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**A7-0370/2012**

8.11.2012

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## **REPORT**

on the draft Council regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)  
(11143/1/2012 – C7-0331/2012 – 2012/0033B(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

(Recast – Rule 87 of the Rules of Procedure  
Simplified procedure – Rule 46(2) of the Rules of Procedure)

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**EN**

*United in diversity*

**EN**

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT.....	19
ANNEX 1 : LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS.....	23
ANNEX 2 : OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION .....	25
RESULT OF FINAL VOTE IN COMMITTEE .....	<b>Error! Bookmark not defined.</b>



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast) (11143/1/2012 – C7-0331/2012 – 2012/0033B(NLE))**

**(Consultation - recast)**

*The European Parliament,*

- having regard to the Council draft (11143/1/2012),
  - having regard to Article 74 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0331/2012),
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to the letter of 12 October 2012 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to Rules 87, 55 and 46 (2) of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0370/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Approves the Council draft as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Asks the Council to consult Parliament again if it intends to substantially amend its draft;
  4. Instructs its President to forward its position to the Council and the Commission.

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

## Amendment 1

### Draft regulation

#### Recital 6

##### *Council draft*

(6) The development of SIS II should be continued and should be finalised ***in the framework of the SIS II global schedule endorsed by the Council on 6 June 2008 and subsequently amended in October 2009 following the orientations adopted in the JHA Council of 4 June 2009. The present version of the SIS II global schedule was presented by the Commission to the Council and the European Parliament in October 2010.***

##### *Amendment*

(6) The development of SIS II should be continued and should be finalised ***at the latest by 30 June 2013.***

##### *Justification*

*It is important in this Regulation to mention a date until which the SIS II will be operating. The date proposed by the rapporteur gives even more time than necessary as the switchover to SIS II is planned for the end of April 2013. In addition, according to the Joint Practical Guide for persons involved in the drafting of legislation reference should only be made to an act which "has been published or is sufficiently accessible to the public" which does not seem to be the case for the SIS II global schedule (see point 16.4 thereof).*

## Amendment 2

### Draft regulation

#### Recital 16

##### *Council draft*

(16) ***In order to support Member States in opting for the most favourable technical and financial solution the Commission should initiate without delay the process of adapting this Regulation by proposing a legal regime for the migration which better reflects to the technical migration approach outlined in the Migration Plan for the SIS Project (Migration Plan) adopted by the Commission after a***

##### *Amendment*

***deleted***

**positive vote by the SIS-VIS Committee on  
23 February 2011.**

*Justification*

*This recital is not necessary as the content is covered also elsewhere: the reasons for the proposed co-financing of Member States are given in recitals 25 to 27 and the reasons for the change of the applicable legal framework are provided for in recital 17. In addition, according to the Joint Practical Guide for persons involved in the drafting of legislation reference should only be made to an act which "has been published or is sufficiently accessible to the public" which does not seem to be the case for the Migration Plan (see point 16.4 thereof).*

**Amendment 3**

**Draft regulation  
Recital 17**

*Council draft*

(17) ***The Migration Plan describes*** that within the switchover period all Member States, consecutively, will perform their individual switchover of the national application from SIS 1+ into SIS II. It is desirable from a technical point of view that Member States that have switched over be able to use SIS II full scope from the time of the switchover and do not have to wait until other Member States have also switched over. Therefore, it is necessary to apply Regulation (EC) No 1987/2006 and Decision 2007/533/JHA from the time of the initiation of the switchover by the first Member State. For reasons of legal certainty, the period of switchover should be kept as short as possible, and should not exceed 12 hours. The application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA does not prevent Member States which have not switched over yet or which have had to fall back for technical reasons to use SIS II limited to SIS 1+ functionalities during the intensive monitoring period. In order to apply the

*Amendment*

(17) ***It is envisaged*** that within the switchover period all Member States, consecutively, will perform their individual switchover of the national application from SIS 1+ into SIS II. It is desirable from a technical point of view that Member States that have switched over be able to use SIS II full scope from the time of the switchover and do not have to wait until other Member States have also switched over. Therefore, it is necessary to apply Regulation (EC) No 1987/2006 and Decision 2007/533/JHA from the time of the initiation of the switchover by the first Member State. For reasons of legal certainty, the period of switchover should be kept as short as possible, and should not exceed 12 hours. The application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA does not prevent Member States which have not switched over yet or which have had to fall back for technical reasons to use SIS II limited to SIS 1+ functionalities during the intensive monitoring period. In order to apply the

same standards and conditions to alerts, data processing and data protection in all Member States, it is necessary to apply the SIS II legal framework, namely Regulation (EC) No 1987/2006 and Decision 2007/533/JHA to the SIS operational activities of the Member States which did not switch over yet.

same standards and conditions to alerts, data processing and data protection in all Member States, it is necessary to apply the SIS II legal framework, namely Regulation (EC) No 1987/2006 and Decision 2007/533/JHA to the SIS operational activities of the Member States which did not switch over yet.

#### *Justification*

*It is not appropriate to refer in a legal act to the Migration Plan as this plan is neither a legal document nor accessible to the public. According to the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions reference should only be made to an act which "has been published or is sufficiently accessible to the public" which does not seem to be the case for the Migration Plan (see point 16.4 thereof).*

#### **Amendment 4**

##### **Draft regulation**

##### **Recital 19**

#### *Council draft*

(19) Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the best available technology, subject to a cost-benefit analysis, should be used for Central SIS II. The Annex to the Council Conclusions on the further direction of SIS II of 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 milestone requirements. Based on these parameters, the Council may decide to invite the Commission to switch to the alternative technical scenario.

#### *Amendment*

(19) Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the best available technology, subject to a cost-benefit analysis, should be used for Central SIS II. The Annex to the Council Conclusions on the further direction of SIS II of 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 milestone requirements. Based on these parameters, the Council may decide to invite the Commission to switch to the alternative technical scenario. ***In such a case the Commission should present a***



***proposal to revise this Regulation.***

*Justification*

*Even if following the successful SIS II Milestone 2 test the alternative technical scenario does not seem necessary it appears appropriate, for reasons of legal certainty, to provide for a procedure in case it is followed.*

**Amendment 5**

**Draft regulation  
Recital 31**

*Council draft*

(31)The European Data Protection Supervisor is responsible for monitoring and ensuring the application of Regulation (EC) No 45/2001 and it is competent to monitor the activities of the Union institutions and bodies in relation to the processing of personal data. This Regulation should be without prejudice to the specific provisions of the Schengen Convention as well as of Regulation (EC) No 1987/2006 and of Decision 2007/533/JHA on the protection and security of personal data.

*Amendment*

(31) The European Data Protection Supervisor is responsible for monitoring and ensuring the application of Regulation (EC) No 45/2001 and it is competent to monitor the activities of the Union institutions and bodies in relation to the processing of personal data. ***The Joint Supervisory Authority is responsible for supervising the technical support function of the current SIS 1+ until the entry into force of the SIS II legal framework. National Supervisory Authorities are responsible for the supervision of SIS 1+ data processing on the territory of their respective Member States and will remain responsible for monitoring the lawfulness of the processing of SIS II personal data on the territory of the Member States.*** This Regulation should be without prejudice to the specific provisions of the Schengen Convention as well as of Regulation (EC) No 1987/2006 and of Decision 2007/533/JHA on the protection and security of personal data. ***This SIS II legal framework provides that the National Supervisory Authorities and the European Data Protection Supervisor ensure the coordinated supervision of SIS II.***

## *Justification*

*It is important to spell out that a number of different data protection authorities are involved in the migration process.*

### **Amendment 6**

#### **Draft regulation Recital 43 a (new)**

*Council draft*

*Amendment*

***(43a) This Regulation constitutes a development of provisions of the Schengen acquis, in which Bulgaria and Romania are participating in accordance with Article 4(2) of the 2005 Act of Accession and with Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania,***

### **Amendment 7**

#### **Draft regulation Article 7 – paragraph 6**

*Council draft*

*Amendment*

6. The activities in paragraphs 1 to 3 shall be coordinated by the Commission and the Member States participating in SIS 1+ acting within the Council.

6. The activities in paragraphs 1 to 3 shall be coordinated by the Commission and the Member States participating in SIS 1+ acting within the Council. ***The European Parliament shall be informed on a regular basis about these activities.***

## Amendment 8

### Draft regulation

#### Article 11 – paragraph -1 (new)

*Council draft*

*Amendment*

***-1. Prior to the start of the migration, Member States shall verify that all the personal data to be migrated to SIS II are accurate, up-to-date and lawful in accordance with Regulation (EC) No 1987/2006.***

***Any data that cannot be verified before the start of the migration shall be verified within a maximum period of six months following the start of the migration.***

*Justification*

*The quality of the data to be migrated to the SIS II is of major importance. This is not a technical detail but necessary to protect EU citizens and third country nationals from errors which could seriously affect them (for example unjustified refusal at the border).*

## Amendment 9

### Draft regulation

#### Article 11 – paragraph 1

*Council draft*

*Amendment*

1. For the migration from C.SIS to Central SIS II, France shall make available the SIS 1+ database and the Commission shall introduce the SIS 1+ database into Central SIS II. Data of SIS 1+ database referred to in Article 113 (2) of the Schengen Convention shall not be introduced into Central SIS II.

1. For the migration from C.SIS to Central SIS II, France shall make available the SIS 1+ database and the Commission shall introduce the SIS 1+ database into Central SIS II. Data of SIS 1+ database referred to in Article 113 (2) of the Schengen Convention shall not be introduced into Central SIS II. ***These data shall be deleted at the latest one month after the end of the intensive monitoring period.***

*Justification*

*Once the SIS II is fully operational no current SIS data should be available outside the SIS II.*

*It is necessary for reasons of proper data management and control to avoid that SIS data is kept elsewhere. It should therefore be clarified that this data will be deleted.*

## **Amendment 10**

### **Draft regulation**

#### **Article 11 – paragraph 3 – subparagraph 1**

##### *Council draft*

3. The migration of the national system from SIS 1+ to SIS II shall start with the data loading of N.SIS II, when that N.SIS II is to contain a data file, the national copy, containing a complete or partial copy of the SIS II database.

##### *Amendment*

3. The migration of the national system from SIS 1+ to SIS II shall start with the data loading of N.SIS II, when that N.SIS II is to contain a data file, the national copy, containing a complete or partial copy of the SIS II database. ***Member States shall ensure that all personal data loaded into N.SIS II are accurate, up-to-date and lawful in accordance with Regulation (EC) No 1987/2006.***

## **Amendment 11**

### **Draft regulation**

#### **Article 11 – paragraph 4 a (new)**

##### *Council draft*

##### *Amendment*

***4a. On the basis of information provided by the Member States and the responsible supervisory authorities, the Commission shall report to the European Parliament and the Council on the completion of the migration, in particular on the switchover of the Member States to SIS II. This report shall confirm whether the migration and in particular the switchover have been carried out in full compliance with this Regulation at central as well as at national level, and that the processing of personal data during the entire migration was in accordance with Regulation (EC) No 45/2001 and Directive 95/46/EC of the European***

***Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>.***

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<sup>1</sup> ***OJ L 281, 23.11.1995, p. 31.***

*Justification*

*Following the complex process of the migration there should be a validation to determine if the migration and the following switchover were successful. It is important to recall that, also, under SIS II the Commission will continue to not have access to the data in the central system. This means that the Member States will continue to remain the data owners and will remain responsible for the data quality in line with Article 34(1) of the SIS II Regulation and Article 49(1) of the SIS II decision.*

**Amendment 12**

**Draft regulation**

**Article 11 – paragraph 4 b (new)**

*Council draft*

*Amendment*

***4b. One month after the end of the intensive monitoring period, the SIS 1+ database, all the data in the SIS 1+ database, irrespective of its medium or location, C.SIS, Member States' N.SIS and any copies thereof, shall be definitively deleted.***

*Justification*

*Once the SIS II is fully operational no current SIS data should be available outside the SIS II. It is necessary for reasons of proper data management and control to avoid that SIS data is kept elsewhere. It should therefore be clarified that this data will be deleted.*

## Amendment 13

### Draft regulation Article 11 a (new)

*Council draft*

*Amendment*

#### *Article 11a*

#### *Migration of the SIRENE bureaux*

***The migration of the SIRENE bureaux to the S-TESTA network shall take place in parallel with the switchover referred to in Article 11(3) and shall be terminated immediately after the switchover.***

#### *Justification*

*The SIS 1+ and the SIRENE systems operate at the moment on the SISNET communications network. The launch of SIS II operations requires also the migration of the SIRENE bureaux to the S-TESTA network for the exchange of supplementary information.*

## Amendment 14

### Draft regulation Article 12 – paragraph 2

*Council draft*

*Amendment*

As from the switchover of the first Member State from N.SIS to N.SIS II, as referred to in the second subparagraph of Article 11 (3) of this Regulation, Regulation (EC) 1987/2006 shall apply.

As from the ***successful*** switchover of the first Member State from N.SIS to N.SIS II, as referred to in the second subparagraph of Article 11 (3) of this Regulation, Regulation (EC) 1987/2006 shall apply.

#### *Justification*

*It should be specified that only in case the switchover was successful the SIS II legal framework should become applicable.*

## Amendment 15

### Draft regulation

#### Article 15 – paragraph -1 (new)

*Council draft*

*Amendment*

***-1. In addition to the recording of automated searches, Member States and the Commission shall ensure that, during the migration in accordance with this Regulation, the applicable data protection rules are fully respected and that the tasks specified in Article 3(f) and Article 11 are appropriately recorded in Central SIS II. The recording of those activities shall, in particular, ensure the integrity and lawfulness of the data during the migration and switchover to SIS II.***

*Justification*

*The data protection provisions of the Commission's proposal and subsequently of the Council draft seem to be drafted more with having the operation of SIS II in mind than the process of the migration which this Regulation deals with. This amendment therefore adds data protection rules to be applied during the process of the migration before the SIS II legal framework becomes applicable.*

## Amendment 16

### Draft regulation

#### Article 15 – paragraph 4

*Council draft*

*Amendment*

4. The records shall show, in particular, the date and time of the data transmitted, the data used to perform searches, the reference to the data transmitted and the name of the competent authority responsible for processing the data.

4. The records shall show, in particular, the date and time of the data transmitted, the data used to perform searches, the reference to the data transmitted and the name of the competent authority responsible for processing the data ***and the name of the end user.***

## Amendment 17

### Draft regulation

#### Article 15 – paragraph 5

##### *Council draft*

5. The records may only be used for the purposes referred to in **paragraph 1** and shall be deleted at the earliest one year, and at the latest three years after their creation.

##### *Amendment*

5. The records may only be used for the purposes referred to in **paragraph 3** and shall be deleted at the earliest one year, and at the latest three years after their creation.

##### *Justification*

*The reference should be to paragraph 3 of Article 15 as this deals with the keeping of records.*

## Amendment 18

### Draft regulation

#### Article 15 – paragraph 7

##### *Council draft*

7. The competent authorities in charge of checking whether or not a search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of Central SIS II, data integrity and security, shall have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

##### *Amendment*

7. The competent authorities **referred to in Article 44(1) and Article 45(1) of Regulation (EC) 1987/2006** in charge of checking whether or not a search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of Central SIS II, data integrity and security, shall, **in accordance with the provisions of Regulation (EC) 1987/2006**, have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

##### *Justification*

*It is important to refer to the SIS II Regulation to clarify which "competent authorities" are covered by this provision. These are the European Data Protection Supervisor and national supervisory authorities.*



## Amendment 19

### Draft regulation

#### Article 15 – paragraph 7 a (new)

*Council draft*

*Amendment*

***7a. All data protection authorities with responsibility for either SIS 1+ or SIS II shall be closely involved in all steps of the migration from SIS 1+ to SIS II.***

*Justification*

*The migration to SIS II is a complex process also from the point of view of its supervision. In order to ensure a smooth transition to the SIS II legal framework and to avoid any gaps in the supervision in practical terms it is important that all the authorities with responsibilities are closely involved in the entire migration phase.*

## Amendment 20

### Draft regulation

#### Article 19

*Council draft*

*Amendment*

The Commission shall submit by the end of every six month period, and for the first time by the end of the first six month period of 2009, a progress report to the European Parliament and the Council concerning the development of SIS II and the migration from SIS 1+ to SIS II.

The Commission shall submit by the end of every six month period, and for the first time by the end of the first six month period of 2009, a progress report to the European Parliament and the Council concerning the development of SIS II and the migration from SIS 1+ to SIS II. ***The Commission shall inform the European Parliament of the results of the tests referred to in Articles 8, 9 and 10.***

## Amendment 21

### Draft regulation Article 21

#### *Council draft*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall expire upon the termination of the migration as referred to in Article 11 (3), third subparagraph. If this date cannot be complied with due to outstanding technical difficulties related to the migration process, 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.

#### *Amendment*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall expire upon the termination of the migration as referred to in Article 11 (3), third subparagraph. If this date cannot be complied with due to outstanding technical difficulties related to the migration process, 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 event by 30 June 2013.**

#### *Justification*

*The rapporteur believes that it is necessary to have a final date for the termination of the migration and for the expiry of the Regulation. Otherwise there is the danger that the migration to the SIS II will continue to be postponed. It is of utmost importance to have the SIS II now finally running. The date proposed by the rapporteur gives even more time than necessary as the switchover to SIS II is planned for the end of April 2013.*

## EXPLANATORY STATEMENT

### General background

The SIS (Schengen Information System) is by far the most important instrument for the security of the Schengen Area, which is rightly considered the backbone of a Europe without borders and the area of freedom, security and justice.

The SIS II (the second generation SIS) makes it possible to add new data (biometric data, in particular), new types of indication and new functions which can increase security and lead to a more intelligent use of information through interconnected alerts.

Provisions on the establishment, operation and use of the SIS II were agreed in 2006 between the Council and the European Parliament in first reading under co-decision in order to avoid any further delays (Regulation 1987/2006). In parallel, an act under the former third pillar was agreed (Decision 2007/533/JHA). These instruments foresee that they will start applying to the Member States participating in the SIS 1+ only as of the date to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS 1+ (according to Article 55(2) of Regulation 1987/2006).

The new system needs to be fully tested before it can come into force, to verify whether SIS II fulfils the necessary technical and functional requirements (as defined by the respective legal instruments) and to confirm its solidity, availability and performance.

The migration from SIS 1+ to SIS II should start once the tests have all been successfully concluded, probably in January 2013.

### The Commission proposal

The migration of the currently used SIS 1+ to SIS II is governed by two legal instruments: Council Regulation 1104/2008 in the former first pillar and Council Decision 2008/839/JHA in the former third pillar. The Commission presented a proposal to recast the two legal acts in one and thereby reflects the abolition of the pillars (COM(2012)81). The principal innovation of the Commission's proposal is that it foresees the entry into force and application of the legal framework for SIS II from the moment the first Member State completes its switchover to the new system. This comes in response to objections raised by various Member States which (rightly) complained that unless this were the case the first Member States to migrate to SIS II would have to deactivate its new functions until the remaining Member States had also completed their migration, for lack of a legal basis. Such a situation, apart from its absurdity, would have involved the extra cost of installing filters which were not originally planned.

The Commission also proposes to provide for the possibility to co-finance (up to 75%) from the EU budget certain national activities related to the migration. In the financial statement the Commission estimates the budgetary impact of the proposal to amount to a total of EUR 35 240 000 for the period 2012 to 2013. The majority of this amount relates to costs linked to Member States' participation in the activities for the preparation of the migration, in particular the coordination of tests. No amending budget had been foreseen as unspent

amounts from 2011 were available. Given the late adoption of the proposal by the Commission on 30 April this year and the time normally necessary to commit funds once a legal base is adopted these calculations, at least in so far as 2012 is concerned, seem to have become obsolete.

The Commission also proposes to eliminate the expiry date of 31 March 2013 (or 21 December 2013, if an alternative technical solution is used) proposed under the legal instruments currently in force. Other proposed changes refer to the internal structure of the migration.

The legal basis for this proposal is Article 74 TFEU (administrative cooperation) which merely provides for consultation with Parliament.

The migration to SIS II is scheduled to start in early January next year. From this moment Member States would begin transferring data from their N.SIS 1+ currently used to the N.SIS II. Towards the end of March 2013 the switchover of all Member States is scheduled to take place within a period of no more than 12 hours. Most likely, much less time will be required. The switchover will be followed by an intense monitoring period of up to 30 days. This schedule would lead to a fully functional SIS II by the end of April 2013 at the latest.

The tight schedule makes the swift adoption of this legislative proposal necessary.

### **The Council's texts**

Following discussions between Member States, Council considered it more appropriate to split the Commission's proposal in two texts: one in which the UK and Ireland are taking part and one in which they are not taking part.

By letter of 5 October 2012 the Council informed Parliament about this and "consults the European Parliament on this splitting and on the resulting instruments."

The resulting two texts of the Council correspond almost with the Commission's original proposal. Regarding the changes introduced by Council the Rapporteur welcomes in particular the precision added regarding the switchover.

### **Rapporteur's position**

For several years, Parliament has upheld the need for a clearly Community solution and rejected the continued use of an intergovernmental structure. This is one of the reasons why we support the SIS II.

The rapporteur congratulates the Commission on its proposal, which clarifies the legal framework applied to the migration from SIS1+ to SIS II, and particularly applauds the

application of the legal framework of SIS II from the moment the first Member State completes its migration. This proposal reinforces legal certainty and prevents unnecessary expenses in the Member States.

Another equally positive aspect is the provision for Community co-financing of expenses which may be incurred by the Member States during the migration process. The rapporteur regrets the delay in the Commission's presentation of this initiative, which may mean the Member States are unable to benefit from the existing 2012 budget heading. This delay has allowed us only a very brief space of time within which to assess the proposal.

The rapporteur therefore recommends that Parliament move to rapidly adopt the proposal. It should not be our fault if conditions do not allow the SIS II to enter into force as scheduled and finally provide us with a truly European system.

The rapporteur agrees with the split of the proposal into two parts. This does not change anything regarding the UK's and Ireland's participation but provides for a more transparent solution which is to be welcomed.

The rapporteur regrets, however, that Parliament is only given a consulting role, in view of the political importance of the file and its significant budget.

The rapporteur proposes a number of amendments and asks the Council to take them into consideration.

The migration process will foresee that an interim migration structure will be put in place, where the two systems (SIS 1+ and SIS II) will work in parallel for a certain period of time, relying on a convertor through which they will see and update each other, keeping them synchronised at all time. This interim structure shall be kept alive for the period necessary to avoid any contingencies, being subject to an intense monitoring.

### **Data protection**

The rapporteur considers it essential to strengthen the rules on data protection and has presented a number of amendments with this in mind.

First of all, it is crucial to ensure an efficient supervision of the complex migration. This should be achieved through an effective cooperation between the current and future supervisory authorities. The SIS 1+ was covered by a Convention, while SIS II relies on Member States' authorities for national supervision and on the EDPS for the central unit, requiring a close cooperation between them, in order to ensure a smooth transition.

Secondly, it is of utmost importance to ensure the quality of the data which eventually will be used by SIS II users under the SIS II legal framework. Personal data is particularly sensitive in this regard as errors can have extremely negative consequences for persons, for example unjustified arrests or refusals at the border. It is therefore necessary to check the correctness of data, through the identification of any errors or discrepancies in the data migrated from one system to the other.

Thirdly, the data protection safeguards of the SIS II legal framework can only then fully achieve their objective if no current SIS data is kept in other places than the SIS II with the risk of being used without proper supervision. It should therefore be explicitly stated that any SIS data outside SIS II be definitely deleted after a transition period.

## **Recast**

A number of the amendments touch upon parts of the text not shaded as grey by the Commission, i.e. strictly speaking not part of this Commission proposal but part of the codification of previously adopted acts. Touching these other parts is, however, in line with Parliament's rules of procedure, in particular rule 87, paragraph 3, 3rd subparagraph. This rule requires the committee to notify its intention to submit amendments to the codified parts of the proposal to the Council and the Commission and refers to point 8 of the interinstitutional agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts which states:

8. Where, in the course of the legislative procedure, it appears necessary to introduce substantive amendments in the recasting act to those provisions which remain unchanged in the Commission's proposal, such amendments shall be made to that act in compliance with the procedure laid down by the Treaty according to the applicable legal basis.

The rapporteur points out that also the Council in the latest version of the text under discussion of 13 July introduced amendments in the codified part.

## **Conclusion**

The SIS II is an essential instrument with which to increase the security of the Schengen Area, end intergovernmental management of the system and considerably improve data protection and the fundamental rights of individuals. The SIS II should, therefore, enter into force at the earliest possible date.

## ANNEX 1 : LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2012)52183

Mr Juan Fernando López Aguilar  
Chair of the Committee on Civil Liberties, Justice and Home Affairs  
ASP 11G306  
Brussels

***Subject: Proposal for a Council regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)***  
***(COM(2012)0081 – C7-0124/2012 – 2012/0033(NLE))***

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

*"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.*

*In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.*

*However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."*

Following the opinion of the Legal Service, whose representatives participated in the

meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

The fact that the Council on 3 May 2012 divided the Commission proposal into two identical texts of proposals for a Council Regulation (doc. 11142/12 and doc. 11143/12), in order to reflect the particular positions of Ireland and the United Kingdom, does not alter this position.

In conclusion, after discussing it at its meeting of 10 October 2012, the Committee on Legal Affairs, by 20 votes in favour and 3 abstentions<sup>1</sup>, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party.

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<sup>1</sup> Members present : Luigi Berlinguer, Sebastian Valentin Bodu, Piotr Borys, Françoise Castex, Luis de Grandes Pascual, Cornelis de Jong, Christian Engström, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sophia in 't Veld, Klaus-Heiner Lehne, Eva Lichtenberger, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Oreste Rossi, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka.



**ANNEX 2 : OPINION OF THE CONSULTATIVE WORKING PARTY OF THE  
LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE  
COMMISSION**

Annex



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 3 August 2012

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)  
COM(2012) 0081 final of 30.4.2012 - 2012/0033 (NLE)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 24 May and 9 July 2012 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a Council Regulation recasting Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) and Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

2) In the recast proposal, in the first citation of the preamble the words "*Articles 30(1)(a) and (b), 31(1)(a) and (b)*", appearing in the first citation of the preamble of Decision 2008/839/JHA, should have been present and should have been identified by using the sign composed of a double strikethrough and a grey-shaded type which is generally used for marking substantive changes consisting of deletions of existing texts.

3) The following parts of the draft recast text should have been marked with the grey-shaded type generally used for identifying substantive changes:

- the entire wordings of recitals 36 and 37;
- both in the first and in the second paragraph of Article 6, the words "*shall be implementing acts*" and the word "*examination*";
- in Article 15(5), the words "*paragraph 1*";
- the entire text of paragraph 2 of Article 17;
- in Article 21, the deletion of the final words "*and in any case no later than on 31 March 2013 or on 31 December 2013 in case of a switchover to an alternative technical scenario as referred to in Article 1(3) of this Regulation*".

4) Article 8(1) contains an erroneous reference to "*Article 1 of Decision 2008/839/JHA*". A correct reference would need to be inserted.

5) The existing wording of both Article 15(3) of Regulation (EC) No 1104/2008 and of Article 15(3) of Decision 2008/839/JHA should have been present in the draft recast text and should have been identified by using the sign composed of a double strikethrough and a grey-shaded type which is generally used for marking substantive changes consisting of deletions of existing texts.

6) In Annex I, the indication "*Council Regulation (EC) No 541/2010*" should be corrected so as to read "*Council Regulation (EU) No 541/2010*", and the indication "*Council Decision 542/2010/JHA*" should be corrected so as to read "*Council Regulation (EU) No 542/2010*".

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

C. PENNERA  
Jurisconsult

H. LEGAL  
Jurisconsult

L. ROMERO REQUENA  
Director General

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Title</b>	Draft Council regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)
<b>References</b>	11143/1/2012 – C7-0331/2012 – 2012/0033B(NLE)
<b>Committee Responsible</b> Date announced in Plenary	LIBE
<b>Rapporteur</b> Date appointed	Carlos Coelho 16.5.2012
<b>Simplified Procedure - date of decision</b>	11.10.2012
<b>Date adopted</b>	5.11.2012