**
- (6a) **As regards the financing of the development of the Central SIS II based on an alternative technical solution, it should be covered by the general EU budget while respecting the principle of the sound financial management. In accordance with Council Regulation (EC) no 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, the Commission may delegate budget implementation tasks to national public sector bodies. Following the political orientation and subject to the conditions laid down in the Financial Regulation, the Commission would be invited,¹¹ in case of switchover to the alternative solution, to delegate the budget implementation tasks related to the development of the SIS II based on SIS 1+RE to France.**
- (7) The Member States should remain responsible for their national systems (N.SIS II). It is still necessary to maintain and, where appropriate, further develop the N.SIS II.
- (8) France should remain responsible for C.SIS.
- (9) Since the objectives of the action to be taken, namely setting up the interim migration architecture and the migrating the data from SIS 1+ to SIS II, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

¹⁰ Text amended to match the new paragraph 3a in Article 1.

¹¹ Suggested by COM to reflect the Council Conclusions of June 2009 (10708/09 JAI 360 SIRIS 82 CATS 64 COMIX 478).

- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is therefore not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the EC Treaty, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*¹²; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (12) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*¹³; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (13) This Regulation is without prejudice to the arrangements for the United Kingdom's and Ireland's partial participation in the Schengen *acquis* as determined by Decision 2000/365/EC and Decision 2002/192/EC respectively.
- (14) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹⁴, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999¹⁵ on certain arrangements for the application of that Agreement.

¹² OJ L 131, 1.6.2000, p. 43.

¹³ OJ L 64, 7.3.2002, p. 20.

¹⁴ OJ L 176, 10.7.1999, p.36.

¹⁵ OJ L 176, 10.7.1999, p.31.

- (15) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁶, which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁷ on the conclusion, on behalf of the European Community, of the Agreement.
- (16) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹⁸,

¹⁶ OJ L 53, 27.2.2008, p. 52.

¹⁷ OJ L 53, 27.2.2008, p. 1.

¹⁸ OJ L 83, 26.3.2008, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1104/2008 is amended as follows:

(1) In Article 4, the introductory sentence is replaced by the following:

"In order to ensure the migration from SIS 1+ to SIS II, the following components shall be made available to the extent necessary:";

(2) In Article 10, paragraph 3 is replaced by the following:

"3. To the extent necessary, the converter shall convert data in two directions between the C.SIS and Central SIS II and keep C.SIS and Central SIS II synchronised.";

(3) In Article 11, paragraph 2 is replaced by the following:

"2. The Member States participating in SIS 1+ shall migrate from N.SIS to N.SIS II using the interim migration architecture, with the support of France and of the Commission.";

(3a) In Article 11, a new paragraph 6 is added as following:

“(6) The development of SIS II may be achieved by implementing an alternative technical scenario.”¹⁹

(4) The following Article 17a is inserted:

"Article 17A

Global Programme Management Board

1. Without prejudice to the respective responsibilities and activities of the Commission, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (hereinafter the "GPMB"), is hereby set up. The GPMB shall provide a forum for **assistance to the central SIS II project and facilitate consistency²⁰** between central and national SIS II projects.

¹⁹ Based on a proposal from AT.

²⁰ Suggested by COM.

2. The GPMB shall be composed of a maximum of 10 **members**²¹, **with an ability to make active contributions to the SIS II development on a weekly basis. A maximum of 8**²² experts and an equal number of alternates shall be designated by the Member States acting within the Council. **A maximum of**²³ two experts and two alternates shall be designated by the Director General of the responsible Directorate-General of the Commission from among Commission officials.
- The meetings of the GPMB may be attended by other Commission officials **as well as Member States' experts** with an interest in the proceedings²⁴ **at their own expense.**
3. The GPMB may invite further experts to participate in GPMB meetings as appropriate in order to enable it to accomplish its objective as set out in paragraph 1.
4. The GPMB(...)'s secretariat shall be ensured by the Commission.
5. The GPMB shall draw up its own terms of reference **which shall include in particular procedures on:**
- **chairmanship,**
 - **meeting venues,**
 - **preparation of meetings,**
 - **admission of experts invited pursuant to paragraph 3,**
 - **communication plan ensuring full information to non participating Member States.**
- The terms of reference** shall take effect after a favourable opinion has been given by the Director General of the responsible Directorate-General of the Commission **and by Member States meeting within the framework of the Committee referred to in Article 17.**

²¹ Designation chosen to distinguish experts reimbursed by the Commission from others attending GPMB meetings. Corresponding change made in paragraph 6.

²² Supported by DK, FI and PT.

²³ Supported by DK, FI and PT.

²⁴ Text modified to cater for experts from MS not taking part in the GPMB as members, not to be excluded from taking part in the meetings.

5a. The GPMB shall regularly report about the progress of the project to the Member States, meeting within the framework of the Committee referred to in article 17 or, as appropriate, within the relevant Council preparatory²⁵ bodies.

6. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the **members** in the GPMB designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the GPMB, the Commission's 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity' shall apply.

(5) In Article 19, the last sentence is replaced by the following:

"It shall expire on a date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006, **and in any case no later than on 31 December 2011.or on 31 December 2013 in case of a switchover to an alternative technical scenario as referred to in Article 11(6).**"²⁶

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council

The President

²⁵ Suggested by ES.

²⁶ Presidency compromise supported by IT and NL.